

**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

**MOTION RECORD**  
(Chambers Appointment Held July 6, 2017)

July 4, 2017

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BETWEEN:

2292912 ONTARIO INC.

Applicant

-and-

2380009 ONTARIO LIMITED

Respondent

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# TAB 1



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

**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, 2017 at 9:30 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, 2017;
- (b) 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;
- (c) 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 interfere with BuiltRite’s business operations;
- (d) that 238, BuiltRite and any persons with notice of this Order cooperate with the Receiver and 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**”);

- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;

- (i) that the Second Report and the activities of the Receiver outlined therein are approved; and
- (j) 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;

**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;

**Access to Property Issues**

- (h) Following termination of the lease, and in accordance with the terms of the May 29, 2017 Order, CBRE began its marketing process for the Property on June 26, 2017;
- (i) 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 of a number of tours scheduled with prospective purchasers;
- (j) As a result of the lack of cooperation received from 238/BuiltRite, the Receiver is presently unable to effectively market the Property;
- (k) 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;

**Approval of Conduct**

- (l) The Receiver's conduct, as outlined in the Second Report to Court is reasonable and ought to be approved by the Court.
- (m) 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 of the Receiver;

- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 4, 2017

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TO: **THE SERVICE LIST**

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

**NOTICE OF MOTION**

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## TAB 2

**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:

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(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



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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.

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#### **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.

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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:

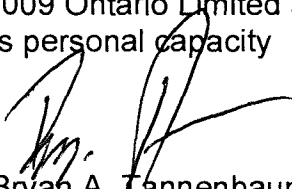
- (a) that 238, BuiltRite and persons with notice of the order shall fully cooperate with the Receiver and CBRE in allowing the Sheridan Property to be viewed by prospective purchasers and in providing such information on and unfettered access to the Sheridan Property, including during the regular business 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



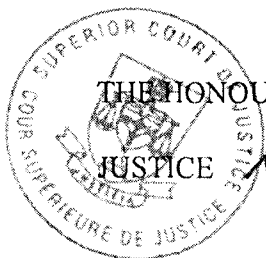
Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
President

**TAB A**

**APPENDIX “A”**  
**Appointment Order dated February 7, 2017**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE

JUSTICE

*NEUBOU*

)  
)  
)

*708*

DAY, THE

*7<sup>th</sup>*

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 29<sup>th</sup>, 2016 and the Exhibits thereto, the Supplementary Affidavit of Andrew Jones sworn May 4<sup>th</sup>, 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.



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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



**TAB B**

# **APPENDIX “B”**

**First Report of the Receiver dated May 11, 2017**

**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.



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## **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

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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.

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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

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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.

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*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:

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- 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.

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*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.

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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);



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- 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	\$18,000 a month (\$216,000 per annum) plus HST for first 5 years  \$20,000 a month (\$240,000 per annum) plus HST for next 5 years	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.  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.
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 <b>throughout the first 10 years</b>	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)	It is to be noted that there is <b>no increase</b> in the annual Tenant realty tax contribution from \$7,500.98 throughout a <b>potential 20 year period</b> , while realty taxes are expected to continue to increase throughout the 20 year period.  This means the effective net base rent received by the Landlord during the initial 10 year term will <b>decrease each year</b> , 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

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>
<p>Tenant Improvements</p>	<p>The Tenant is <b>not</b> to pay the fixed \$7,500.98 monthly contribution towards realty taxes in the <b>first five years</b> as a reimbursement to leasehold improvements by Tenant</p>	<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, <b>100% of realty taxes fall on the Landlord thereby dramatically reducing the return on investment and net rent received.</b></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"> <li>• Tenant responsible for cleaning and interior maintenance of premises</li> <li>• Landlord liable for any personal injuries to any party due to Tenant's failure to repair, maintain or clean its premises</li> </ul>	<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.

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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".

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43. On April 18, 2017, Mr. Lathem advised Torkin Manes that he had changed law firms<sup>1</sup> 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 28<sup>th</sup> 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:

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<sup>1</sup> 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.

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“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.



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## 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*].

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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

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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**

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**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".

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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

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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

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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.

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## 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



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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

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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

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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

**TAB C**

# **APPENDIX “C”**

**Supplemental Report to the First Report of the Receiver dated May 24, 2017**

**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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II. RECEIVER'S REQUESTS FOR INFORMATION ..... 2

III. THE LEASE ..... 4

IV. CONCLUSION ..... 5

**Appendices**

May 16 Letter ..... A

Letter to BuiltRite ..... B

May 19 email (without appendices) ..... C

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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**”).
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



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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

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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 1<sup>st</sup> 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

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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 24<sup>th</sup> day of May, 2017.

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**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

34487.0002/9953231\_3

**TAB D**

# **APPENDIX “D”**

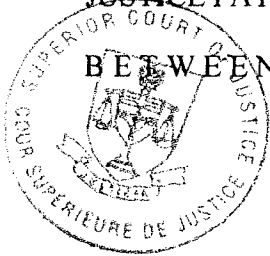
**Order (Re: Approval of Sales Process) dated May 29, 2017**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE PATTILLO

)  
)  
)

MONDAY, THE 29<sup>TH</sup>  
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

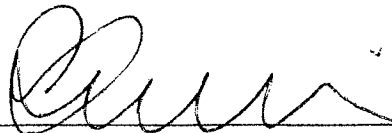
deliver vacant possession of the Property, in a proper state of cleanliness and repair, upon the expiry of the Notice Period.

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.



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ENTERED AT / INSCRIT A 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](mailto: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)

# TAB E

# **APPENDIX “E”**

**Notice of Termination of Lease dated June 22, 2017**

**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**")

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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 22<sup>nd</sup> day of June, 2017.

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

Per: 

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

**TAB F**



# **APPENDIX “F”**

**E-mail from Receiver to M. Hernandez dated June 26, 2017**

## Brenda Wong

---

**From:** Brenda Wong  
**Sent:** Monday, June 26, 2017 3:31 PM  
**To:** mhernandez  
**Cc:** emancebo@builtritetechnology.com; Daniel Weisz; Paulino, Catherine @ Toronto West  
**Subject:** CBRE re tours of the property

Marcelo,

As you are aware, the Receiver has retained CBRE as its listing agent and CBRE has now listed 2370 South Sheridan Way on MLS and started its marketing campaign. CBRE will be conducting tours of the property for interested parties and will be contacting you directly to give you advance notice of scheduled tours. We trust that you will cooperate with the Receiver by giving CBRE access to the property.

If you have any questions or concerns, please do not hesitate to contact Danny or myself.

Brenda

**Brenda Wong**  
Senior Manager  
Collins Barrow Toronto Limited  
Licensed Insolvency Trustee  
**T** 647-727-3621  
**F** 416-480-2646

11 King St. W., Suite 700, Box 27,  
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**TAB G**

# **APPENDIX “G”**

**E-mail from CBRE to Receiver dated June 28, 2017**

## Brenda Wong

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**From:** Miller, Allison @ Toronto West <Allison.Miller@cbre.com>  
**Sent:** Wednesday, June 28, 2017 9:27 AM  
**To:** Brenda Wong; Paulino, Catherine @ Toronto West  
**Cc:** Taylor, Gary @ Toronto West; Steele, Scot @ Toronto West; Daniel Weisz  
**Subject:** RE: 2370 South Sheridan Way Tours

Hi Brenda I have been contacting him.

Monday, June 26<sup>th</sup> – I phoned him on his company phone around 3pm and he answered. When I inquired about conducting a tour on Thursday he said that he was unsure and needed to set up a schedule. He then asked for my phone number and I also said that I would email him with all the information.

Monday, June 26<sup>th</sup> – After the phone call I emailed him *“Hi Marcelo, As discussed on the phone, we would like to gain access to the property this Thursday, June 29<sup>th</sup> at 9:00 a.m. to tour the property. Gary Taylor will most likely be showing the property that day. Please let me know if you have any questions in regards to the tour. Thank you,”*

I waited until the next day but still received no response.

Tuesday, June 27<sup>th</sup> – I phoned him around 11a.m on both his company phone and cellphone and left voicemails on both. With no response, I then phoned him again at 2:00pm on his company phone and was able to get ahold of him, he said that this Thursday does not work for him as he will be out of town. I asked if there was another point of contact we could have for the Thursday and he said no that will not work. He said maybe we could do tours for next week but he would prefer if we only do weekends. I said that we do not normally schedule tours on weekends and he said that weekends are the only times that work for him as it is a safety hazard for people to tour the building while they are working. Not getting any answers as to when we will be able to tour the property besides the weekends, I said I will get an agent to connect with him. I then told Scot the situation.

Thank you,

Allison Miller | Client Services Assistant

CBRE Limited, Real Estate Brokerage  
Advisory and Transaction Services

5,005 Airport Road, Ste. 700, Mississauga, ON L4V 1W5  
T 416 739 6261 | F 416 674 6575

[allison.miller@cbre.com](mailto:allison.miller@cbre.com) | [http://secure-web.cisco.com/1NWq6UUxJsEnyPEnXKZ6ua\\_8iVjseKHFDS8eJ2YQORuUUN-P7InqllRKLR\\_ARACGnZE3pgctWKakColGszWFihrX02dPsn\\_1v0H1lIQkJ7PXDtKHZ88BZquabrVOkNg3bb7qh2Xlp9VFqZtyssXqNEo\\_v9DU3WuOLI-KQXHbjDEshZNCDrZknfBXV1Ay04doli1WFUkSi4\\_ePAP8NgG58PHsYaAuDW\\_4Oalp-50wBypxflh\\_DUCfERKqUVS7rz9qXPq3P-Mfspyhb1x1LaAEROqJYCwqXhMlinub6GZ37IVXZZFE9JrLFnOMzXtoT9VxmyWSHEEZRF-R651LXAA/http%3A%2F%2Fwww.cbre.ca](http://secure-web.cisco.com/1NWq6UUxJsEnyPEnXKZ6ua_8iVjseKHFDS8eJ2YQORuUUN-P7InqllRKLR_ARACGnZE3pgctWKakColGszWFihrX02dPsn_1v0H1lIQkJ7PXDtKHZ88BZquabrVOkNg3bb7qh2Xlp9VFqZtyssXqNEo_v9DU3WuOLI-KQXHbjDEshZNCDrZknfBXV1Ay04doli1WFUkSi4_ePAP8NgG58PHsYaAuDW_4Oalp-50wBypxflh_DUCfERKqUVS7rz9qXPq3P-Mfspyhb1x1LaAEROqJYCwqXhMlinub6GZ37IVXZZFE9JrLFnOMzXtoT9VxmyWSHEEZRF-R651LXAA/http%3A%2F%2Fwww.cbre.ca)

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**From:** Brenda Wong [mailto:bywong@collinsbarrow.com]  
**Sent:** Wednesday, June 28, 2017 8:59 AM

**To:** Paulino, Catherine @ Toronto West <Catherine.Paulino@cbre.com>  
**Cc:** Taylor, Gary @ Toronto West <Gary.Taylor@cbre.com>; Steele, Scot @ Toronto West <Scot.Steele@cbre.com>; Miller, Allison @ Toronto West <Allison.Miller@cbre.com>; Daniel Weisz <dweisz@collinsbarrow.com>  
**Subject:** RE: 2370 South Sheridan Way Tours

Catherine,

Do you have a detailed log of issues encountered in connection with getting access and attempts to contact Marcelo, with dates and times of each interaction? If not, can you prepare one and maintain it going forward?

Brenda

**Brenda Wong**  
Senior Manager  
Collins Barrow Toronto Limited  
T 647-727-3621  
F 416-480-2646

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

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**From:** Paulino, Catherine @ Toronto West [<mailto:Catherine.Paulino@cbre.com>]  
**Sent:** Tuesday, June 27, 2017 5:26 PM  
**To:** Brenda Wong <[bywong@collinsbarrow.com](mailto:bywong@collinsbarrow.com)>; Daniel Weisz <[dweisz@collinsbarrow.com](mailto:dweisz@collinsbarrow.com)>  
**Cc:** Taylor, Gary @ Toronto West <[Gary.Taylor@cbre.com](mailto:Gary.Taylor@cbre.com)>; Steele, Scot @ Toronto West <[Scot.Steele@cbre.com](mailto:Scot.Steele@cbre.com)>; Miller, Allison @ Toronto West <[Allison.Miller@cbre.com](mailto:Allison.Miller@cbre.com)>  
**Subject:** 2370 South Sheridan Way Tours

Hi Brenda & Daniel;

We have attempted to connect with Marcelo with regards to gaining access for Tours. We have sent emails and made numerous calls. When we have reached Marcelo; he is too busy to give us an answer. The last time we did speak with him, he was too busy and could only give access on weekends. We tried to explain that would not work, but got the same answer.

Would you be able to have Counsel help us with gaining access to the property?

Thank you in advance

Kind Regards,

Catherine Paulino | Client Services Assistant | Sales Representative

CBRE Limited, Real Estate Brokerage

Advisory and Transaction Services

5935 Airport Road, Ste. 700, Mississauga, ON L4V 1W5

T 416 798 6240 | C 647 293 9423

[catherine.paulino@cbre.com](mailto:catherine.paulino@cbre.com) | <http://secure-web.cisco.com/1mBjvKZdjQPdMLvnyTbi7RkyBmvxlb9Q3e-Angya9WVvksZf1H8I9k-Mz4yIsK2IxPKCHt->

[5ssegAgiu16f2lyvUAKZ3JjvltmtIRFz5kHN9QfKtIUWCzhWceFORfP1LYML9N8EsHqnDu1ygKVFNdVcyNRrzBKblK8sHp0h4zoKo4XzB4JzlI7Cbx2iRawm0IO14V0yVQErMtJQOrGY6eLbEYvhQAWxWkr3z9inNZgAaEZZmbR0SNcM31rjkk1I-4DTILD-O2V6yRIIt2Kqtj52G5FjHv-EotiTVu6sXyhGcPcvZhu4M-fvg6N9rqX-xLl4lXplYIYuyVDsJq51FCQ/http%3A%2F%2Fwww.cbre.ca](http://5ssegAgiu16f2lyvUAKZ3JjvltmtIRFz5kHN9QfKtIUWCzhWceFORfP1LYML9N8EsHqnDu1ygKVFNdVcyNRrzBKblK8sHp0h4zoKo4XzB4JzlI7Cbx2iRawm0IO14V0yVQErMtJQOrGY6eLbEYvhQAWxWkr3z9inNZgAaEZZmbR0SNcM31rjkk1I-4DTILD-O2V6yRIIt2Kqtj52G5FjHv-EotiTVu6sXyhGcPcvZhu4M-fvg6N9rqX-xLl4lXplYIYuyVDsJq51FCQ/http%3A%2F%2Fwww.cbre.ca)



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**TAB H**



# **APPENDIX “H”**

**E-mail from Receiver to M. Hernandez dated June 27 & 28, 2017**

## Brenda Wong

---

**From:** Daniel Weisz  
**Sent:** Wednesday, June 28, 2017 4:25 PM  
**To:** mhernandez  
**Cc:** emancebo@builtritetechnology.com; Brenda Wong  
**Subject:** RE: CBRE tours

Hi Marcelo,

I understand from Brenda that you have not responded to her request below.

In order to carry out the Receiver's mandate, CBRE needs to be able to attend at the property during business hours in order to show the property to interested purchasers. CBRE can conduct the tours with, or without, a representative of BuiltRite present during the tour. If you wish for a BuiltRite representative to accompany CBRE, then we request that someone be available during business hours who CBRE can contact and we ask that you provide their contact information.

If BuiltRite is unable or unwilling to assist the Receiver as set out above, or does not respond to our requests, the Receiver will proceed to make an application to the Court for the relief the Receiver considers necessary in order to be able to market the property effectively.

If we do not hear from you by 9:30 am on Friday June 30, 2017, we will instruct our counsel accordingly.

We look forward to hearing from you before then.

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>

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---

**From:** Brenda Wong  
**Sent:** Tuesday, June 27, 2017 3:38 PM  
**To:** mhernandez  
**Cc:** emancebo@builtrititech.com; Daniel Weisz  
**Subject:** CBRE tours  
**Importance:** High

Marcelo,

Further to the message which I left on your voice mail, CBRE needs to start taking parties through 2370 South Sheridan Way and they need to start this week. Would you please call me today to discuss what times will be made available for tours this Thursday and going forward.

Brenda

**Brenda Wong**  
Senior Manager  
Collins Barrow Toronto Limited  
Licensed Insolvency Trustee  
**T** 647-727-3621  
**F** 416-480-2646

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# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 6<sup>TH</sup>  
 )  
JUSTICE ) DAY OF JULY, 2017

B E T W E E N:

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: Access to Property and Cooperation with Receiver)

**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 (the “238”) for an Order, *inter alia*, requiring that 238, BuiltRite Technologies Inc. (“**BuiltRite**”) and such other persons as may have notice of this order provide access to the Receiver and/or its agents to the property located at 2370 South Sheridan Way, Mississauga, Ontario (the “**Property**”) for the purposes of conducting and carrying out the marketing process contemplated by the Order of the Honourable Justice Patillo dated May 29, 2017 in this proceeding, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Receiver, and on hearing the submissions of counsel for the Receiver and counsel for 238 and BuiltRite, no other person appearing,

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 ORDERS** that BuiltRite and 238 shall provide to the Receiver or its agents unfettered access to 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.

3. **THIS COURT ORDERS** that the Receiver or 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 interfere with BuiltRite's business operations.

4. **THIS COURT ORDERS** that 238, BuiltRite and any persons with notice of this Order shall cooperate with the Receiver and shall not disturb or remove any signage advertising the sale of the Property which may be placed on the Property premises by the Receiver or its agents, 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.

5. **THIS COURT ORDERS** 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 cellular phone number for:

- (a) a primary contact, and
- (b) two alternative contacts,

who may be contacted by the Receiver for the purpose of gaining access to the Property in order to conduct tours with prospective purchasers.

6. **THIS COURT ORDERS** 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 such that they are aware of the obligation to cooperate with the Receiver and to provide access.

7. **THIS COURT ORDERS** that in the event that no representative of BuiltRite or 238 is available to provide access to the Receiver as contemplated by the terms of this Order, then the Receiver is authorized, upon the passing of 24 hours from a request for access being made, to enter the Property for the purposes set out herein. 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. Neither the provision of keys or information to the Receiver or the Receiver’s or its agent’s entering the Property pursuant to the terms of this Order shall be deemed to constitute taking possession of the Property by the Receiver.

8. **THIS COURT ORDERS** that nothing in this Order shall be deemed to have altered or amended any provisions of the Appointment Order.

9. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver outlined therein are approved.

---



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: Access to Property and Cooperation with Receiver)

**TORKIN MANES LLP**

Barristers & Solicitors  
151 Yonge Street, Suite 1500  
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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)

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

**MOTION RECORD**  
**(Chambers Appointment Held July 6, 2017)**

**TORKIN MANES LLP**  
Barristers & Solicitors  
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Lawyers for the Receiver, Collins Barrow Toronto Limited

RCP-E 4C (May 1, 2016)