

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

FIRST REPORT OF THE RECEIVER
December 30, 2019

INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 28, 2019 (the “**Receivership Order**”), RSM Canada Limited was appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of 2305992 Ontario Inc. (the “**Debtor**”).
2. The purpose of this report (the “**First Report**”) is to provide the Court with background and information about:
 - (a) the Receiver’s conduct and activities since issuance of the Receivership Order and seek the Court’s approval thereof; and
 - (b) the Receiver’s comments and recommendations regarding the sale process being carried out by the Receiver (the “**Sale Process**”), for which the Receiver seeks an Order, among other things, approving the Sale Process.

3. The Receiver seeks approval of the Sale Process at this time to, among other things, give the Debtor and those parties on the Service List an opportunity to review the Sale Process and provide their comments to the Receiver or to make submissions to the Court.

TERMS OF REFERENCE

4. 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 Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
5. Unless otherwise stated, all monetary amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

6. The Debtor is an Ontario corporation that has its registered office in Woodbridge, Ontario.
7. The Debtor is the registered owner of real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario (the “**Property**”).
8. The Property is currently vacant land that the Debtor intended to develop into a mixed use condominium consisting of residential, office and commercial space.
9. The Receiver understands that the Debtor had made several attempts to market and sell the Property, both privately and through a broker, during the two years prior to these Receivership proceedings. The Receiver further understands that a number of offers were received by the Debtor, but none of the offers were accepted, or if accepted by the Debtor, no transaction was concluded.

THE RECEIVER'S ACTIVITIES

10. Since the issuance of the Receivership Order, the Receiver has conducted the following activities:
 - (a) took possession of the Property and registered a copy of the Receivership Order against title to the Property;
 - (b) issued the notices required pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) to known creditors of the Debtor;
 - (c) arranged for insurance coverage in respect of the Property;
 - (d) established a website for these Receivership proceedings:

<<https://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/2305992-ontario-inc.html> >;
 - (e) prepared the forms of CA, CIM, Teaser Letter, Bidding Procedures and Template APS (each as defined below) in connection with the Sale Process;
 - (f) prepared a data room to be used in connection with the Sale Process (the “**Data Room**”);
 - (g) administered certain aspects of the Sale Process as described below; and
 - (h) prepared this First Report.

SALE PROCESS

11. The Receivership Order, among other things, authorizes the Receiver to market and sell the Property.
12. The Receiver has developed a Sale Process for which it seeks the Court’s approval. A copy of the Sale Process including bidding procedures governing the Sale Process (the “**Bidding Procedures**”) is attached to this First Report as **Appendix “A”**.

13. The Receiver has commenced certain activities in connection with the Sale Process in accordance with the Bidding Procedures, namely, the Receiver has prepared:
- (a) a list of approximately 900 parties who may have an interest in submitting an offer for the Property. The parties on this list will be sent by email a teaser letter (the “**Teaser Letter**”) on two separate occasions commencing on December 27, 2019. A copy of the Teaser Letter is attached as **Appendix “B”** to this First Report;
 - (b) a draft form of advertisement that will be published on two separate occasions in the *Globe and Mail* (National Edition). A copy of the draft form of advertisement is attached as **Appendix “C”** to this First Report; and
 - (c) the form of confidentiality agreement (“**CA**”) to be provided to parties requesting additional information from the Receiver with respect to the Property, which CA is to be signed and returned to the Receiver;
 - (d) a confidential information memorandum (“**CIM**”) to be provided to parties that execute a CA; and
 - (e) the form of agreement of purchase and sale (the “**Template APS**”) to be included in the Data Room, and on which offers for the Property are to be submitted. A copy of the Template APS is attached as **Appendix “D”** to this First Report.
14. A summary of the Bidding Procedures is as follows:¹
- (a) interested parties who execute a CA will receive a copy of the CIM, along with access to the Data Room;
 - (b) the deadline to submit offers is 12:00 noon (EST) on Thursday, February 13, 2020; and

¹ Capitalized terms not otherwise defined in this section are used as defined in the Bidding Procedures.

- (c) the Receiver will review submitted offers. The Receiver may: (i) negotiate with bidders, (ii) request or agree to changes in any offer, or (iii) request from some or all of the bidders that they submit revised offers reflecting improved terms;
 - (d) the Receiver will select a successful bid (the “**Successful Bid**”) and seek the Court’s approval of the Successful Bid as soon as reasonably practical. Pursuant to the Sale Process the Receiver is not required to select the highest or best bid received.
15. Bidders will also be advised that, unless otherwise agreed to by the Receiver:
- (a) offers are to be accompanied by a cash deposit by certified cheque or wire transfer of immediately available funds in an amount equal to ten percent (10%) of the offered purchase price;
 - (b) the projected closing date is proposed to be no later than March 31, 2020;
 - (c) offers are to be submitted on the Template APS with a blackline highlighting any changes made; and
 - (d) offers are not to be conditional on financing and shall include satisfactory proof of the bidder’s financial ability to complete the transaction.
16. In the Receiver’s view, the Sale Process is commercially reasonable in the circumstances and allows for sufficient time for the Property to be exposed to the market in order to maximize the value of the Property. The Sale Process and Bidding Procedures are supported by the Debtor’s senior secured creditor, MarshallZehr Group Inc.

CONCLUSIONS AND RECOMMENDATIONS

17. Based on the foregoing, the Receiver respectfully requests that the Court make an order approving:
- a) the First Report and the Receiver’s activities set out herein; and
 - b) the Sales Process.

All of which is respectfully submitted to this Court as of this 30th day of December, 2019.

RSM Canada Limited

in its capacity as Court-appointed Receiver and Manager of
2305992 Ontario Inc., and not in its personal or corporate capacity

Per:

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

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

APPENDIX “A”

APPENDIX "A"

SALE PROCESS AND BIDDING PROCEDURES

For 9740, 9750, 9760 Yonge Street, Richmond Hill, Ontario

Overview

1. On November 28, 2019, on the application of MarshallZehr Group Inc., the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an Order (the "**Receivership Order**"), among other things, appointing RSM Canada Limited ("**RSM**" or the "**Receiver**") as receiver and manager of the assets, undertakings and properties of 2305992 Ontario Inc. (the "**Debtor**").
2. On January 9, 2020, the Court granted an order (the "**Sales Process Order**") approving, authorizing and directing the Receiver to carry out a process (the "**Sale Process**") to market for sale the Debtor's right, title and interest, if any, in the Property (as defined below) in accordance with the bidding procedures set out in this document (the "**Bidding Procedures**").

Property to Be Sold and Terms of Sale

3. The property for sale is the Debtor's right, title and interest in the vacant land municipally known as 9740, 9750, 9760 Yonge Street, Richmond Hill, Ontario and legally described in the following parcel registers: 03156-0317 (LT) and 03156-0552 (LT) (together with any permits or plans, the "**Property**").
4. The sale of the Property pursuant to this Sale Process shall be on an "as is, where is" basis subject to whatever defects, conditions, title deficiencies, impediments, hazardous materials or deficiencies which may exist, and without representations or warranties of any kind, nature, or description by the Receiver or its directors, officers, employees, representatives or agents except to the extent set forth in the agreement of purchase and sale to be entered into between the Receiver and the successful bidder. By submitting a Binding Offer (as defined below), each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Binding Offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents, permits, plans or the Property in making its Binding Offer, and that it did not, and does not, rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated herein or as set forth in a Successful Bid (as defined below) approved by the Court.
5. Subject to an Approval and Vesting Order being issued by the Court, all of the right, title and interest of the Receiver and the Debtor in and to the Property, if any, will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests of any kind thereon (collectively, the "**Claims**") and such Claims shall attach to the net proceeds of sale (without prejudice to any claims or entitlements regarding

priority, validity and enforceability), except to the extent otherwise expressly set forth in the Approval and Vesting Order.

Conduct of the Sale Process

6. The procedures set out herein shall exclusively govern the process for soliciting and selecting bids for the sale of the Property, subject at all times to the discretion of the Receiver to make such amendments as may be advisable and may be authorized hereunder or by further Order of the Court.

Timeline

7. The following table sets out the key milestones under the Sale Process:

Milestone	Deadline
Sale Process Commencement Date:	December 27, 2019
Bid Deadline	February 13, 2020 at Noon (EST)
Closing Date (on or before)	March 31, 2020

8. Subject to the terms contained herein, the dates set out in the Sale Process may be extended by the Receiver, in its sole discretion acting reasonably, with a view to maximizing the value of the Property. If the Bid Deadline is extended, the Receiver shall notify all Potential Bidders (as defined herein).

Identification of Potential Interested Parties

9. The Receiver has prepared a list of potential bidders (the “**Known Potential Bidders**”) who may have interest in making an offer to purchase the Property (a “**Transaction**”) and sent such parties a letter summarizing the opportunity (the “**Teaser Letter**”). The Known Potential Bidders include certain parties that participated in the sale process conducted by the Debtor prior to the issuance of the Receivership Order.
10. Any interested party may obtain a copy of the Teaser Letter by contacting the Receiver.

Solicitation

11. Any person interested in obtaining additional information on the Property and making a bid to the Receiver for the Property, shall sign a confidentiality agreement in a form acceptable to the Receiver (the “**Confidentiality Agreement**”).
12. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and additional information, should contact the following representative of the Receiver: Jeffrey Berger at: “jeff.berger@rsmcanada.com”.

13. Interested parties that have executed and returned a Confidentiality Agreement to the Receiver (each, a "**Potential Bidder**") will be provided with: (i) a copy of the confidential information memorandum (the "**CIM**"), (ii) access to an electronic data room containing information related to the Property (the "**Data Room**"), and (iii) access to such further materials that the Receiver may obtain in respect of the Property.
14. The Receiver has prepared and included in the Data Room a form of agreement of purchase and sale on which offers for the Property must be submitted (the "**Template APS**").

Binding Offers

15. Each Bidder shall have **until 12:00 noon (EST) on February 13, 2020** (the "**Bid Deadline**"), to submit to the Receiver binding offers for the purchase of the Property on the Template APS (a "**Binding Offer**"), and each Bidder shall submit with the Binding Offer a blackline to the Template APS reflecting any proposed changes to the Template APS. Each Potential Bidder that submits a Binding Offer is hereafter referred to a "**Bidder**".
16. A Binding Offer shall be an offer for all of the Property and, without limitation, shall:
 - (a) be accompanied by a cash deposit by certified cheque or by wire transfer of immediately available funds (wire transfer instructions will be provided upon request) in an amount equal to 10% of the offered purchase price (the "**Deposit**");
 - (b) clearly identify the potential purchaser and sponsoring entities (including any beneficial holders) by name and confirm that corporate and any and all other required authorizations have been obtained to enter into the transaction contemplated by such Binding Offer;
 - (c) be submitted on the Template APS and include a blackline against the Template APS highlighting any changes made;
 - (d) not be conditional upon financing and shall include proof satisfactory to the Receiver in its sole discretion of the Bidder's financial ability to close a transaction on the terms of its Binding Offer;
 - (e) in the Receiver's opinion, not include any material conditions to closing;
 - (f) include such other documents or evidence as may be reasonably requested by the Receiver; and
 - (g) not request or entitle the Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment.
17. All Binding Offers shall be sealed, marked "Offer – 2305992 Ontario Inc.", and delivered by hand, mail postage prepaid or by email to the Receiver at RSM Canada Limited, 11 King Street West, Suite 700, PO Box 27, Toronto, Ontario M5H 4C7, attention: Mr. Jeffrey Berger (jeff.berger@rsmcanada.com). All Binding Offers must be capable of acceptance and must be irrevocable until **11:59 pm EST on February 21, 2020**, and shall be subject to

Court approval. The Receiver may in its discretion seek clarifications with respect to any of the Binding Offers received and may grant extensions.

18. Each Binding Offer shall be considered by the Receiver in its sole discretion. No Bidder shall be entitled to be present for the opening of offers. The Receiver is not required to accept the highest or any Binding Offer.
19. The Receiver may:
 - (a) negotiate with any Bidder with respect to any provision of such Bidder's Binding Offer;
 - (b) request or agree to any changes in any Binding Offer;
 - (c) in the Receiver's discretion, request some or all Bidders to submit revised Binding Offers reflecting improved terms. The Receiver has no obligation to negotiate identical terms with, or extend identical terms to, each Bidder;
 - (d) take such steps as the Receiver considers necessary or desirable to maximize the value realized for the Property; or
 - (e) in the Receiver's discretion, select a Binding Offer (such selected offer being the "**Successful Bid**") and seek Court approval of the Successful Bid.
20. The Receiver intends to notify the Bidder with the Successful Bid (the "**Successful Bidder**") that it is the Successful Bidder on or before 5:00 p.m. EST on February 24, 2020 or such later date as may be determined by the Receiver.
21. Deposits of all Bidders shall be held in a non-interest bearing account of the Receiver. The Receiver shall return the Deposits held by it, other than the Deposit from the Successful Bidder, by registered mail addressed to the Bidder at the address set out in its Binding Offer or made available for pickup not later than eighteen (18) days following notification to the Bidder that its bid was not accepted by the Receiver. Upon closing of a transaction with the Successful Bidder, all Binding Offers of other Bidders that are not the Successful Bidder shall be deemed to be rejected.

Approval Motion for Successful Bid

22. The Receiver shall take such steps as may be necessary to facilitate the closing of the Successful Bid as soon as practical, including, without limitation, applying to the Court (the "**Approval Motion**") for an Approval and Vesting Order approving the Successful Bid and authorizing the Receiver to complete the transactions contemplated by the Successful Bid.
23. Closing of the Successful Bid shall be completed as soon as possible, but in any event on or before March 31, 2020, unless otherwise agreed to by the Receiver in its sole discretion.
24. If the Successful Bidder fails to complete the transaction contemplated by the Successful Bid for any reason other than a failure to perform on the part of the Receiver, the Receiver

shall be entitled to retain the Deposit of the Successful Bidder as part of the Receiver's damages resulting from the non-completion of such transaction.

Miscellaneous

25. The Receiver may, in its sole discretion:
 - (a) amend this Sale Process, including the right to extend, abridge or otherwise amend any timelines described herein as considered necessary or desirable by the Receiver or by further order of the Court;
 - (b) reject, at any time, any bid that is inadequate or insufficient, not in conformity with these Bidding Procedures or any other orders made in these Receivership proceedings, or is contrary to the best interests of the Debtor and its stakeholders as determined solely by the Receiver;
 - (c) impose additional terms, conditions or requirements and otherwise modify the Sale Process or these Bidding Procedures;
 - (d) accept bids not in conformity with these Bidding Procedures to the extent that the Receiver determines that doing so would maximize the value of the Property; and
 - (e) reject any or all bids or offers including the highest and/or best bid in respect of the Property.
26. This Sale Process does not, and shall not be interpreted to, create any contractual or other legal relationship between any Potential Bidder, Bidder and the Debtor, the Receiver or any of their respective directors, officers, employees, agents, representatives, estates, advisors or professionals, other than as expressly set forth in definitive agreement(s) signed by the Receiver.
27. At any time during this Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

APPENDIX “B”



PRIME REAL ESTATE DEVELOPMENT OPPORTUNITY

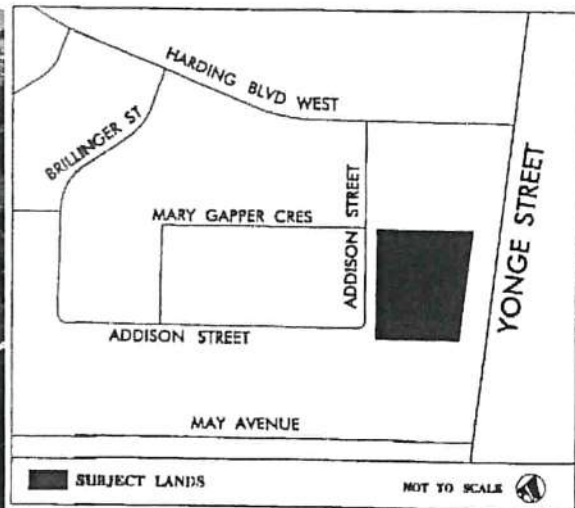
MIXED USE LAND PARCEL
APPROVED FOR 291 RESIDENTIAL
CONDOMINIUM UNITS, OFFICE
SPACE, AND GROUND FLOOR
RETAIL SPACE

APPROXIMATELY 2.1-ACRE PARCEL
OF LAND IN RICHMOND HILL, ON
DECEMBER 27, 2019

THE OPPORTUNITY

RSM Canada Limited, in its capacity as Court-appointed receiver and manager (the “Receiver”) of all the assets, undertakings, and properties of 2305992 Ontario Inc. (the “Debtor”), and not in its personal capacity, is inviting the submission of offers to purchase the right, title and interest of the Debtor, in the real property owned by the Debtor located at 9740 – 9760 Yonge Street in Richmond Hill, Ontario (the “Property”). The Property is currently vacant development land.

The deadline for submission of offers is set for 12:00 noon, EST, on Thursday, February 13, 2020.



INVESTMENT HIGHLIGHTS

- Prime location in Richmond Hill to capture residential demand
- Zoned for residential condominium, retirement residences, and commercial space with parking
- Located along the VivaNext Bus Rapid Transit route

Subject Property Overview

- The subject property consists of approximately 2.1 acres, which is zoned for a mixed-use, 285,782 sq. ft. condominium building.
- The subject property occupies street frontage of approximately 326 feet on the west side of Yonge Street between May Avenue and Harding Boulevard West in the city of Richmond Hill.
- The property is currently zoned for the construction of 291 residential condominium units, second floor office space, and ground floor retail space.
- The zoning also permits the site to be used for Assisted Living Residences, Independent Seniors Living Residences, Retirement Home, or Long Term Health Care Facility.

-
- Situated within walking distance to transit, grocery stores, shopping malls, restaurants and other amenities.
 - The current total net saleable floor area of the 291 condominium units in the proposed building being planned is approximately 285,782 sq. ft.
 - According to a proposed site plan, an additional 38,947 sq. ft. of Gross Floor Area, representing an additional 51 residential units, may be granted by the City of Richmond Hill.

ZONING & LEGAL DESCRIPTION

Zoning

According to the prevailing Zoning By-law 75-13, the subject property is currently zoned as follows:

- Residential – 291 residential condominium units consisting of 3 buildings; two towers facing Yonge Street with total heights of 15 and 13 storeys, based on a 3 storey podium, and a 4 storey building adjacent to Addison Street.
- Office – approximately 19,650 sq. ft. of second floor office space along Yonge Street.
- Retail – approximately 11,000 sq. ft. of retail space located on the ground floor.

Legal Description

The Property is legally described as:

PIN: 03156-0317(LT) and 03156-0552(LT), Block 39, Registered Plan 65M-2079 and Part Block 3, Registered Plan 65M-2368, Town of Richmond Hill, Regional Municipality of York, Province of Ontario

and municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario, previously defined herein as the Property.

TRANSACTION AND COMPETITIVE BID PROCESS

The Receiver is conducting a Sale Process, with the deadline for submission of offers set for Thursday, February 13, 2020 at 12:00 noon, Eastern Standard Time. Offers submitted are to be irrevocable for acceptance until February 28, 2020. Offers must be submitted using the agreement of purchase and sale available in the data room set up by the Receiver. The Receiver reserves the right to extend the above deadline at its sole discretion.

To receive additional information including the Confidential Information Memorandum, interested parties must execute a Confidentiality Agreement. If you are interested in this opportunity, please contact Mr. Jeffrey Berger of the Receiver's office either at 647-726-0496 or at jeff.berger@rsmcanada.com to obtain a copy of the Confidentiality Agreement.

rsmcanada.com

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APPENDIX “C”

Prime Real Estate Development Opportunity

Invitation for Offers to Purchase

**LAND PARCEL APPROVED FOR MIXED-USE IN
RICHMOND HILL, ONTARIO**

RSM Canada Limited, in its capacity as Court-appointed receiver and manager (the "Receiver") of 2305992 Ontario Inc. (the "Debtor") invites offers for the purchase of the Debtor's right, title and interest, if any, in the property municipally known as 9740, 9750 and 9760 Yonge Street in Richmond Hill, Ontario. The property is comprised of an approximately 2.1-acre parcel of land, which is zoned for mixed (residential/retail) condominium project use.

All offers must be received by the Receiver at the address set out below, on or before 12:00 noon (EST – Toronto), February 13, 2020.

For further information and in order to obtain a confidentiality agreement, please contact:

RSM Canada Limited
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7
Attn: Mr. Jeffrey Berger
T: 647 726 0496 | F: 416 480 2646
E: jeff.berger@rsmcanada.com



Visit rsmcanada.com/aboutus for more information regarding RSM Canada Limited.

APPENDIX “D”

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the <*> day of <*> 2020.

BETWEEN:

RSM CANADA LIMITED,

in its capacity as Court-Appointed Receiver and Manager of the assets, undertakings and properties of **2305992 ONTARIO INC.** ("the **Debtor**") and not in its personal or corporate capacity

(the "**Vendor**")

and



(the "**Purchaser**")

RECITALS:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 28, 2019, (the "**Appointment Order**") RSM Canada Limited was appointed as receiver and manager 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 and including the real property described in Schedule "A" of the Appointment Order (the "**Property**").
- B. The Vendor desires to sell and the Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

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

SECTION 1 - INTERPRETATION

1.1 Definitions

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

- (a) "**Acceptance Date**" means the date that this Agreement is executed by the Parties;
- (b) "**Agreement**" means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement.

- (c) "**Applicable Laws**" means, with respect to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;
- (d) "**Approval and Vesting Order**" means an order or orders made by the Court approving the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances (except the Permitted Encumbrances) in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably. For greater certainty, the vesting portion of the "Approval and Vesting Order" shall be substantially in the form of the model approval and vesting order approved by the "Ontario Commercial List Users Committee".
- (e) "**Assumed Liabilities**" has the meaning ascribed to it in Section 2.9.
- (f) "**Business Day**" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (g) "**CIM**" means the confidential information memorandum prepared by the Vendor;
- (h) "**Claim**" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;
- (i) "**Closing**" means the successful completion of the Transaction;
- (j) "**Closing Date**" means the date which is ten (10) days immediately following the date upon which the Approval and Vesting Order is granted, or the next Business Day, as applicable, or such other date as the Parties may mutually agree upon;
- (k) "**Collateral Security**" has the meaning ascribed to it in Section 2.13;
- (l) "**Deposit**" has the meaning ascribed to it in Section 2.5;
- (m) "**Encumbrance**" means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
- (n) "**Environmental Condition**" has the meaning ascribed to it in Section 2.2(a);
- (o) "**Environmental Laws**" means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials;

- (p) "**Ereg**" has the meaning ascribed to it in Section 5.7;
- (q) "**ETA**" means the *Excise Tax Act* (Canada);
- (r) "**Government Authority**" means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, court, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;
- (s) "**Hazardous Materials**" means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;
- (t) "**HST**" means all goods and services taxes and harmonized sales tax payable under the ETA;
- (u) "**Land Transfer Tax**" means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;
- (v) "**Letters of Credit**" means any letters of credit issued on behalf of the Debtor in respect of the Property;
- (w) "**Liabilities**" means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes.
- (x) "**Parties**" means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. "**Party**" means any one of the foregoing;
- (y) "**Permits**" means all permits, licenses and applications in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;
- (z) "**Permitted Encumbrances**" means those Encumbrances listed in Schedule "B" attached hereto and in Schedule "D" to the Approval and Vesting Order;
- (aa) "**Person**" means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political

subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

- (bb) "**Plans**" means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, the engineering drawings, architectural plans and working drawings, landscaping plans, other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the data room created by the Vendor in respect of the Transaction;
- (cc) "**Purchaser Closing Conditions**" has the meaning ascribed to it in Section 4.1;
- (dd) "**Purchase Price**" shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Taxes and any other taxes payable as a result of or in connection with the Transaction;
- (ee) "**Purchased Assets**" means, collectively, the right, title and interest of the Debtor in and to the Property, the Permits and the Plans;
- (ff) "**Transaction**" means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (gg) "**Taxes**" means all HST, Land Transfer Tax, charges, fees, levies, imposts and other assessments, including all sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto; and
- (hh) "**Vendor Closing Conditions**" has the meaning ascribed to it in Section 4.3.

1.2 Interpretation Not Affected by Headings, etc.

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

1.3 Extended Meanings

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

1.4 Schedules

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

Schedule "A"	Purchased Assets
Schedule "B"	Permitted Encumbrances

SECTION 2 — SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets. The Purchaser further acknowledges that the Purchased Assets do not include any interest in the Letters of Credit, in respect of which, the provisions of Section 2.13 hereof shall govern.

2.2 "As is, Where is"

The Purchaser acknowledges and agrees that:

- (a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning, permitted uses, permits, compliance with Applicable Laws of Governmental Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets contained in this Agreement are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that all written and oral information (including, analyses, financial information and projections, compilations and studies) obtained by the Purchaser from the Vendor or any agent of the Vendor (including, any information contained in any of the Plans and the CIM) with respect to the Purchased Assets or otherwise relating to the Transaction has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.
- (b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding work orders, deficiency notices

or orders to comply issued by any Government Authority and the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances.

- (c) the various parties who prepared the Plans may have restricted the use thereof by the Debtor only, in their respective retainers with the Debtor and any purported conveyance of the Plans by the Vendor to the Purchaser may be subject to such limitations.

2.3 Permitted Encumbrances

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

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "**Purchase Price**") shall be an amount of ●.

2.5 Deposit

The Parties acknowledge and agree that the sum of \$●, being ten percent (10%) of the Purchase Price (the "**Deposit**") has been delivered by the Purchaser to the Vendor upon submission by the Purchaser of an executed copy of the Agreement to the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

- (a) if the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;
- (b) if the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Purchaser hereunder, then the Deposit shall be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or
- (c) if the purchase and sale of the Purchased Assets is not completed on the Closing Date as a result of the Purchaser's default hereunder (including for failing to satisfy a Vendor Closing Condition that is not waived by the Vendor) then the Deposit shall be released from trust and paid to the Vendor without prejudice to the Vendor's rights to claim damages, losses, costs and expenses incurred by the Vendor as a result of such failure.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

- (a) at the Closing, the Deposit shall be paid in immediately available funds to the Vendor and credited against the Purchase Price in accordance with Section 2.5(a); and
- (b) at the Closing, the Purchase Price minus the amount paid to the Vendor pursuant to Section 2.6(a), shall be paid to the Vendor or as the Vendor may direct in writing.

2.7 Allocation of Purchase Price

The entire Purchase Price shall be allocated to the Property (as opposed to any other item forming part of the Purchased Assets, to the extent applicable) and the Parties shall ensure that the Purchaser and the Vendor shall follow such allocation in determining and reporting their liabilities for any Taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocation, provided that nothing herein shall require the Vendor to file any income tax returns that it is not otherwise required to file.

2.8 Excluded Liabilities

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

2.9 Assumed Liabilities

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

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

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

2.10 Taxes

In addition to the Purchase Price, the Purchaser shall pay all applicable Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, HST and Land Transfer Tax.

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

If part or all of the Transaction is subject to HST and:

- (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the ETA; and/or
- (ii) the Purchaser is a "prescribed recipient" under the ETA and/or is registered under the ETA,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the ETA or, if no such form is prescribed, then in reasonable form, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Governmental Authority all HST payable in respect of the Transaction. If sub-paragraph (a)(ii) above is applicable, then the Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration as the

case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Transaction.

The Purchaser hereby indemnifies and holds the Vendor harmless from and against any liability for Taxes, including HST and Land Transfer Tax, arising out of any failure to pay such taxes as and when due, together with all interest, penalties and expenses resulting from such failure.

2.11 Inspections

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

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

The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.11 by the Purchaser. To the extent that the Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.12 [Intentionally Deleted]

2.13 Letters of Credit

The Purchaser covenants and agrees that on Closing, it shall be required to substitute the Letters of Credit with replacement letters of credit of its own such that the Letters of Credit shall be released and returned for cancellation. In addition to the foregoing, to the extent that the Letters of Credit are collaterally secured, whether by a cash account or otherwise (the "**Collateral Security**"), the Purchaser shall further be required on Closing to replace the Collateral Security as may be necessary to release and return same to the Vendor or as it may otherwise direct. The

Purchaser shall be solely responsible for payment of all costs and expenses attributable to the performance of the foregoing obligations.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

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

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

3.2 Purchaser's Representations

The Purchaser represents and warrants to the Vendor that:

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

executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;

- (g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*; and
- (h) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Vendor's Representations

The Vendor represents and warrants to the Purchaser as follows:

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

3.4 Survival of Representations and Warranties

The representations and warranties contained in Section 3.2 hereof or any other agreement, certificate or instrument delivered by the Purchaser to the Vendor pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, for a period of twelve (12) months from the Closing Date, after which time the Purchaser shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by the Vendor in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

SECTION 4 — CONDITIONS

4.1 Purchaser Closing Conditions

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

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement; and

- (c) the Approval and Vesting Order shall not have been stayed, varied or set aside.

The Purchaser Closing Conditions are for the exclusive benefit of the Purchaser. Any Purchaser Closing Condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

4.2 Purchaser Closing Conditions Not Fulfilled

If any Purchaser Closing Condition has not been fulfilled at or prior to Closing, then the Purchaser in its sole discretion may, either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser in accordance with the provisions of Section 2.5 hereof; or
- (b) waive compliance with any such Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Purchaser Closing Condition.

4.3 Vendor Closing Conditions

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

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement; and
- (c) there shall be no litigation or proceedings pending against any of the Parties hereto, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.

The Vendor Closing Conditions are for the exclusive benefit of the Vendor. Any Vendor Closing Condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing.

4.4 Vendor Closing Conditions Not Fulfilled

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

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and the Deposit shall

be retained by the Vendor in accordance with the provisions of Section 2.5 hereof;
or

- (b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual condition that the Approval and Vesting Order shall have been made by the Court on or before ●, 2018 (or such later date agreed upon by the Parties) approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Purchaser is not in default of its obligations hereunder, the Deposit shall be promptly returned to the Purchaser in accordance with the provisions of Section 2.5 hereof.

SECTION 5 — CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date or as otherwise determined by mutual agreement of the Parties in writing.

5.2. Purchaser's Deliveries on Closing

On or before the Closing, the Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price;
- (b) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (c) an acknowledgement dated as of the Closing Date, that each of the Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) assignment of Purchased Assets and assumption of Liabilities executed by the Purchaser and the Vendor;
- (e) the certificate and indemnity provided for under Section 2.10;
- (f) evidence satisfactory to the Vendor, acting reasonably, that the Letters of Credit and Collateral Security have been released and returned, as applicable, in accordance with the provisions of Section 2.13;

- (g) an undertaking to re-adjust any item on or omitted from the statement of adjustments; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order(s) and the receiver's certificate relating thereto;
- (b) a statement of adjustments;
- (c) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;
- (d) an assignment of the Purchased Assets and assumption of the Assumed Liabilities executed by the Purchaser and the Vendor; and
- (e) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

5.4 Risk

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

5.5 Termination

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

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

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with, or waived by the Purchaser,

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

5.7 Electronic Registration

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

SECTION 6 - GENERAL

6.1. Further Assurances

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

6.2. Notice

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

in the case of the Purchaser, as follows:

Attention:
Telephone No:
Email:

and in the case of the Vendor, as follows:

RSM CANADA LIMITED, Court-Appointed
Receiver of 2305992 ONTARIO INC.
11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Bryan Tannenbaum
Email: bryan.tannenbaum@rsmcanada.com

with a copy to:

Miller Thomson LLP
40 King Street W., Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

Attention: Kyla Mahar
Email: kmahar@millertthomson.com

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

6.3. Time

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

6.4. Currency

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

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

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

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter herein and supersede all prior negotiations, understandings and

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

6.8. Paramountcy

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

6.9. Severability

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

6.10. Governing Law

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

6.11. Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendor against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

6.12. Certain Words

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

6.13. Statutory References

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

6.14. Actions to be Performed on a Business Day

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

6.15. No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property.

6.16. Strict Construction

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

6.17. Capacity of Vendor

The Purchaser acknowledges that RSM CANADA LIMITED has been appointed as receiver and manager pursuant to the Appointment Order. The Purchaser acknowledges and agrees that RSM CANADA LIMITED is entering into this Agreement solely in its capacity as the receiver and manager and that RSM CANADA LIMITED, its directors, agents, officers, partners and employees shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of or in any way connected with this Agreement or as a result of the Vendor performing or failing to perform any of its obligations hereunder.

6.18. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

6.19. Planning Act

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

6.20. Counterparts

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

6.21. Non Merger

Each Party hereby agrees that all provisions of this Agreement (other than the Purchaser Closing Conditions, the Vendor Closing Conditions and the representations and warranties contained in Sections 3.2 and 3.3) shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

6.22. Expenses

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

6.23. Announcements

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

[remainder of page intentionally left blank]

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

**RSM CANADA LIMITED, solely in its capacity as
Court-Appointed Receiver and Manager of
2305992 ONTARIO INC., and not in its personal capacity**

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



Per: _____
Name:
Title:

Schedule A
Purchased Assets

1. The Property:

PIN: 03156-0317 and 0552, Block 39, Registered Plan 65M-2079 and Part Block 3, Registered Plan 65M-2368, Town of Richmond Hill, Regional Municipality of York, Province of Ontario

Schedule B

Permitted Encumbrances

[To be confirmed prior to Approval and Vesting Order]

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

FIRST REPORT OF THE RECEIVER

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