

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

FIRST SOURCE FINANCIAL MANAGEMENT INC.

Applicant

and

2807823 ONTARIO INC.

Respondent

**APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvent Act*,
R.S.C., 1985 C, B-3, and section 101 of the *Courts of Justice Act*,
R.S.O. 1990, C.43**

RESPONDING APPLICATION RECORD OF THE RESPONDENT, 2807823 ONTARIO INC.

October 31, 2023

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-2-

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-3-

Court File No. CV-23-00705617-00CL

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INDEX

TAB	DOCUMENT	DATE
1	Affidavit of Trevor Rabie	sworn October 31, 2023
<i>Exhibit to the Affidavit of Trevor Rabie sworn October 31, 2023</i>		
A	Agreement of Purchase and Sale	September 28, 2023

TAB 1

Court File No. CV-23-00705617-00CL

**ONTARIO
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**AFFIDAVIT OF TREVOR RABIE
(sworn October 31, 2023)**

I, Trevor Rabie, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am an officer of the Respondent, 2807823 Ontario Inc. (“**280**”), the registered owner of the property municipally located at 142 Queenston Street, St. Catharines, L2R 2Z7 (the “**Property**”), which is subject to the Applicant, First Source Financial Management Inc.’s (the “**Applicant**”) mortgage security (the “**Loan**”). I am also one of the guarantors of the mortgage registered against title of the Property, being the Loan, and as such, have knowledge of the matters hereinafter deposed. To the extent that this affidavit is based on information received from others, I verily believe that information to be true.

2. I make this affidavit in response to the affidavit of Steven Walter sworn on October 20, 2023 (“**Walter’s Affidavit**”). I do not have sufficient time to respond to all the statements made

-2-

by Mr. Walter in his affidavit. I intend to comment only upon those allegations which require immediate response.

3. The Property is a residential development land purchased by 280, in trust for 2807435 Ontario Inc., for the purpose of redevelopment into mixed residential and commercial buildings. As indicated Mr. Walter's affidavit, the Property is the former site of the St. Catherines General Hospital.

4. On November 22, 2021, 280 entered into a letter of commitment with Applicant with respect to the Loan.

5. Pursuant to the terms of the commitment, the Applicant agreed to provide a mortgage to 280, providing the lessor of the loan amount of \$8,750,000.00 or 62.91 percent of the satisfactory appraised "as is" value for the property, and an interest on the higher of the sum at 8.75 percent or CIBC Prime + 15.55 per annum calculated monthly with no deemed re-investment of monthly payments on the principals outstanding during the first 16 months after the interest. The letter of commitment can be found at Exhibit "C" of Walter's affidavit.

6. It was a term of the commitment letter that the mortgage was open for 16 months plus 7 days from the Interest Adjustment Date, with a closing date of January 31, 2022, or as soon as practical.

7. The Applicant's refinancing required that I along with several individuals and corporations execute guarantors, which I agreed to in this regard.

8. By January 31, 2022, the Applicant registered its charge against title to the Property, as Instrument No. NR603718, in the Land Register Office for the Land Titles Divisions of Niagara

-3-

North (No. 30), under which the charge was placed as the first charge on title to the Property, securing the sum of \$10,500,000.00, with an interest rate of 18 percent per annum.

9. A copy of the January 31, 2022, Charge is evidenced is found in Exhibit “E” of Walter’s Affidavit.

10. Furthermore, on January 28, 2022, and prior to the registration of the charge against title to the Property, 280 and the other guarantors executed an Acknowledgement re Interest rate and Principal Amount, providing that:

- (a) Up to including May 31, 2023, the greater of 8.75 percent per annum or the CIBC prime rate plus 6.3 percent; and
- (b) From and including June 1, 2023, the greater of 18 percent per annum of the CIBC prime rate plus 15.55 percent.

The Acknowledgement re Interest Rate and Principal Amount can be found in paragraph Exhibit “G” of Walter’s Affidavit.

11. Since the commencement of this application, 280 has been actively pursuing replacement financing to fully discharge the Loan, including all accrued interest to date.

12. In fact, I understand and verily believe that 280 lawyer, William Friedman of Friedman Law Professional Corporation, has discussed this matter in detail with the Applicant’s lawyer, Jeffreery Larry of Paliare Roland, Rosenberg Rothstein LLP.

13. For instance, I understand that Mr. Friedman previously provided the Applicant’s lawyer with an agreement of purchase of sale, entered between 280, as vendor, and 1000344633 Ontario

-4-

Inc., as purchaser, dated September 28, 2023 for the purchase of the Property at the price of \$20,000,000.00 (the “**September 28 APS**”). Attached hereto and marked as **Exhibit “A”** is a copy of the September 28 APS.

14. As stipulated in the September 28 APS:

- (a) The purchaser was required to provide an initial deposit of \$250,000.00 within two business days of acceptance, payable to the vendor’s solicitor.
- (b) The purchaser was obligated to grant the vendor a vendor take-back mortgage in the amount of \$6,000,000.00.
- (c) The purchaser was to pay \$13,750,000.00, which represented the balance of the purchase price, to the vendor’s solicitors by the closing date of November 15, 2023.

15. Nonetheless, despite these terms, the September 28 APS was recently mutually terminated by both parties with the intention of entering into a new revised agreement.

16. Presently, 280 has resumed negotiations with the same purchaser, and an agreed-upon agreement of purchase and sale is expected to be finalized shortly.

17. The terms to be proposed agreement is that purchase price of the Property would be increased from \$20,000,000.00 to \$23,000,000.00, with the following provisions:

- (a) the purchaser shall give the vendor two vendor take back mortgages in the amount of \$5,000,000.00 and \$6,000,000.00, respectively;
- (b) the completion of the transaction would be conditional upon the purchaser being satisfied that can obtain financing on or before November 10, 2023, from the acceptance date of the APS;

-5-

- (c) The purchaser shall pay \$11,750,000.00, representing the balance of the purchase price, to the vendor's solicitors by the closing date of November 30, 2023.

18. I strongly believe that the proposed APS will be executed shortly, and funds to be received by 280 will be sufficient to fully settle the Loan and all accrued interest owed to the Applicant.

19. However, appointing a Receiver at this juncture would effectively terminate the proposed transaction with the new purchaser.

20. Additionally, the Property is vacant land. There is no rental income and no upkeep related to the Property. The only carrying costs are the mortgage, realty taxes and insurance. There are no arrears of payment of any carrying costs other than under the mortgage, which we are in the process of selling.

21. In my view, the reason that the Applicant is seeking to appoint a Receiver is to conduct a sale of the Property on an "as is" basis.

22. It is my belief that the appointment of a Receiver in these circumstances is neither just nor equitable at this time, particularly in light of the imminent execution of an APS with a new purchaser.

23. Furthermore, the Applicant has not served a notice of power of sale under the mortgage.

24. I strongly object to the Applicant circumventing 280 rights of redemption under the mortgage by appointing a Receiver to sell the Property. The reality is the costs associated with a

-6-

Receivership will undoubtedly be substantial, even though there are no receivables to collect, and the Property is vacant land.

25. For all the foregoing reasons, I believe it would not be appropriate, just, or convenient, to appoint of the Receiver. Alternatively, if this Honourable Court decides to appoint a Receiver, such an appointment should only take effect after December 1, 2023.

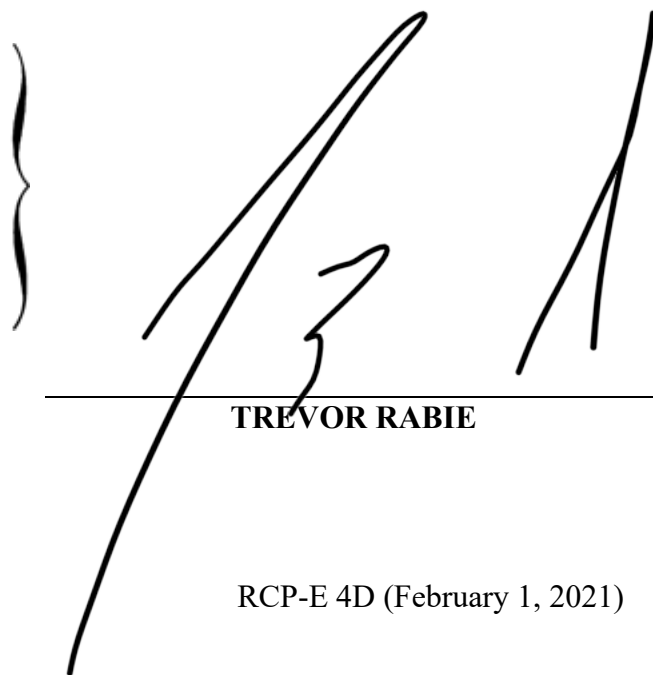
26. I swear this affidavit to oppose the appointment of a Receiver and for no other or improper purpose.

SWORN by Trevor Rabie of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 31, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

KHALED GHEDDAI



TREVOR RABIE

RCP-E 4D (February 1, 2021)

EXHIBIT "A"

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF TREVOR RABIE SWORN
BEFORE ME THIS 31ST OF OCTOBER 2023

A handwritten signature in blue ink, consisting of several fluid, connected strokes that are difficult to decipher but appear to be a personal name.

A Commissioner for taking Affidavits

Khaled Gheddai

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made as of the 28th day of September, 2023.

BETWEEN:

1000344633 ONTARIO INC.
(hereinafter referred to as the “**Purchaser**”)

- and -

2807823 ONTARIO INC.
(hereinafter referred to as the “**Vendor**”)

WHEREAS the Purchaser agrees to purchase, and the Vendor agrees to sell the property municipally known as 142 Queenston Street, St. Catherines, Ontario and legally described in Schedule “A” (hereinafter, collectively, the “**Property**”);

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Two Dollars (\$2.00) paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party), the Parties covenant and agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions.

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

- (a) “**Acceptance Date**” means the date this Agreement has been executed and accepted by and is binding on the Parties;
- (b) “**Adjustment Date**” means 11:59 p.m. on the date preceding the Closing Date;
- (c) “**Adjustments**” has the meaning ascribed thereto in Section 5.1;
- (d) “**Agreement**” means this agreement, all schedules and every executed written document which amends, modifies and/or supplements this agreement;
- (e) “**Business Day**” means a day of the week, other than a Saturday, Sunday or any other day which is a statutory, banking or municipal holiday in the City of Toronto or in the Province of Ontario;
- (f) “**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;

- (g) “**Closing**” means the transfer of the Property and the completion of all other matters contemplated by this Agreement either on the Closing Date or such earlier or later date and/or time as the Parties or their respective solicitors may agree to in writing;
- (h) “**Closing Date**” means November 15, 2023, or such earlier or later date and/or time as the Parties or their respective solicitors may agree to in writing;
- (i) “**Deposits**” means the Initial Deposit and any other monies paid by the Purchaser to the Vendor prior to the Closing of the Transaction;
- (j) “**Environmental Claim**” means, with respect to any Person, any action, cause of action, investigation, suit, proceeding, judgment, award, fine, penalty, assessment or written notice or claim by any Person alleging potential liability (including, without limitation, potential liability for investigatory costs, clean-up and remediation costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, discharge, migration or release into the environment, of any Hazardous Substances at any location, whether or not owned or operated by such Person or (b) the generation, handling, use, treatment, recycling, storage, disposal or transport of any Hazardous Substances; or (c) any violation of Environmental Laws;
- (k) “**Environmental Laws**” means all applicable federal, provincial and municipal laws, by-laws, rules, regulations, codes or judgments relating to the protection of the environment and public health and safety, and without restricting the generality of the foregoing, includes without limitation those Environmental Laws relating to the storage, transportation, treatment and disposal of Hazardous Substances, employee and product safety, and the emission, discharge, release or threatened release of Hazardous Substances into the air, surface water, ground water, land surface, subsurface strata or any building or structure and, in each such case, as such Environmental Laws may be amended or supplemented from time to time;
- (l) “**Hazardous Substances**” means any pollutant, dangerous substance, liquid waste, industrial waste, hauled liquid waste, toxic substance, hazardous waste, hazardous material, hazardous substance, asbestos or contaminant as such terms are, or may be, described or defined in any Environmental Laws;
- (m) “**hereof**”, “**hereunder**”, “**hereto**”, “**herein**” and words in similar import have reference to this Agreement as a whole and not to any particular section, subsection or clause of this Agreement except where otherwise expressly provided;
- (n) “**HST**” means the goods and services tax payable pursuant to the Excise Tax Act (Canada), (the “**Act**”) including, for greater certainty, harmonized sales tax and the provincial portion of any harmonized sales tax or value added tax exigible or applicable in Ontario pursuant to the Act;
- (o) “**Leases**” means collectively, any and all leases, tenancy agreements or arrangements related to the Property;
- (p) “**Party**” means any of the Vendor or the Purchaser; and “**Parties**” means collectively both Vendor and Purchaser;
- (q) “**Permitted Encumbrances**” means those agreements, covenants, restrictions, easements, rights of way, and other encumbrances affecting the title to the Property expressly set out in Schedule “B”;
- (r) “**Person**” means either a natural person, a partnership of any type, a corporation, a chartered bank,

a trust, a trust company, a government or an agency thereof;

- (s) “**Property**” has the meaning ascribed thereto in the recitals;
- (t) “**Purchase Price**” has the meaning ascribed to it in Section 2.1;
- (u) “**Purchaser’s Solicitors**” means Goodmans LLP or such other firm of lawyers licensed in the Province of Ontario as Purchaser may designate by written notice to Vendor;
- (v) “**Regulatory Authority**” means any government, council, tribunal, regulatory or administrative authority, approval authority, agency, organization, commission, department, utility or board (federal, provincial, or municipal, domestic or foreign) having jurisdiction over or in connection with the Property, and any Person acting under the authority of any of the foregoing;
- (w) “**Tests**” has the meaning ascribed thereto in Section 3.2 of this Agreement;
- (x) “**Transaction**” means the purchase and sale transaction contemplated by this Agreement;
- (y) “**Vendor’s Solicitors**” means Friedman Law Professional Corporation (attention: William Friedman) or such other firm of lawyers licensed in the Province of Ontario as Vendor may designate by written notice to the Purchaser.

1.2 General.

The information contained in the Schedules annexed hereto shall be of the same force and effect as if the same had been contained in the body of this Agreement. The singular includes the plural, the plural the singular, and any gender the other genders. Unless otherwise indicated references to dollars or amounts stated in dollars are to Canadian dollars. Headings are included for convenience or reference only and shall not affect the interpretation hereof. All references to time shall be in eastern time.

1.3 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein. Each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario located in the City of Toronto.

1.4 Rights of Parties Independent.

The rights available to the Parties under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a party from time to time and, subject to the provisions of this agreement, no such exercise shall exhaust the rights of such party or preclude any other party from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

ARTICLE 2 - PURCHASE AND SALE

2.1 Purchase Price.

The Purchaser shall purchase, and the Vendor shall sell to the Purchaser the Property, on the Closing Date, for a purchase price of TWENTY MILLION DOLLARS (\$20,000,000.00) (the “**Purchase Price**”) plus any applicable HST.



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2.2 Satisfaction of Purchase Price.

The Purchase Price shall be paid and satisfied as follows:

- (a) the Purchaser shall deliver an initial deposit by wire transfer in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) (the “**Initial Deposit**”) within two (2) Business Days of the Acceptance Date, payable to the Vendor’s Solicitors, in trust;
- (b) the Purchaser shall give, and the Vendor shall take back a first mortgage (“**VTB**”) in an amount of SIX MILLION DOLLARS (\$6,000,000.00), subject to the following terms:
 - (i) the term of the VTB (the “**Term**”) shall commence on the Closing Date and shall six (6) months following the Closing Date (the “**Maturity Date**”);
 - (ii) for the first three (3) months of the Term of the VTB, interest shall accrue at the rate of seven per cent (7.00%) per annum, calculated and payable semi-annually interest only;
 - (iii) interest shall accrue at the increased rate of eighteen per cent (18.00%) per annum calculated and payable semi-annually interest only from and including the first day of the fourth (4th) month following the Closing Date;
 - (iv) the VTB shall (1) contain the terms set out in Schedule “C” annexed hereto, and (2) have incorporated therein Standard Charge Terms 200033;
- (c) on the Closing Date, the Purchaser shall pay THIRTEEN MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$13,750,000.00), being the balance of the Purchase Price, subject to the Adjustments provided for herein, to the Vendor’s Solicitors, by wire transfer from the trust account of the Purchaser’s Solicitors.

2.3 Deposits.

The Deposits shall be payable to the Vendor’s Solicitors, in trust, and shall be held by the Vendor’s Solicitors in trust, in an interest-bearing account pending the Closing and on Closing the Deposits and any interest accrued thereon shall be applied on account of and credited against the Purchase Price.

If the Transaction is not completed for any reason whatsoever other than by reason of the default of the Purchaser under this Agreement, the Deposits and any interest accrued thereon shall be paid and returned to the Purchaser forthwith, without any deduction or set off subject to any Claim by the Vendor for any Purchaser’s Repair Obligations, and without prejudice to any other rights or remedies that the Purchaser may have pursuant to this Agreement or at law or in equity.

In the event the Transaction is not completed due to the default of the Purchaser, the Deposits and any interest accrued thereon shall be paid to the Vendor forthwith, without deduction or set off, and without prejudice to any other rights or remedies that the Vendor may have pursuant to this Agreement or at law or in equity.

The Vendor and the Purchaser acknowledge that the Vendor’s Solicitors are a mere stakeholder of the Deposits as between the Parties to this Agreement and, in the event of a dispute between the Vendor and the Purchaser as to the entitlement to, or disposition of, the Deposits, the Vendor’s Solicitors shall be entitled to pay the Deposits into court and thereafter shall have no further responsibility in regard thereto

and the Vendor's Solicitors may act in the interests of the Vendor in the matter of any dispute between the Parties.

2.4 **HST.**

With respect to HST the Parties hereto agree and covenant as follows:

- (a) the Purchaser shall pay to the Vendor subject to clause (b) hereof all HST payable as a result of this Transaction in accordance with the *Excise Tax Act (Canada)* (the "**Act**") and the Vendor shall remit such HST to the Receiver General for Canada when and to the extent required by the Act; and
- (b) notwithstanding clause (a) above, the Vendor shall not collect the HST from the Purchaser if the Purchaser is registered under the Act as evidenced by a statutory declaration of the Purchaser (or if there are beneficial owner(s) of the Property, such beneficial owner(s)) and in such event the Purchaser (or, if applicable, the beneficial owner(s)) shall remit such HST when and to the extent required under the Act and the Purchaser (or, if applicable, the beneficial owner(s)) shall indemnify the Vendor and hold the Vendor harmless from any liability under the Act arising out of any breach of the obligations of the Purchaser contained in this clause and the statutory declaration noted above with respect to HST. The Purchaser shall provide its HST registration number to the Vendor's Solicitors at least five (5) Business Days before Closing.

ARTICLE 3 - INVESTIGATION AND OPERATION OF THE PROPERTY

3.1 **Productions by the Vendor.**

The Vendor shall within five (5) Business Days after the Acceptance Date deliver to the Purchaser the following, if in the possession and control of the Vendor (collectively referred to as the "**Productions**"):

- (a) an existing survey of the Property;
- (b) copies of the Leases to be assumed by the Purchaser;
- (c) copies of all contracts currently affecting the Property to be assumed by the Purchaser;
- (d) any outstanding realty tax assessment notices and correspondence and a copy of the current tax bills relating to the Property;
- (e) copies of all reports, orders and notices (including work orders, violations, deficiency notices, permit applications, open building permits, active permits, open files or investigations) prepared or issued by any Regulatory Authority or third-party consultants in connection with the Property; and
- (f) letters of authorization from the Vendor, in form acceptable to the Purchaser, permitting the Purchaser to meet and discuss matters pertaining to the Property with any and all Regulatory Authorities, and authorizing the said authorities to release to the Purchaser or the Purchaser's Solicitors any and all information on file and any work orders or deficiencies respecting the Property; provided that no physical inspections by such authorities of the Property shall be permitted or requested and provided that such meetings and discussions do not impose any liability or financial obligations on the Vendor.

3.2 **Intentionally Deleted.**

3.3 **Operation of Property.**

The Vendor will:

- (a) if it receives a work order, deficiency notice, or other claim that is made by any Regulatory Authority requiring repair, renovation, or other work to be performed on the Property prior to the Closing Date (the “**Work Order**”), at its own expense, perform the work required pursuant to such Work Order prior to the Closing Date; and
- (b) carry out all routine day-to-day maintenance and repairs of the Property.

3.4 **Expropriation.**

In the event that, prior to the Closing Date, any part of the Property is expropriated or notice of expropriation or intent to expropriate including without limitation a temporary expropriation or easement, is issued by any Regulatory Authority in respect of any part of the Property, the Vendor shall immediately advise the Purchaser thereof in writing and the Purchaser shall have the following options exercisable by written notice to be given to the Vendor within five (5) Business Days of the receipt of such notice from the Vendor:

- (a) to complete the Transaction without reduction of the Purchase Price, in which event all compensation for expropriation shall be payable to the Purchaser and all right and claim of the Vendor to such amount shall be assigned to the Purchaser; or
- (b) to refuse to complete the Transaction and, in such event, the Parties shall be released from all obligations hereunder and the Deposits shall be returned to the Purchaser with interest earned thereon and without deduction or set off, subject to any amounts owed resulting from the Purchaser’s Repair Obligations.

3.5 **Representations and Warranties by Vendor.**

The Vendor represents and warrants to the Purchaser as follows, which representations and warranties shall be remade by the Vendor and be true as of the Closing Date, and acknowledges that the Purchaser is relying on these representations and warranties in entering into this Agreement and completing the Transaction:

- (a) The entering into of this Agreement and the performance by Vendor of the terms hereof will not result in a violation by Vendor of the provisions contained in its constating documents or any agreement by which it is bound.
- (b) The Vendor is a corporation incorporated and subsisting under the laws of Ontario and has all necessary corporate capacity, power and authority to enter into this Agreement and perform the terms hereof and complete the Transaction.
- (c) The Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada).
- (d) No part of the Property has ever been occupied by the Vendor or any of its officers, directors or shareholders as a family residence within the meaning of the *Family Law Act*, R.S.O. 1990, and that the ownership of shares in the capital stock of the Vendor does not entitle the owners of such shares to possession or occupation of any portion of the Property as contemplated by the *Family Law Act*, R.S.O. 1990.

- (e) The conveyance of the Property to the Purchaser by the Vendor complies with the Planning Act, Ontario, and in particular, without limiting the generality of the foregoing, complies with Section 50(3)(f) of the Planning Act, Ontario.
- (f) The Vendor is the owner of the Property, which on Closing will be free and clear of all encumbrances, except the Permitted Encumbrances.

3.6 **Representations and Warranties by Purchaser.**

The Purchaser represents and warrants to the Vendor as follows which representations and warranties shall be remade by the Purchaser and be true as of the Closing Date, and acknowledges that the Vendor is relying on these representations and warranties in entering into this Agreement and completing the Transaction:

- (a) The entering into of this Agreement and the performance by Purchaser of the terms hereof will not result in a violation by Purchaser of the provisions contained in its constating documents or any agreement by which it is bound.
- (b) The Purchaser agrees to assume and all Leases.
- (c) It is a corporation duly incorporated and subsisting under the laws of Ontario and has all necessary corporate power and authority to enter into this Agreement and perform the terms hereof and the completion of the Transaction will have been duly authorized by all necessary corporate action on the part of Purchaser.

ARTICLE 4 - INTENTIONALLY DELETED

ARTICLE 5 - ADJUSTMENTS

5.1 **Items of Adjustment.**

The Purchaser and Vendor will adjust on the Adjustment Date, with the Closing Date apportioned to the Purchaser, for:

- (a) realty taxes and local improvement rates and charges;
- (b) utilities, and fuel accounts;
- (c) all other items reasonably capable and subject to the provisions of this Agreement, properly the subject of adjustment in connection with the ownership of the Property,

(collectively, the “**Adjustments**”).

The Vendor will prepare a statement of the Adjustments and a copy thereof (to which there will be annexed complete details of the calculations made therein) will be delivered to Purchaser at least three (3) Business Days prior to the Closing Date. Those items of Adjustments that cannot be either ascertained or finally made on Closing will be made on the basis of estimates by Vendor, acting reasonably, and will be finally adjusted pursuant to the undertaking to readjust. If the Purchaser disputes any such estimates, the Closing will nevertheless proceed on the basis thereof and the matter will subsequently be determined by either negotiation or arbitration. In the absence of notice by the Purchaser prior to Closing, the Purchaser will be conclusively deemed to have accepted such estimates as final and binding.

All realty tax arrears arising from an assessment of realty taxes against the Property for any year(s) prior to the year in which the closing date occurs, as well as all outstanding arrears for utility charges invoiced in the name of the Vendor applicable to the Property, shall be fully paid for by the Vendor on or before Closing and in the event that a reassessment of realty taxes subsequent to the Closing results in additional realty taxes owing or payable for the Property for any period prior to the Closing Date, then the Vendor shall be responsible to pay such additional realty tax amounts, notwithstanding that the reassessment may be received by the Purchaser after Closing. Likewise, in the event that any rebates, credits or similar amounts on account of realty taxes relating to any period prior to the Closing Date are received by the Purchaser or applied to the realty tax account for the Property or any portion thereof after the Closing Date, the Purchaser shall forthwith upon receipt or application of same, pay to the Vendor the amount of same and the Vendor shall be entitled to rely upon and enforce the Purchaser's undertaking to readjust for such purposes.

ARTICLE 6 - CLOSING

6.1 Vendor Deliveries on Closing.

On Closing, Vendor will deliver the following, all in form and content satisfactory to the Purchaser acting reasonably and executed:

- (a) the Statement of Adjustments to be delivered at least three (3) Business Days prior to the Closing Date;
- (b) a good and valid deed/transfer of title to the Property, in registrable form, which deed/transfer shall contain the statements contemplated by Section 50 of the Planning Act (Ontario), as amended, together with such statements and/or consents as are required to comply with the Family Law Act (Ontario), as amended;
- (c) a statutory declaration, wherein the Vendor confirms, and declares as follows:
 - (i) that the Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act of Canada, and the amendments thereto;
 - (ii) that all accounts for services, labour and materials owing or payable by the Vendor with respect to the Property have been fully paid for and to the best of its knowledge, no one has a right to file a lien under the Construction Act (Ontario) as amended against the Property; and
 - (iii) that no part of the Property is the site of a matrimonial home as defined in the Family Law Act (Ontario), as amended;
- (d) vacant possession of the Property, subject to the Leases;
- (e) a direction as to the payee or payees of the balance of the Purchase Price;
- (f) assignment and assumption of the Leases;
- (g) direction to the tenant (if any) regarding payment of rent;
- (h) the undertaking to readjust; and
- (i) such other conveyances, documents, instruments, agreements and items which are reasonably required by the Purchaser to give effect to the terms of this Agreement.

6.2 Purchaser Deliveries on Closing.

The Purchaser will deliver or cause to be delivered the balance of the Purchase Price as provided for in Section 2.2(c), subject to the Adjustments and the following documents all in form and content satisfactory to the Purchaser acting reasonably, duly executed and dated as of the Closing Date:

- (a) undertaking to readjust;
- (b) assignment and assumption of the Leases;
- (c) the acknowledgement, covenant, release and indemnity contemplated in Article 7;
- (d) a statutory declaration or certificate of the Purchaser and the applicable beneficial owner(s) relating to HST and indemnity as set out in Section 2.4;
- (e) a direction re title confirming the manner in which the Purchaser is to take title to the Property; and
- (f) such other documents, instruments, agreements and items which are reasonably required by the Vendor to give effect to the terms of this Agreement.

ARTICLE 7 - AS IS, WHERE IS

7.1 The Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Property shall be subject to the Permitted Encumbrances;
- (b) except as expressly provided for herein, in entering into this Agreement, the Purchaser has relied and will continue to rely, entirely and solely, upon its own inspections and investigations with respect to the Property including without limitation, the physical and environmental condition of the Property, and the Purchaser acknowledges it is not relying on any information or documents furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith, including without limitation the Productions; and
- (c) the Purchaser acknowledges and agrees that, save and except for the express representations and warranties of the Vendor set out in this Agreement, the Vendor has not made, does not make, and shall not be required to make or provide any warranty, representation or covenant of any kind whatsoever whether statutory, express or implied, oral or written, past, present or future, and the Vendor, and the Vendor shall have no liability or obligation with respect to the value, state, marketability, development potential or condition of the Property or any buildings, structures or erections located thereon, any deficiencies or irregularities therein or repairs, replacements or other work required with respect thereto (environmental, structural, or otherwise). The Purchaser further acknowledges that it shall rely upon its own environmental counsel or environmental consultant to evaluate the environmental condition of the Property and shall make its own determination as to whether the Property is in compliance with applicable Environmental Laws, irrespective of being provided with the Productions.

- 7.2 The Purchaser shall be deemed to, and does hereby, acknowledge to the Vendor that:
- (a) the Purchaser has fully examined and inspected the Property and conducted its own independent investigation of the Property and searches, inspections, investigations and testing for Hazardous Substances and in respect of all other matters pertaining to the Property;
 - (b) the Purchaser has accepted and is fully satisfied in all respects with the foregoing and with the physical and environmental condition, development potential, value, financing status and expenses of the Property;
 - (c) on Closing the Purchaser shall assume responsibility for the physical condition of the Property without regard to the stated of repair of the Property, locations of structures, walls, fences (freestanding or otherwise) and subject to all judicial, municipal and any other governmental by-laws, agreements, restrictions or orders affecting its condition or use (including, but not limited to, deficiency and other notices, Work Orders, and other orders) and the Vendor shall have no obligations or responsibility to the Purchaser after Closing with respect to the Property;
 - (d) the Purchaser has decided to purchase the Property solely on the basis of its own independent judgment, searches, inspections, investigations and testing and has relied upon its own judgment or expert's advice concerning the purchase of the Property;
 - (e) the Purchaser assumes all risk and responsibility for any Environmental Claims arising from the condition of the Property (including, without limitation, Claims relating to the past, present or future environmental condition of the Property) and expressly waives any and all Environmental Claims and other Claims relating to the foregoing against the Vendor and the Released Entities (as herein defined) relating thereto and further covenants:
 - i. never to make any Environmental Claims directly or indirectly against the Released Entities (as defined above) whether by legal process or otherwise in respect of any of the foregoing matters.
 - ii. to irrevocably and unconditionally release, acquit and forever discharge the Vendor and all Persons currently having an interest in the Property and each of their present and former respective officers, shareholders, employees, servants, agents, predecessors, successors, and all associated and related entities (collectively, the "**Released Entities**") from any Environment Claims and all Claims arising from the condition of the Property (including, without limitation, claims relating to the past, or present or future physical or environmental condition of the Property existing at the Requisition Date), howsoever arising which hereto may have been or may hereafter be sustained by the Purchaser, its present and former directors, officers, employees, servants, agents, successors, successors in title and all associated and related entities (collectively the "**Releasing Entities**"), and furthermore the Releasing Entities shall not initiate, lodge or continue with any complaints, or make any claims or take any proceedings against any one or more the Released Entities, as the case may be, in any manner or form, in common law or in equity, under the provisions of any statute or regulation, in connection with any Environmental Claim or Claim arising from the condition of the Property existing on the Requisition Date; and
 - (f) on Closing, the Purchaser shall deliver to the Vendor and the Released Entities a written acknowledgement, covenant and release in favour of the Vendor and the Released Entities

incorporating the provisions of this Section 7.1. provisions of this Article 7 to this Agreement apply notwithstanding any other provision of this Agreement to the contrary; and

- (g) the provisions of this Article 7 shall not merge on completion, but shall survive completion in full force and effect, binding upon the Purchaser.

ARTICLE 8 - GENERAL

8.1 Costs and Expenses.

Each of the Parties hereto shall be responsible for and shall pay all of its own taxes, costs, expenses and legal or other fees incurred by it in connection with the negotiations, settlement and execution of this Agreement and all matters related thereto.

8.2 Planning Act Compliance.

The Vendor covenants and agrees that the deed(s)/transfer(s) to be delivered on the Closing Date shall contain the statements prescribed pursuant to Section 50(22)(a) and (b) of the Planning Act (Ontario), as amended, wherein the Vendor certifies that, the deed/transfer does not contravene the subdivision and part lot control provisions of the Planning Act (Ontario), as amended.

8.3 Tender.

Any tender of documents or money hereunder may be made upon the respective solicitors of the Vendor and Purchaser, on the Closing Date. Money may be tendered by a bank draft or certified cheque drawn on a Canadian chartered bank or trust company or by wire transfer from the Purchaser's Solicitors trust account.

8.4 Time.

Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter may be extended or abridged by an agreement in writing between Purchaser and Vendor or their respective solicitors who are hereby expressly appointed and authorized in this regard.

8.5 Entire Agreement.

This Agreement constitutes the entire understanding, contract and agreement between the Parties hereto and supersedes all prior written and oral understandings, agreements or contracts, formal or informal, between the Parties hereto or their representatives with respect to the subject matter of this Agreement. No supplement, modification, waiver or termination (other than termination pursuant to the terms of this Agreement) shall be binding unless executed in writing by the Parties hereto.

8.6 Notices.

Every notice, consent, request, instruction, approval and other communication provided for or permitted by this Agreement and all legal process in regard hereto shall be validly given, made or served, if in writing and delivered to, or mailed postage prepaid, or sent by facsimile or electronic mail, to the party to whom it is to be given at:

in the case of a communication to the Purchaser at:

1000344633 ONTARIO INC.
1405 – 251 Consumers Road
North York, Ontario, M2J 4R3
Attention: Mohammed Qadoumi
Email: mohammed@tregholdings.com

with a copy to:

and in the case of communication to the Vendor at:

2807823 ONTARIO INC.
305 Lonsdale Road
Toronto, Ontario, M4V 1X3
Attention: Trevor Rabie
Email: trevor@privecapital.com

with a copy to:
Friedman Law Professional Corporation
150 Ferrand Drive, Unit 800
Toronto, Ontario, M3C3E5
Attention: William Friedman
Fax: 416-497-3809
E-mail: wf@friedmans.ca

or to such other addresses as any party hereto may, from time to time, designate in writing delivered in a like manner. Notice given by mail as set out above shall be deemed delivered within five (5) days of the date that it is postmarked, and if delivered or sent by facsimile or electronic mail, shall be deemed delivered on the date of such delivery or transmission if such day is a Business Day and if delivered or transmitted prior to 5:00 p.m. on such Business Day, failing which such notice shall be deemed to be delivered on the next Business Day following the date of delivery or transmission, and if delivered personally, shall be deemed delivered on the same date if such day is a Business Day, failing which such notice shall be deemed delivered on the next Business Day following the date of delivery.

8.7 Calculating Time Periods.

When calculating any period of time within which, or following which, any act is to be done, or any steps are to be taken pursuant to the provisions of this agreement, the day which is the reference date in computing any such period of time shall be excluded from the calculation. If no specific reference is made to “Business Days” when computing a particular time period pursuant to the provisions of this Agreement, then whenever the last of such period would fall on a day that is not a Business Day, the period of time in question shall then be deemed to end on the next succeeding Business Day.

8.8 Successors and Assigns.

This Agreement shall endure to the benefit of and be binding upon the Parties hereto, their heirs, estate trustees, administrators, successors and permitted assigns. This Agreement may not be assigned by the Purchaser, in whole or in part, except with the prior written consent of the Vendor, which consent may be withheld in the Vendor’s sole, absolute and unfettered discretion.

8.9 **Title.**

The Purchaser shall be allowed until the day that is three (3) Business Days after the Acceptance Date (the “**Requisition Date**”) to examine the title to the Property at its own expense. Subject always to the terms of this Section 8.9, if within the time allowed for examining title to the Property, any valid objections to title is made in writing to the Vendor, which the Vendor is unable to remove, remedy or satisfy without any costs or expenses to be incurred by the Vendor and which the Purchaser will not waive, then notwithstanding any intermediate acts or negotiations in respect of such objections, this Agreement shall be at an end, and the Deposits (subject to any amounts owed resulting from the Purchaser’s Repair Obligations) shall be returned to the Purchaser together with all accrued interest and without deduction or setoff. Save as to any valid objections so made by such time, and except for any objections going to the root of title, or pertaining to instruments registered on title to the Property after the Requisition Date, but prior to the Closing Date, provided that the Vendor’s title to the Property is in fee simple, and free and clear from all liens, mortgages, charges, encumbrances, except for the Permitted Encumbrances, the Purchaser shall be conclusively deemed to have accepted the Vendor’s title to the Property.

8.10 **Governing Law and Jurisdiction.**

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties hereto shall be governed by, the laws of the Province of Ontario. Each of the Parties irrevocably attorns to the jurisdiction of the courts of the Province of Ontario located in the City of Toronto. No remedy conferred upon, or reserved herein in favour of the Parties, is intended to be exclusive of any other remedy provided for in this Agreement or at law, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or hereafter existing or applicable, either at law, in equity or by statute.

8.11 **Execution by Counterparts and Electronically.**

This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, constitute one agreement binding on the Parties, notwithstanding that all Parties are not signatories to the same counterpart, provided that each Party has signed at least one counterpart.

The Vendor and Purchaser hereto consent and agree to the use of electronic signature pursuant to the *Electronic Commerce Act 2000*, S.O. 2000, c17 as amended from time to time, with respect to this document and any other documents respecting this Transaction.

8.12 **Confidentiality.**

- (a) The Parties shall, until Closing or within six (6) months in the event this Agreement is terminated for any reason, keep in strict confidence all information relating to this Agreement and the Transaction. Notwithstanding the foregoing, the Parties may disclose all information obtained with respect to this Agreement to its employees, consultants, contractors, agents and representatives as long as such representatives agree to keep the information confidential. If the purchase and sale of the Property is not completed for any reason, each of the Parties shall promptly return to the other all documents, information and materials or copies thereof relating to the Property delivered to it by or on behalf of the other, including without limitation the Productions, and shall keep in confidence all such documents, information and materials obtained and all discussions between the Vendor and the Purchaser with respect to the Property, this Agreement, and the Transaction.
- (b) Subsection 8.12(a) above shall not include:

- (i) public information or information in the public domain at the time of receipt by the Purchaser or the Vendor or their respective agents and advisors;
- (ii) information which becomes public through no fault or act of the Purchaser or the Vendor or their respective agents, consultants and advisors;
- (iii) information in the possession of the Purchaser or Vendor not provided solely by the other Party or its agents, consultants or the manager of the Property (unless otherwise provided in confidence as well); and
- (iv) information required to be disclosed by law.

8.13 **No Registration.**

The Purchaser shall not be entitled to register a copy of this Agreement or notice thereof, or an assignment or notice of an assignment of this Agreement, or a caution or a certificate of pending litigation against the title to the Property or any portion thereof nor any other notice or registration to be filed against the title to the Property or any portion thereof, and a breach of this covenant shall be deemed to go to the root of the agreement between the Vendor and the Purchaser entitling the Vendor to terminate this Agreement and retain all Deposits and accrued interest thereon, and reserving to the Vendor all of its rights and remedies against the Purchaser available to the Vendor pursuant to this Agreement, at law or in equity.

8.14 **Further Assurances.**

Each of the Vendor and Purchaser hereto shall from time to time and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

8.15 **Effect of Termination.**

Notwithstanding the termination of this Agreement for any reason, the Purchaser shall remain obligated to comply with its obligations to return documents and repair and restore the Property and the Parties shall remain obligated to the confidentiality provisions herein.

8.16 **Discharge of Encumbrances.**

On or before the Closing, the Vendor shall register discharges at its own expense, of all mortgages, liens, encumbrances, consents, restrictions, security interests and other encumbrances affecting the Property other than Permitted Encumbrances. If a discharge of any Charge/Mortgage held by a bank listed in Schedule I or II to the Bank Act (Canada), registered loan or trust corporation, a licensed insurer, or a subsidiary of any of them, or a pension fund, which is not to be assumed by the Purchaser on completion, is not available in registrable form on Closing, the Purchaser shall accept the Vendor's Solicitor's personal undertaking to obtain, out of the closing funds, a discharge in registrable form, and to register same or cause same to be registered on title within a reasonable period of time after Closing, not to exceed 120 days from the Closing Date, provided that on or before Closing, the Vendor shall provide to the Purchaser a mortgage statement prepared by the mortgagee, setting out the balance required to obtain the discharge.

8.17 Waiver.

No waiver of any of the provisions of the Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

8.18 Electronic Registration.

The Vendor and the Purchaser acknowledge and agree (a) that this Transaction will be completed on the Closing Date by electronic registration pursuant to Part III of the *Land Registration Reform Act* (Ontario), as amended and the *Electronic Registration Act* (Ontario), as amended; and (b) that the exchange of closing funds, non-registrable documents and other items (the “**Requisite Deliveries**”) and the release thereof to the Vendor and Purchaser will (i) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this Transaction) and (ii) be subject to condition whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form in which is as recommended by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

8.19 Irrevocable Date.

This Agreement shall be irrevocable by the Purchaser until 11:59 p.m. on September 28, 2023, after which time if not accepted and signed by the Vendor, this Agreement shall be null and void and any Deposits shall be returned forthwith to the Purchaser with interest earned thereon and without deduction or set off.

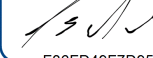
[The balance of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the Vendor has signed this Agreement on the 28th day of September, 2023.

2807823 ONTARIO INC.

Per:

DocuSigned by:



F86FD49F7D954DD...

Name: Trevor Rabie

Title: ASO

I have authority to bind the corporation

IN WITNESS WHEREOF the Purchaser has signed this Agreement on the 28th day of September, 2023.

1000344633 ONTARIO INC.

Per:

DocuSigned by:



57AF9FD881F0496...

Name: Mohammed Qadoumi

Title: ASO

I have authority to bind the corporation

SCHEDULE "A"

Legal Description: LT 3500 CP PL 2 GRANTHAM; LT 3473-3487, 3494-3499, 3501-3504 CP PL 2 GRANTHAM EXCEPT VALLEYVIEW RD; PT LT 3488, 3506-3510 CP PL 2 GRANTHAM; PT VINE ST CP PL 2 GRANTHAM CLOSED BY NC4350 AS IN RO12400, RO16696, RO30189, RO10700, RO11444, RO321759, SCE18090; PT 1 30R1484; LTS 3490-3493CP2 EXCEPT PTS 1 & 2 30R12073; S/T RO535289, RO713328; CITY OF ST.CATHARINES

PIN: 46267 – 0101 (LT)

SCHEDULE "B"**PERMITTED ENCUMBRANCES**

1. Any subsisting reservations, limitations, provisions and conditions, contained in any original grants from the Crown of any land or interest therein
2. Title defects or irregularities including any easements or rights of way in favour of any federal, provincial, municipal or other governmental bodies or regulatory authorities, any private or public utility, any railway company or any adjoining owner which either individually or in the aggregate do not and will not impair the value, use or marketability of the Property.
3. Permits, reservations, covenants, water course, right of water, rights of access or user licenses, easements, rights of way, restrictions, building schemes, licenses restrictive covenants, and other similar rights in land granted to, reserved or taken by any person, provided the same are complied with in all material respects.
4. All applicable laws, including municipal, provincial or federal statutes, by laws, regulations or ordinances including any charge, trust, priority or preference given to or in favour of the Crown, Crown agents or municipalities pursuant thereto.
5. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with a Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
6. Any easement, right-of-way, watercourse, right-of-water or other unregistered interest or claim not disclosed by registered title in respect of the provision of utilities to the Property.
7. Zoning, land use and building restrictions, by-laws, regulations and ordinances, including subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with federal, provincial, municipal or other governmental bodies or regulatory authorities or private or public utilities affecting the development or use of the Property.
8. The rights reserved to or vested in any municipality, governmental or other public authority by statutory provisions including, without limitation, the right to acquire portions of the lands for road widening or interchange construction, and the right to complete or remedy improvements, landscaping or deficiencies in any pedestrian walkways or traffic control or monitoring.
9. Restrictive covenants, exclusivity provisions, and other similar land use control agreements, provided same have been complied with and which do not materially impair the Purchaser's intended use, operation or marketability of the Property.
10. Minor encroachments by the Property, or any portion thereof, over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property, or any portion thereof, by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that, in either case, do not materially and adversely impair the current use, operation or marketability of the Property.

11. Security given to a public utility or any governmental authority when required by the operations of the Property in the ordinary course of business.
12. Any statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to a Property and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, or by any other governmental authority under or pursuant to any applicable laws, provided the Purchaser at law cannot become responsible to satisfy same.
13. All hydro lines and/or other hydro apparatus located on, in, under or over the Property, or any portion thereof, and all actual or potential unregistered easements relating to same, regardless of whether or not any of same are reflected on any registered reference plan or any survey of the Property.
14. All qualifications set out on any one or more of the parcel registers for the Property prior to the Requisition Date.
15. All instruments and plans set out on any one or more of the parcel registers for the Property as well as all easements benefitting or burdening any portion of the Property as set out on any one or more of the parcel registers for the Property, save and except for any mortgage to be discharged in accordance with the terms of the Agreement.
16. Zoning, by-laws, regulations and ordinances of federal, provincial, municipal or other governmental bodies or regulatory authorities in place as of the Acceptance Date.
17. All instruments registered on the parcel abstract as of the Acceptance Date.

Specific Instruments:

1. Instrument No. RO493091 registered on March 4, 1985 is a Notice of Airport Zoning.
2. Instrument No. RO535289 registered on February 25, 1987 is an Transfer Easement in favour of the City of St. Catharines.
3. Instrument No. RO713328 registered on July 29, 1996 is a Transfer Easement in favour of Bell Canada.
4. Instrument No. RO256100 registered on November 8, 1972 is an Encroachment Agreement.
5. Instrument No. R0713328 – Easement in favour of Bell.

SCHEDULE "C"**Additional Charge Provisions for the VTB**

The following terms shall form part of the Charge/Mortgage to which this schedule is attached to and are in addition to the terms indicated in standard charge terms No. 200033.

1. PREPAYMENT OPTION

The Chargor, its successors and assigns, may prepay the whole or any part or parts of the principal sum hereby secured at any time or times without notice or penalty.

2. DEVELOPMENT PROVISIONS

- (a) Provided that the Chargee, its successors and assigns, shall at the expense of the Chargor, its successors and assigns, consent to any official or secondary plan amendments or rezoning by-laws in connection with the registration of a plan or plans of subdivision, and shall execute, without remuneration, all documents necessary to enable registration of a plan or plans of subdivision of the whole or any part or parts of the land herein, and/or to enable registration of the lands under the Land Titles system, provided priority of the Vendor's mortgage are not affected and the Chargee does not thereby render himself liable for any expenses or costs. The Chargee shall, without remuneration, further postpone its mortgage in favour of any easement or right-of-way necessary to service the Lands.
- (b) (i) Provided that the Chargee, its successors and assigns, shall provide partial discharges for any lands without any payment on account of the Charge which the Chargor is required to convey or dedicate for municipal or governmental purposes in connection with the registration of a plan or plans of subdivision, including, and without limiting the generality of the foregoing, any lands required for roads, road widenings, easements, park sites and school sites, provided that the Chargor has received no payments for the conveyance of these lands, and provided further that the total lands for which partial discharges shall be required without payment shall not exceed twenty (20%) percent of the total area of the lands which are the subject of this mortgage. Should payment be received by the Chargor for these lands, then one hundred (100%) percent of such payment shall be applied to obtain the partial discharges of the Charge with respect to the lands to be discharged. Notwithstanding the foregoing, the Chargor shall be entitled to free partial discharges with respect to any lands which are below the regulated regional floodplain or the top of the bank.
- (ii) Notwithstanding anything heretofore or hereafter written, it is understood and agreed that the Chargee shall not be required to grant a discharge of any part or parts of the lands herein defined, if the lands then remaining undischarged would be landlocked without frontage on a public street, or would unreasonably impair the Chargee's security.
- (c) Provided Section 50 of the Planning Act is complied with, the Chargor, its successors or assigns, after the registration of a plan or plans of subdivision in respect of the whole or any part of the land subject to this Charge, shall be entitled to obtain a partial discharge of any parcel, or unsubdivided land, or block or lot on a registered plan of subdivision upon payment of an amount on account of principal calculated according to the following formula:

Area of parcel to be discharged, multiplied by the principal balance outstanding hereunder with the product divided by the total area of lands then subject to this Charge,

together with accrued interest then owing on the account of the principal payment calculated as aforesaid.

- (d) The Chargor shall have the right to demolish any buildings on, or excavate, improve or service, the said property without any further payment to the Chargee and such demolition, excavation, improvement or service shall not be deemed to be an act of waste.

3. SUBSEQUENT FINANCING

The Chargee agrees that the Chargor shall be entitled to further charge/mortgage the Property provided that such further chargee/mortgagee delivers an executed subordination and postponement agreement in form and content acceptable to the Chargee, acting reasonably.

4. APPOINTMENT OF RECEIVER

- (e) At any time after this Charge hereby constituted becomes enforceable, the Chargee may from time to time appoint by writing or cause to be appointed a Receiver or a Receiver-Manager, as it shall elect (hereinafter called "**Receiver**"), with or without bond, and may from time to time remove the Receiver and appoint another in his stead, and any such Receiver appointed hereunder shall have, without limitation, the following powers:
- i. To take possession of the Property and to collect all rent and other revenues arising from the Property or any portion thereof and for such purpose to enter into and upon any lands, buildings and premises wheresoever and whatsoever and for such purpose to do any act and take any proceedings in the name of the Chargor or otherwise as he shall deem necessary;
 - ii. To carry on or concur in carrying on the business of the Chargor, and to employ and discharge agents, workmen, accountants and others upon such terms and with such salaries, wages or remuneration as he shall think proper, and to repair and keep in repair the Property and to do all necessary acts and things for the carrying on of the business of the Chargor and the protection of the Property of the Chargor;
 - iii. To sell or lease or concur in selling or leasing any or all of the Property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part or parts of the Property; and he may make any stipulations as to title or conveyance or commencement of title or otherwise which he shall deem proper; and he may buy or rescind or vary any contracts for the sale of any part of the Property and may resell the same; and he may sell any of the same on such terms as to credit or part cash and part credit or otherwise as shall appear in his sole opinion to be most advantageous and at such prices as can reasonably be obtained therefor and in the event of a sale on credit neither he nor the Chargee shall be accountable for or charged with any monies until actually received;
 - iv. To make any arrangement or compromise which the Receiver may think expedient in the interest of the Chargee and to consent to any modification or change in or omission from the provisions of the Charge and to exchange any part of the Property for any other Property suitable for the purposes of the Chargee and upon such terms as may seem expedient and either with or without payment or exchange of money or regard to the equality of the exchange or otherwise;

- v. To borrow money to carry on the business of the Chargor and to charge the whole or any part of the Property in such amounts as the Receiver may from time to time deem necessary and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the Property in priority to the Charge;
 - vi. To execute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Property, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defense of any suit, proceedings or action then pending or thereafter instituted and to appeal any suit, proceeding or action; and
 - vii. To execute and deliver to the purchaser of any part or parts of the Property, good and sufficient transfer or transfers for the same, the Receiver hereby being constituted the irrevocable attorney of the Chargor for the purpose of making such sale and executing such transfer or transfers, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Chargor, and all other persons claiming the Property or any part thereof by, from, through or under the Chargor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided.
- (f) It is agreed that no purchaser at any sale purporting to be made in pursuance of the aforesaid power or powers shall be bound or concerned to see or inquire whether any default has been made or continued, or whether any notice required hereunder has been given, or as to the necessity or expediency of the stipulations subject to which such sale shall have been made, or otherwise as to the propriety of such sale or regularity of its proceedings, or be affected by notice that no such default has been made or continues, or notice given as aforesaid, or that the sale is otherwise unnecessary, improper or irregular; and notwithstanding any impropriety or irregularity or notice thereof to such purchaser, the sale as regards such purchaser shall be deemed to be within the aforesaid power and be valid accordingly and the remedy (if any) of the Chargor, or of any party claiming by or under the Chargor, in respect of any impropriety or irregularity whatsoever in any such sale shall be in damages only.
- (g) The revenue of the business of the Chargor and the net proceeds of any sale of the Property or part or parts thereof shall be applied by the Receiver subject to the claims of any creditors ranking in priority to the Charge:
- (i) Firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by him;
 - (ii) Secondly, in payment of all of the fees, costs, charges, losses, damages and expenses incurred by the Chargee as a direct or indirect consequence of granting the loan secured by the Charge including, without limitation, all expenses incurred in the construction, preservation, maintenance, repair, insuring and realization of the security contained herein, and all legal costs incurred by the Chargee as between a solicitor and his own client;
 - (iii) Thirdly, in payment to the Chargee of the loan hereunder;
 - (iv) Fourthly, any surplus shall be paid to the Chargor provided that, in the event that any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus as the Receiver deems appropriate in the circumstances.

- (d) The Chargee shall not be liable to the Receiver for his remuneration costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising unless the same shall be caused by his own negligence or willful default; and he shall, when so appointed by notice in writing pursuant hereto, be deemed to be the agent of the Chargor and the Chargor shall be solely responsible for his acts and defaults and for his remuneration.

FIRST SOURCE FINANCIAL MANAGEMENT INC.
Applicant

-and-

2807823 ONTARIO INC.
Respondent

Court File No. CV-23-00705617-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF TREVOR RABIE
SWORN OCTOBER 31, 2023**

**FRIEDMAN LAW
PROFESSIONAL CORPORATION**
Barristers and Solicitors
150 Ferrand Drive, Suite 800
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Lawyers for the Respondent

RCP-E 4C (May 1, 2016)

FIRST SOURCE FINANCIAL MANAGEMENT INC.
Applicant

-and-

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**RESPONDING APPLICATION RECORD OF
THE RESPONDENT, 2807823 ONTARIO INC.**

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