

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

-and-

**2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO
INC., 1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and SUNSHINE
PROPANE INC.**

Respondents

**RESPONDING MOTION RECORD OF 2495087 ONTARIO INC., 2496800
ONTARIO INC., 1527020 ONTARIO INC., 1651033 ONTARIO LTD AND
1496765 ONTARIO LTD**

OLUBUNMI OGUNNIYI
Barrister and Solicitor
Suite 102
2680 Matheson Boulevard East
Mississauga, ON L4W 0A5

LSUC No.: 47419A

Tel: (1) 866-840-5167
Fax: (1) 877-201-3476

Lawyer for 2495087 Ontario Inc,
2496800 Ontario Inc, 1527020
Ontario Inc, 1651033 Ontario Ltd
and 1496765 Ontario Ltd

TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, Ontario
M5V 3H1

Attention: Jeffrey Larry

Tel: 416-646-4330
Fax: 416-646-4301

Lawyers for the Receiver

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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-and-

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INC., 1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and SUNSHINE
PROPANE INC.**

Respondents

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1. Affidavit of Rauf Khan.
 - A. Exhibit "A" to the Affidavit of Rauf Khan.
 - B. Exhibit "B" to the Affidavit of Rauf Khan.
 - C. Exhibit "C" to the Affidavit of Rauf Khan.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

BANK OF MONTREAL

Applicant

-and-

**2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO LTD., 1496765 ONTARIO LTD. and SUNSHINE PROPANE
INC.**

Respondents

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

AFFIDAVIT OF RAUF KHAN

I, RAUF KHAN, of the City of Mississauga, Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a director of the Respondent corporation, 1527020 Ontario Inc ("152") in the within action. I have the consent of the following Respondent companies to swear the within Affidavit on their behalf: 2496800 Ontario Inc. ("249"), 1651033 Ontario Ltd ("165"), and 1496765 Ontario Ltd ("149"), (collectively, "the Debtor Companies"). As such, I have direct knowledge of the facts to which I here depose, save and except those matters based expressly upon information and belief.

2. I make this Affidavit in response to the Receiver's Motion seeking the Court's approval of three Agreements of Purchase and Sale.

3. In its Motion Record, the Receiver (RSM Canada Limited) states that it has entered into the following Agreements of Purchase and Sale with respect to the following properties owned by the Debtor Companies:

- (a) Agreement between the Receiver and 2677323 Ontario Inc, with respect to the property municipally known as 5462 Dundas Street West, Etobicoke, Ontario ("Etobicoke Property");
- (b) Agreement between the Receiver and Harsha Minrani in trust for a corporation to be incorporated, with respect to the property municipally known as 5223 Dundas Street, Burlington, Ontario ("Burlington Property");
- (c) Agreement between the Receiver and 2573702 Ontario Inc, with respect to the property municipally known as 633 Main Street West, Port Colborne, Ontario ("Port Colborne Property").

4. It has come to the attention of the Debtor Companies that the Receiver, through its Listing Agent, Avison Young ("Avison"), ignored, disregarded and/or failed to consider favourable offers and/or potentially better offers than the aforesaid Agreements entered into with respect to the Etobicoke and Burlington Properties.

5. I direct the attention of this Honourable Court to an e-mail exchange between one of such buyers, Sunil Bhardwaj ("Mr. Bhardwaj") and Kelly Avison ("Mr. Avison"). Attached hereto and marked collectively as **Exhibit "A"** to this Affidavit, are copies of the said e-mail exchange dated November 27, 2018 and December 10, 2018, respectively.

6. In particular, I direct the attention of this Honourable Court to Mr. Bhardwaj's e-mail of December 10, 2018 which states as follows:

"Hi Kelly, I have called you couple of times and left messages. I am interested in two properties the Burlington and Dundas Toronto. Willing to pay full prize and buy as is. We would like you to represent us. We will do quick closing plz respond ASAP. May be we can close before XMASS".

7. It is my understanding that there was a gross lack of follow-up and a real lack of appetite to pursue Mr. Bhardwaj's offer by Mr. Avison.

8. In addition to the above, it is my understanding that SMV Financial Service Inc ("SMV"), through its realtor, Prem Ragunathan ("Mr. Ragunathan"), signed a Confidentiality Agreement (dated January 30, 2019) with respect to the purchase of the Burlington Property.

9. However, on the following day (being February 1, 2019), Mr. Avison informed Mr. Ragunathan via e-mail that the Burlington Property had been sold.

10. It is interesting to note, however, that a search of the MLS Sold Listing shows that the Burlington Property was, infact, sold on February 6, 2019 and not by February 1, 2019 as alleged by Mr. Avison. Attached hereto and marked collectively as **Exhibit "B"** to this Affidavit, are: a copy of the aforesaid Confidentiality Agreement, the e-mail exchange of February 1, 2019, between Mr. Avison and Mr. Ragunathan and a copy of the MLS Sold Listing of the Burlington Property.

11. It is my understanding that there are more favourable and/or better offers than the above-referenced Agreements entered into by the Receiver. Attached hereto and marked collectively as **Exhibit "C"** to this Affidavit, are copies of the more favourable and/or better offers.

12. I must emphasize that it is obviously in the interest of the Debtor Companies that these better offers be considered as it will save the Debtor Companies millions of dollars of a possible "shortfall" situation if the creditors do not recover all their funds from the current Agreements entered into by the Receiver.

13. I understand from the lawyer for the Debtor Companies, Olubunmi Ogunniyi ("Mr. Ogunniyi"), that the purchasers under the aforesaid Agreements entered into by the Receiver, executed these Agreements being fully aware that the said Agreements are conditional upon Court approval. As such, there is no prejudice to these existing purchasers.

14. I understand from Mr. Ogunniyi that all interested parties are entitled to transparency in the process of realizing on an asset, and to be assured that their interests in the process has been adequately protected.

Re Wagman, 2006 CarswellOnt 2388 (S.C.J. (Reg.)), at paragraph 10

15. I believe that the interests of the Debtor Companies cannot be adequately protected if the above-noted better offers are not allowed to be considered by the Court.

16. I further understand from Mr. Ogunniyi that the Court should not approve a sale where it does not appear that the sale is in the best interests of the parties.

Canrock Ventures LLC v. Ambercore Software Inc., 2011 ONSC 1138

17. I make this Affidavit in response to the Receiver's Motion seeking the Court's approval of the above-mentioned three Agreements of Purchase and Sale.

I make this Affidavit for no other purpose.

SWORN BEFORE ME at the City of)
Mississauga in the Province of)
Ontario, this 27th day of February,)
2019 28)



RAUF KHAN



OLUBUNMI OGUNNIYI
BARRISTER, SOLICITOR & NOTARY PUBLIC
1600 Peter Robertson Boulevard - Suite 202
Brampton, Ontario L6R 3K4

THIS IS EXHIBIT "A" REFERRED TO
IN THE AFFIDAVIT OF RAUF KHAN
SWORN BEFORE ME THIS 28TH DAY OF FEBRUARY, 2019



A COMMISSIONER, ETC

OLUBUNMI OGUNNIYI
BARRISTER, SOLICITOR & NOTARY PUBLIC
1050 Peter Hebertson Boulevard - Suite 202
Ottawa, Ontario K1G 3E3

Regards

Sunil Bhardwaj CFP, Ch. F.C , CLU
Certified Financial Planner
SMV Financial Service Inc
World Financial Solutions inc
Angus Glen Montessori Inc
Medscan Imaging
Direct line 416 520 8557

Begin forwarded message:

From: Sunil Bhardwaj <callsunil4165208557@gmail.com>
Date: December 10, 2018 at 1:33:59 PM EST
To: "Kelly Avison (Avison Young)" <kelly.avison@avisonyoung.com>
Subject: Re: car washes, etc

Hi Kelly,

I have called you couple of times and left messages I am interested in two properties the Burlington and Dundas Toronto. Willing to pay full prize and buy ad is . We would like you to represent us . We will do quick closing plz respond ASAP . May be we can close before X MASS.

Regards

Sunil Bhardwaj CFP, Ch. F.C , CLU
Certified Financial Planner
SMV Financial Service Inc
World Financial Solutions inc
Angus Glen Montessori Inc
Medscan Imaging
Direct line 416 520 8557

On Nov 27, 2018, at 12:59 PM, Kelly Avison (Avison Young) <kelly.avison@avisonyoung.com> wrote:

Sunil

We expect to get the green light from the Receiver and the Bank in the next day or two to commence our marketing.

Yours very truly,

Kelly J. Avison, AACI

Broker

Principal, Capital Markets Group

kelly.avison@avisonyoung.com

Avison Young

Brokerage

18 York Street
Suite 400, Mailbox #4
Toronto, ON M5J 2T8

D 416.673.4030

T 416.955.0000

F 416.955.0724

avisonyoung.com

<image001.jpg>

| <image002.jpg>

<image003.png><image004.png><image004.png><image005.png><image006.jpg><image007.png>

Avison Young Commercial Real Estate (Ontario) Inc., Brokerage

Legal Disclaimer

THIS IS EXHIBIT "B" REFERRED TO
IN THE AFFIDAVIT OF RAUF KHAN
SWORN BEFORE ME THIS 28TH DAY OF FEBRUARY, 2019



A COMMISSIONER, ETC

OLUDUNMI OGUNNIYI
BARRISTER, SOLICITOR & NOTARY PUBLIC
1090 Peter Robinson Boulevard - Suite 202
Brampton, Ontario L6R 3C1

CONFIDENTIALITY AGREEMENT AND AGENCY DISCLOSURE FORM

AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO) INC. ("Avison Young")

18 York Street, Suite 400

Toronto, ON M5J 2T8

Fax: 416-955-0724

Email: kellyavison@avisonyoung.com; bensykes@avisonyoung.com

Attention: Kelly Avison and Ben Sykes

Dear Sirs,

For the purposes of evaluating:

- 591 and 595 Goderich Street, Port Elgin, Province of Ontario
- 274 Bayfield Road, Goderich, Province of Ontario
- 633 Main Street West, Port Colborne, Province of Ontario
- 5462 Dundas Street West, Etobicoke, Province of Ontario
- 5223 Dundas Street, Burlington, Province of Ontario

(hereinafter collectively referred to as "the Property")

I/We SMV Financial Service Inc.

(hereinafter referred to as the "Buyer")

warrants and confirms with Avison Young that

PREM RAJAWATHAN.

(hereinafter referred to as the "Buyer's Broker") is representing the Buyer under a Buyer agency agreement and has introduced said Buyer to the Property. The Buyer and the Buyer's Broker request that **Avison Young** the Seller's Agent, provides the Buyer and the Buyer's Broker with confidential information relating to the Property.

In consideration of Avison Young agreeing to provide the undersigned with said confidential information, the undersigned agrees with

RSM CANADA LIMITED

Solely and in its capacity as Court – Appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc.

(collectively, the "Companies")

with no personal or corporate liability

(hereinafter referred to as the "Seller")

and Avison Young as follows:

- (1) To treat confidentially, such information and any other information that Avison Young or the Seller or any of their advisors furnishes to the undersigned, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered by inspection, and regardless of whether specifically identified as "confidential" (collectively, the "Evaluation Material").
- (2) Not to use any of the Evaluation Material for any purpose other than the exclusive purpose of evaluating the possibility of a purchase and sale transaction relating to the Property. The undersigned agrees that the Evaluation Material will not be used in any way detrimental to the Property, the Seller, or Avison Young and that such information will be kept confidential by the undersigned, its directors, officers, employees and representatives and these people shall be informed by the undersigned of the confidential nature of such information and shall be directed to treat such information confidentially.

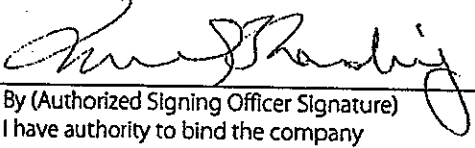
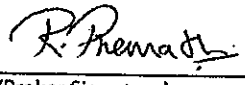
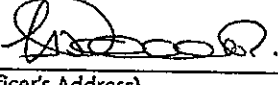


- (3) That if at any time, the undersigned considers a transaction which would involve a third party either purchasing the Property or any interest therein or evaluating the possibility of a purchase and sale transaction relating to the Property, the undersigned must receive the approval by Avison Young or the Seller of such third party as a Buyer, which approval may be unreasonably withheld. Furthermore, the undersigned agrees to obtain from said third party a confidentiality agreement in a form satisfactory to Avison Young or the Seller prior to disclosure to such party of any evaluation material relevant to this transaction.
- (4) The undersigned and its directors, officers, employees and representatives will not, without the prior written consent of Avison Young or the Seller, disclose to any persons either the fact that discussions or negotiations are taking place concerning a possible transaction between the Seller and the undersigned, nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- (5) The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company partnership or individual or any combination of one or more of the foregoing.
- (6) Not to have any contact with any tenant or tenants, nor enter into any discussion with any tenant or tenants, at the Property without the express written permission of the Seller, as such contact may cause irreparable harm to the Seller.
- (7) That any time, at the request of Avison Young or the Seller, the undersigned agrees to promptly return all Evaluation Material without retaining any copies thereof or any notes relating thereto. The undersigned will certify as to the return of all Evaluation Material and related notes.
- (8) That in the event the undersigned is required or requested by legal process to disclose any of the Evaluation Material, the undersigned will provide Avison Young or the Seller with prompt notice of such requirement or request so that Avison Young or the Seller may take appropriate actions.
- (9) That the undersigned agrees that neither Avison Young nor the Seller makes any representations or warranties as to the accuracy or completeness of the Evaluation Material. The undersigned further agrees that neither Avison Young nor the Seller, nor any other author of or person providing Evaluation Material shall have any liability to the undersigned or any of its representatives arising from the use of the Evaluation Material by the undersigned or its representatives.
- (10) The Buyer represents and warrants that it shall be responsible for any costs associated with its review and possible purchase of the Property, including any fees owed to the Buyer's Broker as well any consultants retained by, or acting on behalf of, the Buyer. Any consultants, agents, and/or advisors retained by the Buyer shall be required to execute, and be bound by, this Confidentiality Agreement.
- (11) Upon successful closing of an agreement of purchase and sale to the Buyer, the Buyer's Broker's commission of **2.25% of the closing sale price** shall be paid by Avison Young as per the terms and conditions governed by the Listing Agreement between Avison Young and the Seller.
- (12) The undersigned hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the Personal Information Protection and Electronic Documents Act (Canada) with respect to personal information which may be contained in the Evaluation Material.
- (13) This Agreement shall be governed by the laws of the Province of Ontario and those of Canada applicable therein.
- (14) This Agreement shall enure to the benefit of Avison Young and the Seller, their respective successors and assigns and shall be binding upon the undersigned and its heirs, executors, administrators, and their successors and assigns.



- (15) **Representation and Customer Service:** The Code of Ethics for the Real Estate Council of Ontario requires Commercial Realtors (e.g., Sales Representatives, Agents, Brokers) to disclose in writing the nature of their relationship and services they are providing. The Buyer acknowledges that Avison Young has provided the Buyer with written information explaining agency relationships (attached hereto as Schedule "A" – Working with a Commercial Realtor). The Buyer acknowledges that the Buyer is being represented by the Buyer's Broker, and that Avison Young is the agent, and represents the interests, of the Seller and has a fiduciary and primary duty to protect and promote the interests of the Seller - Client.

DATED at Toronto, this 30 day of January, 2019.

<u>SMV Financial Services Inc.</u>		<u>PREM RAAGUNATHAN</u>	
Buyer's Name (Please Print)		Buyer's Broker Name (Please Print)	
			
By (Authorized Signing Officer Signature) I have authority to bind the company		By (Broker Signature)	
(Officer's Name)		Broker of Record Name (Please Print)	
		<u>KARUNA GOPALAPILLAI</u>	
(Officer's Title)		By (Broker of Record Signature)	
			
(Officer's Address)		(Officer's Address)	
		<u>111 Grangeway Ave, Suite #301</u> <u>Toronto, ON, M1H 3E9.</u> <u>416-284-5552</u>	
(Telephone Number)	(Facsimile Number)	(Telephone Number)	(Facsimile Number)
		<u>gv4yp_3@hotmail.com</u>	
(Email Address: Buyer)		(Email Address: Buyer's Broker)	

Inbox 5782

Junk Email 231

Drafts 126

Sent Items

Deleted Items

Archive

avisonyoung

abi mithun

Conversation History

Facebook

Property Matches

re web

real estate

Spambox

Unwanted

New folder

Re: Dundas Street property



premanath ragunathan
Fri 2019-02-01 3:09 PM
Avison, Kelly (Avison Young - CA) ✉

thank you... for the update...

Best Regards,

PREM RAGUNATHAN
SALES REPRESENTATIVE
DIR: 416-725-8215
prems@homelifegalaxy.ca
HomeLife Galaxy
REAL ESTATE LTD. BROKERAGE
Tel: 416.284.5555 | Fax: 416-284-5727
111 Grangeway Ave, #301, Toronto, ON M1H 3E9

Prem Ragunathan

Sales Representative
Homelife Galaxy Real Estate Ltd. Brokerage
111 Grangeway Ave, Suite 301
Toronto ON M1H 3E9
Office: 416 - 284 - 5555
Fax: 416 - 284 - 5727
Direct: 416 - 725 - 8215
Email: prem@homelifegalaxy.ca
Website: www.premteam.com

From: Avison, Kelly (Avison Young - CA) <kelly.avison@avisonyoung.com>
Sent: February 1, 2019 3:00 PM
To: gvrp_3@hotmail.com
Cc: Sykes, Ben (Avison Young - CA); Kaczynska, Emily (Avison Young - CA)
Subject: Dundas Street property

Thank you for your interest in the property. Unfortunately, we have now confirmed our vendor-client has now executed and accepted an unconditional offer that was submitted with the recent bid process.

The property is now sold, subject to final Court approval and normal closing procedures.

Yours very truly,

Kelly J. Avison, AACI
 Broker
 Principal, Capital Markets Group
kelly.avison@avisonyoung.com

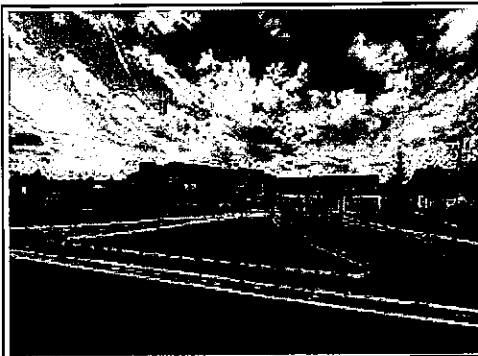
Avison Young

Brokerage

Upgrade to Office 365 with premium Outlook features

Prepared by: PREM RAGUNATHAN, Salesperson
HOMELIFE GALAXY REAL ESTATE LTD., BROKERAGE
 111 Grangeway Ave #301, Toronto, ON M1H3E9 416-284-5555

Printed on 02/20/2019 10:05:49 PM



5223 Dundas St
Burlington Ontario L7M0Y6
 Burlington Tansley Halton
 Taxes: \$31,025.00 / 2018 / Annual For: Sale %Dif:
 Sld Area: 7515.00 Sq Ft SPIS: N Last Status: Sld
 Legal: Plt3, Con 1 Nel Nds, Pt2 20R14068; Burlington. * DOM: 51
 Commercial/Retail Lse Term Months: /
 Retail Holdover: 90
 Automotive Related SPIS: N
 Freestanding: Y Franchise:
 Occup: Vacant Possession: 30 Days/Tbc

MLS#: W4323375 PIN#: ARN#: Seller: Rsm Canada Limited, Solely In Its Capacity As Court-Appointed** Comm Condo Fee: Contact After Exp: N
 Lsd Price 1st Yr: 2nd Yr: 3rd Yr: 4th Yr: 5th Yr:

Total Area: 7,515 Sq Ft	Survey:	Soil Test:
Ofc/Apt Area:	Lot/Bldg/Unit/Dim: 186 x 231 Feet Lot	Out Storage:
Indust Area:	Lot Irreg: 1.13 Acres	Rail:
Retail Area: 100 %	Crane:	Basement:
Apx Age:	Bay Size:	Elevator:
Volts:	%Bldg:	UFFI:
Amps:	Washrooms:	Assessment:
Zoning: Ge-1 (General	Water: Municipal	Chattels:
Employment)	Water Supply:	LLBO:
Truck Level:	Sewers: San+Storm	Days Open:
Grade Level:	A/C: N	Hours Open:
Drive-In:	Utilities: A	Employees:
Double Man:	Garage Type: Outside/Surface	Seats:
Clear Height:	Energy Cert:	Area Infl:
Sprinklers: N	Cert Level:	
Heat: Other	GreenPIS:	
Phys Hdp-Eqp:	Park Spaces: #Trl Spc:	

Bus/Bldg Name:	For Year:	Financial Stmt:
Actual/Est:		
Taxes:	Heat:	Gross Inc/Sales:
Insur:	Hydro:	-Vacancy Allow:
Mgmt:	Water:	-Operating Exp:
Maint:	Other:	=Net Inc B4 Debt:
		EstValueInvAtCost:
		Com Area Upchrg:
		% Rent:

Client Remks: 5,400 Sf (Approx) Partially Constructed Car Wash Building For Sale. Situated On A 1.13 Acre Site Zoned Ge-1. Substantial Frontage Along Dundas Street West, Located Near Major Retail Node & New High Density Residential. Building Is Partially Constructed. Part Of A Five Property Portfolio - Properties Can Be Purchased Individually Or As A Package.
Extras: All Offers To Be On Vendor's Form Of Aps & Subject To Final Court Approval. *Legal Description: S/T Rights Of Owners Of Adjoining Parcels, If Any, Under 687274 **Seller Name: Receiver And Manager Of 1651033 Ontario Ltd.
Brkage Remks: Offers Will Be Entertained On Or After January 18, 2019. Receiver-Seller Form Of Agreement Of Purchase And Sale Must Be Used For All Offers, And Final Sale Is Subject To Court Approval. All Tours By Pre-Arranged Appointment Only. Side Agreement In Place.

Mortgage Comments:
 List: AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO), BROKERAGE Ph: 905-712-2100 Fax: 905-712-2937
 BEN SYKES, Salesperson KELLY JOHN AVISON, Broker 905-283-2324
 Co-Op: AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO), BROKERAGE Ben Sykes, Salesperson
 Contract Date: 12/17/2018 Sold Date: 2/06/2019 CB Comm: 2.25%
 Expiry Date: 3/18/2019 Closing Date: 3/04/2019 Leased Terms:
 Last Update: 2/08/2019 Comments:

THIS IS EXHIBIT "C" REFERRED TO
IN THE AFFIDAVIT OF RAUF KHAN
SWORN BEFORE ME THIS 28TH DAY OF FEBRUARY, 2019



A COMMISSIONER, ETC

CLUDUM OGUNNIYI
COMMISSIONER, SPECIALIST & NOTARY PUBLIC
1700 Paula Robinson Boulevard - Suite 202
Lafayette, LA 70503-1408



SUNIL BHARDWAJ

BANK DRAFT / TRAITE DE BANQUE
06132 - LANGSTAFF & 27
VAUGHAN, ON

2851 2621 5

27-43345

NAME OF REMITTER / DONNEUR D'ORDRE
PAY TO THE ORDER OF
PAYER À L'ORDRE DE
THE SUM OF
LA SOMME DE

TRANSIT NO
N° D'IDENTIFICATION

BRANCH
CENTRE BANCAIRE

\$***100,000.00**

CANADIAN DOLLARS
DOLLARS CANADIENS
CAD

RSM CANADA LIMITED*****
*****ONE HUNDRED THOUSAND

TO
TIRE:

CANADIAN IMPERIAL BANK OF COMMERCE
TORONTO
CANADA



FOR CANADIAN IMPERIAL BANK OF COMMERCE
POUR LA BANQUE CANADIENNE IMPERIALE DE COMMERCE

AUTHORIZED SIGNATURE / SIGNATURE AUTORISÉE

COUNTERSIGNED / CONTRESIGNÉ

⑈285126215⑈ ⑆09502⑈010⑆ 06132⑈2743345⑈

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT dated the 26th day of February, 2018.

BETWEEN:

RSM Canada Limited, solely in its capacity as Court-appointed receiver and manager (the "Receiver") of 1651033 Ontario Ltd., and not in its personal or corporate capacity and without personal or corporate liability.
(the "Vendor")

OF THE FIRST PART

And

Sunil Bhardwaj (corporation to be formed)
A company incorporated in accordance with the laws of the province of Ontario.
(the "Purchaser")

OF THE SECOND PART

WHEREAS

- A 1651033 Ontario Ltd. ("1651033") is the registered owner of the property known as 5223 Dundas Street, Burlington, Ontario and legally described in Schedule "A" attached hereto (the "Property");
- B. On the 29th day of August, 2018, pursuant to an order of the Ontario Superior Court of Justice, Commercial List (the "Court Order") attached hereto and marked as Schedule "B", RSM Canada Limited was appointed receiver and manager to, among other things, market and sell, subject to Court approval, property of 1651033; and
- C. Subject to the Court issuing the Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the right, title and interest of 1651033 in and to the Property on the terms and conditions set out herein.

IN CONSIDERATION of the mutual agreements contained in this Agreement, the sufficiency of which is acknowledged by each of the Vendor and the Purchaser, the Vendor and the Purchaser agree as follows:

1. DEFINITIONS

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

- (a) "Act" means, for purposes of Section 26 only, the *Excise Tax Act* (Canada);

- (b) **"Agreement"** means this agreement to purchase executed by the Purchaser and accepted by the Vendor, together with the attached schedules;
- (c) **"Building"** means the building(s) situate on the Property (as hereinafter defined) together with all other structures situate thereon, including all improvements thereto and all fixtures forming a part thereof;
- (d) **"Business Day"** means any day other than a Saturday or a Sunday or a statutory holiday in the Province of Ontario;
- (e) **"Closing"** shall have the meaning ascribed to it in Section 11;
- (f) **"Condition Date"** shall have the meaning ascribed to it in Section 6;
- (g) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (h) **"Court Condition Date"** shall have the meaning ascribed to it in Section 16;
- (i) **"Court Order"** shall have the meaning ascribed to it in Recital B;
- (j) **"Date of Closing"** shall have the meaning ascribed to it in Section 11 hereof;
- (k) **"Deposit"** shall have the meaning ascribed to it in Section 4(a);
- (l) **"Environmental Law"** means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;
- (m) **"Government Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal governments having or claiming to have jurisdiction over part or all of the Property, the transaction contemplated in this Agreement and/or one or both of the parties hereto;
- (n) **"HST"** shall have the meaning ascribed thereto in Section 26 hereof;
- (o) **"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 Government 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



and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;

- (p) **"Material Documents"** includes copies of all architectural drawings, site plans relating to the Property, existing plan of survey, if any, the lease(s), if any, and operating statements for the Building to the extent that such Material Documents are in the possession of the Vendor;
- (q) **"Party"** means the Vendor or Purchaser, as the case may be, and **"Parties"** mean both of them;
- (r) **"Permitted Encumbrances"** means those Permitted Encumbrances listed in Schedule "C" attached hereto;
- (s) **"Property"** means the lands and/or premises legally described in Schedule "A" hereto, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and inuring to the benefit thereof;
- (t) **"Purchase Price"** shall have the meaning ascribed thereto in Section 3 hereof;
- (u) **"Purchaser"** means Sunil Bhardwaj (corporation to be formed);
- (v) **"Purchaser's Condition"** shall have the meaning ascribed to it in Section 6 hereof;
- (w) **"Purchaser's Solicitors"** means Bhardwaj Law.
- (x) **"Registry Office"** shall have the meaning ascribed thereto in Section 12 hereof;
- (y) **"Vendor"** means RSM Canada Limited, solely in its capacity as Court-appointed Receiver and Manager of 1651033, and not in its personal or corporate capacity and without personal or corporate liability;
- (z) **"Vendor's Solicitors"** means the firm of Torkin Manes LLP; and
- (aa) **"Vesting Order"** has the meaning ascribed thereto in Section 16(a) hereof.

2. NATURE OF TRANSACTION

The Purchaser shall purchase and the Vendor shall sell the Property, upon and subject to the terms of this Agreement.

3. PURCHASE PRICE

The aggregate purchase price (the **"Purchase Price"**) for the Property shall be the sum of Two Million Seven Hundred Thousand Canadian Dollars (\$2,700,000.00).

4. METHOD OF PAYMENT

The Purchase Price shall be paid, accounted for and satisfied as follows.

- (a) **Deposit:** A deposit equal to the amount of ten percent (10%) of the Purchase Price (the "**Deposit**") to be deposited in the trust account of the Receiver, to be paid as follows:

(i) upon the execution of this Agreement an amount equal to three percent (3%) of the Purchase Price, representing the first portion of the Deposit shall be paid; and

(ii) upon waiver of the Purchaser's Condition as set out in paragraph 6 herein, the remaining amount of the Deposit, representing the second portion thereof, shall be paid.

The Deposit, or any portion thereof, is to be held in accordance with the terms of this Agreement. The Deposit will be held by the Receiver until completion or other termination of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Receiver shall place the Deposit in a non-interest bearing account and no interest shall be earned, received or paid on the Deposit.

- (b) **Balance Due at Closing:** The balance of the Purchase Price, subject to the adjustments contemplated in this Agreement, by payment at Closing to the Vendor or to the order of the Vendor.
- (c) **Method of Payment:** The Deposit and the balance due on Closing shall be made, by way of wire transfer to the Vendor's Solicitors in trust.
- (d) **Allocation of Purchase Price:** The Vendor and the Purchaser acknowledge and agree that they shall each make their own allocations of the Purchase Price between the Property and Building for the purposes of the *Income Tax Act* (Canada) and any filings in accordance with the provisions thereof.

5. DEPOSIT

The Deposit shall be held in trust by the Vendor's Solicitors and shall be:

- a) returned to the Purchaser without interest or deduction if the Vendor does not accept this offer;
- b) credited to the Purchaser as an adjustment against the Purchase Price on the Closing Date if the purchase and sale of the Property is completed pursuant to this Agreement;



- c) refunded to the Purchaser without interest or deduction if the purchase and sale of the Property is not completed pursuant to this Agreement, provided that the Purchaser is not in default under this Agreement; or,
- d) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Agreement and at law, including offering the Property for sale to another person, if the purchase and sale of the Property is not completed pursuant to this Agreement as a result of the Purchaser's breach hereunder.

6. PURCHASER'S CONDITION

Notwithstanding any terms or provisions to the contrary contained herein, the within Agreement is conditional to the Purchaser for thirty (30) calendar days from the date of acceptance by the Vendor (the "**Condition Date**") and is subject to the following conditions: the Purchaser satisfying itself in its sole, absolute and unfettered discretion with all matters relating to the Property, including without limitation, zoning matters, and the suitability and economic viability of the Property for the Purchaser's use, the physical condition of the Property and the surrounding real property and the results of its other due diligence tests, inspections and investigations (the "**Purchaser's Condition**").

The Purchaser's Condition is for the exclusive benefit of the Purchaser and may be waived in writing in whole or in part by the Purchaser at any time on or before the Condition Date, any such waiver to be made by the Purchaser or its solicitors on its behalf. The day on which the Purchaser waives the Purchaser's Condition or provides the Vendor with written confirmation that the Purchaser's Condition has been satisfied is the "**Condition Waiver Date**". In the event that the Purchaser has not, on or before the Condition Date, waived the Purchaser's Condition or provided the Vendor with written confirmation that the Purchaser's Condition has been satisfied, this Agreement shall be null and void and the first portion of the Deposit shall be returned to the Purchaser without interest and without deduction and the Vendor and the Purchaser shall have no further obligations to each other with respect hereto.

7. CLOSING ADJUSTMENTS

Adjustment shall be made, as of 12:01 a.m. on the Date of Closing, for realty taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, and utilities. The day of Closing shall be for the account of the Purchaser.

If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Vendor, acting reasonably, as of the Closing Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be

determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date after which time neither Party shall have any right to request re-adjustment.

8. DELIVERIES

Unless already made available to the Purchaser by the Vendor prior to the execution of this Agreement, the Vendor covenants to deliver (unless otherwise specified) to, or make available for inspection by, the Purchaser, within five (5) Business Days of the date of execution of this Agreement, the following material:

- (a) **Survey:** a photocopy of a survey of the Property if such survey is in the actual possession of the Vendor, it being understood that such survey is not up to date;
- (b) **Authorizations for Information:** authorizations to be provided by the Vendor in a form and substance satisfactory to the Vendor and the Purchaser both acting reasonably and executed by the Vendor and addressed to the appropriate municipal property department, zoning department and fire department and to all other Government Authorities, authorizing the release of any and all information on file in respect of the Property, but specifically prohibiting inspections and requests for inspections by any of such Government Authorities; and
- (c) **Tax Notices:** copies of real property assessment and realty tax notices/statements in respect of the Property for the current calendar year and the immediately preceding calendar year, to the extent such notices or statements are in the Vendor's actual possession;

(collectively the "Vendor's Deliveries").

The Purchaser acknowledges that the Vendor makes no representation and/or warranty as to the accuracy, correctness, fitness for purpose or comprehensiveness of the Vendor's Deliveries and any information contained therein, or as to the Purchaser's entitlement to use or rely on same, and that the Purchaser shall be required to make its own investigations to satisfy itself in this regard. In the event that this transaction does not close for any reason whatsoever, including the default of the Vendor, the Purchaser agrees to return the Vendor's Deliveries, and all copies thereof made by or on behalf of the Purchaser or its agents and representatives, forthwith to the Vendor.

9. ACCESS

The Vendor agrees to allow the Purchaser and the Purchaser's authorized representatives reasonable access to the Property during normal business hours from time to time, on at least two clear Business Day's advance written notice to the Vendor, solely for the purpose of inspecting the Property. The Purchaser agrees that no destructive or intrusive testing will be requested or allowed.



The Purchaser covenants and agrees to (i) forthwith repair or pay the cost of repair of any damage occasioned during and resulting from the inspection of the Property and/or the Building conducted by the Purchaser or its authorized representatives, as outlined above and to return the Property and/or the Building, as the case may be, to the condition same was in prior to such inspections; and (ii) indemnify and save the Vendor harmless from and against all losses, costs, claims, third party claims, damages, expenses (including legal costs as between a solicitor and its own client) which the Vendor may suffer as a result of the inspection of the Property and/or the Building conducted by the Purchaser or its authorized representatives, as outlined above or as a result of any unauthorized tests or inspections by Government Authorities. The provisions of Subsection 8(b) and this Section 9 shall survive Closing or other termination of this Agreement, notwithstanding any other provisions hereof.

The provisions in this Section 9 shall not merge and shall survive Closing.

10. TERMS OF PURCHASE

- (a) **"As Is, Where Is":** The Purchaser acknowledges that the Vendor is selling and the Purchaser is purchasing the Property and the Building on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Date of Closing, including, without limiting the generality of the foregoing, any latent or patent defects in the Property and/or the Building. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Property. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, location, merchantability, quantity, the existence or non-existence of Hazardous Materials, compliance with any or all Environmental Law, condition or quality, or in respect of any other matter or thing whatsoever concerning the Property or the Building, including any law, by-law, regulation, code, standard or agreement of, or administered by, any municipality, utility or other government or authority, fire insurance underwriters or any other party, or the right of the Vendor to sell 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* of Ontario do not apply hereto and have been waived by the Purchaser. The descriptions of the Property 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 accuracy of such descriptions. Notwithstanding the above, the Vendor will provide title to the assets clear of any and all encumbrances, pursuant to the Vesting Order and the encumbrances set out therein and subject to any Permitted Encumbrances outlined in Schedule "C".
- (b) **Title and Other Requisitions:** The Purchaser acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions of title or in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities and the Purchaser shall accept the title to the Property and the Building subject to



those Permitted Encumbrances listed in Schedule "C" attached hereto and in the Vesting Order.

- (c) The Purchaser acknowledges to and in favour of the Vendor that, without limiting the generality of the foregoing, the Purchaser has entered into this Agreement and has purchased the Property and the Building from the Vendor on the basis that:
1. the Purchaser shall not require the deletion of nor compliance with any registered agreement with any municipality, Government Authority, public or private utility or conservation authority;
 2. the Purchaser is purchasing the Property and the Building on an "as is, where is" basis subject to any and all zoning and/or other by-laws and regulations and easements affecting the Property and/or the Building, restrictions and covenants which run with the Property, defects and deficiencies, encroachments, work orders, deficiency notices, compliance requests, impost charges, lot levies, sewer charges, development charges and any requirements which may have been, now are or may in the future be imposed by any federal, provincial, municipal or other Government Authority having jurisdiction over the Property and the Building including, but not limited to, the Permitted Encumbrances referenced in this Agreement;
 3. the Vendor shall not be required to provide any letters of compliance, releases or acknowledgements whatsoever including, without limitation, any confirmations in respect of any registered agreements, restrictions and/or easements. The Purchaser further acknowledges that the Purchaser will be deemed to have received notice of all provisions and obligations contained in any site plan, development or other registered agreement whether registered by any provincial, regional, municipal, public or private utility or governmental authority or any owner or occupant of adjoining lands;
 4. the Vendor is not providing and has made no representations, warranties, covenants, agreements, statements, acknowledgements, inducements or promises whatsoever, save and except as expressly contained in this Agreement, with respect to the Property or the Building, whether express or implied, by statute, at law or in equity, to or in favour of the Purchaser, oral or written, legal, equitable, collateral, or otherwise, including without limitation, with respect to:
 - (i) title, including, without limitation, the existence, validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way relating to the Property and/or the Building;
 - (ii) the fitness for any particular purpose or use, zoning, suitability, description, marketability, access, condition, quality, extent of the Property or the Building, availability of services, permitted use or state of repair of the Property or the Building, compliance or accord of any



improvements with municipal building by-laws and/or Ontario building code requirements and/or Ontario or municipal fire code requirements;

- (iii) the presence, absence, nature and/or extent of Hazardous Materials on, in, under, about or migrating from the Property or the Building; the discharge of such Hazardous Materials from, on, or in relation to the Property or the Building; the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario) or any other applicable law in relation to the Property; nor, the existence, state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfil any obligations with respect to the environmental condition or quality of the Property or the Building. The Purchaser acknowledges that it accepts the Property and the Building subject to the environmental condition and any Hazardous Materials, whether or not such environmental condition and/or Hazardous Materials is or are known by the Vendor prior to the completion date, and acknowledges that the Purchaser will have no recourse against the Vendor for any such pre-existing environmental conditions or Hazardous Materials; and
- (iv) any defects in workmanship or any existing, executed or partially performed agreement for the supply of materials or services to the Property or the Building or any improvement constructed thereon or therein including any right, license or easement to the use of any portion of the Property or any fixtures or chattels located thereon; or any other matter or thing whatsoever in respect of all or any of the Property or the Building or otherwise affecting this Agreement or any right or entitlement by which agreement or operation of law may run with and bind the Property.

The provisions in this Section 10 shall not merge and shall survive Closing.

11. DATE OF CLOSING

The Vendor will seek an appointment with the Court to obtain a Vesting Order (as defined in Section 16 hereof) within seven (7) clear Business Days or otherwise as soon as reasonably possible after the Condition Waiver Date and receipt of the entirety of the Deposit by the Receiver. The transaction contemplated herein will close on the tenth Business Day following the date on which the Vesting Order is granted, or such other date as agreed between the Vendor and Purchaser in writing (the "Date of Closing" or "Closing"). All documents and monies shall be delivered in accordance with the provisions of Sections 12, 23 and 24 of this Agreement.

12. ELECTRONIC REGISTRATION

- (a) In the event that the electronic registration system ("TERS") is operative in the relevant land registry office (the "Registry Office"), the following provisions shall apply:
 - (i) The Purchaser shall be obliged to retain a solicitor who is both an authorized TERS user and is in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction and shall authorize such solicitor to enter into a document registration agreement with the Vendor's Solicitors in the form as agreed by the parties (the "DRA"), establishing the procedures and timing for completing this transaction.
 - (ii) The delivery and exchange of the closing documents:
 - (A) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
 - (B) shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitors shall hold all closing documents in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.
- (b) The Purchaser expressly acknowledges and agrees that the Vendor will not release the Vesting Order described in Section 23(a) of this Agreement for registration until the balance of funds due on Closing, in accordance with the Statement of Adjustments, are remitted by wire transfer to the Vendor's Solicitors (or in such other manner as the Vendor or Vendor's Solicitors may in writing direct) prior to the release of the Vesting Order for registration, which the Vendor's Solicitors will hold in escrow.
- (c) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser, or by the Purchaser upon the Vendor, when the Vendor's Solicitors have:
 - (i) delivered all closing documents required to be delivered by the Vendor to the Purchaser pursuant to Section 23 hereof;
 - (ii) advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's Solicitors, and specifically



when the "completeness signatory" for the Vesting Order has been electronically "signed" by the Vendor's Solicitors,

without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Purchaser upon the Vendor, when the Purchaser's Solicitors have:
- (i) delivered the balance due at Closing and all the closing documents required to be delivered by the Purchaser to the Vendor pursuant to Section 24 hereof;
 - (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Vendor's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Purchaser's Solicitors,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (e) If through no fault of the Purchaser's Solicitors or the Vendor's Solicitors TERS is unavailable on the Closing Date, such that the Purchaser's Solicitors are unable to register the Application for Vesting Order, then the transaction contemplated by this Agreement shall be completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitors forthwith and the parties shall arrange to complete the registration of the Vesting Order as expeditiously as possible, whereupon the escrow shall be released.

In the event of any conflict or inconsistency between the terms of this Section 12 and the terms of the DRA, the terms of this Section 12 shall prevail.

13. PRE-CLOSING RISK AND POST-DAMAGE ENTITLEMENTS

The Property and the Building are and shall remain at the Vendor's risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the parties as their respective interests may appear pending Closing. In the event that the Property and/or the



Building shall be materially damaged prior to Closing then the Vendor shall promptly advise the Purchaser in writing of such damage. In the event that the Property and/or the Building shall be materially damaged prior to Closing then the Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement, by delivery of written notice to the Vendor within ten (10) Business Days following receipt of the Vendor's notice of damage and in such event the parties hereto shall be released from all obligations and liabilities hereunder and the Deposit shall be returned to the Purchaser forthwith, without interest or deduction. If the Purchaser does not elect to terminate this Agreement as set out above, then the transaction contemplated hereunder shall be completed and the Vendor shall release its interest in the insurance proceeds, if any, payable in respect thereof to the Purchaser.

14. VENDOR'S REPRESENTATIONS AND WARRANTIES

The Vendor represents and warrants to the Purchaser that:

- (a) **Non-Residency:** the Vendor is not now and does not intend to become, prior to Closing, a non-resident of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada); and
- (b) **Authority to Sell:** as at the date hereof, the Vendor has been duly appointed as Receiver and Manager of 1651033 by the Court Order and, subject to the Vendor obtaining the Vesting Order, has full right, power and authority to market the Property for sale and on Closing shall have the power and authority to sell the Property, in accordance with the terms and conditions of this Agreement.

15. PURCHASER'S REPRESENTATIONS AND WARRANTIES

The Purchaser represents and warrants to the Vendor that, as at the date hereof:

- (a) **Corporate Matters Regarding Purchaser:** the Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of the Province of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement; neither the execution of this Agreement nor the performance (such performance shall include, without limitation, the exercise of any of the Purchaser's rights and compliance with each of the Purchaser's obligations hereunder) by the Purchaser of the transaction contemplated hereunder will violate:
 - (i) the Purchaser's articles of incorporation and by-laws;
 - (ii) any agreement to which the Purchaser is bound;
 - (iii) any judgement or order of a court of competent authority or any Government Authority; or
 - (iv) any applicable law;



and the Purchaser has duly taken, or has caused to be taken, all requisite corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder;

- (b) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
- (c) there are no proceedings for or pending before any Government Authority, or threatened to be brought by or before any Government Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby by the Purchaser;
- (d) the Purchaser has made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price to the Vendor on the Closing Date;
- (e) the Purchaser will be responsible for and will remit to or reimburse, as applicable, all taxes, including (without limitation) Land Transfer Tax, levies or the like that arise from the sale of the Property and the Building unless otherwise specified in this Agreement; and
- (f) *Investment Canada Act (Canada)*: either (i) the Purchaser is not a “**non-Canadian**”, as defined in the *Investment Canada Act (Canada)* (“ICA”); or (ii) if the Purchaser is a “**non-Canadian**”, this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

16. CONDITIONS OF CLOSING IN FAVOUR OF THE VENDOR

- (a) The Vendor's obligations contained in this Agreement shall be conditional upon the Vendor receiving, within thirty (30) days of the Condition Waiver Date (the “**Court Condition Date**”), an Order of the Court substantially in the form attached hereto as Schedule “D” approving the transaction contemplated herein and ordering that 1651033's right, title and interest in the Property and the Building be vested in the Purchaser free and clear of encumbrances except for Permitted Encumbrances upon satisfaction by the Purchaser of its obligations under this Agreement (collectively, the “**Vesting Order**”).

The Vendor and the Purchaser acknowledge and agree that the above-noted condition is a true condition precedent to the completion of the transaction



contemplated in this Agreement that cannot be waived by either the Vendor or the Purchaser.

The Vendor covenants and agrees to proceed as expeditiously as reasonably possible, to work in a diligent manner and to use reasonable commercial efforts to attempt to satisfy this condition. The Purchaser at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain approval of this Agreement, anticipated currently to be related to financial and financing details. If the Vesting Order is not obtained on or before the Court Condition Date, this Agreement shall, at the Vendor's discretion:

- (i) be terminated, by notice, in writing, to the Purchaser, without any penalty or liability whatsoever to the Vendor or the Purchaser, other than the return by the Vendor to the Purchaser of the Deposit, but without cost or other compensation and each of the Vendor and the Purchaser shall be released from all other obligations hereunder except for the obligations of the Purchaser, if any, arising under or as a result of a breach of the provisions of Subsection 8(b) or Section 9 hereof. The Vendor will only choose this option if it is the opinion of the Receiver acting reasonably that there is no commercially appropriate way to complete the transaction, or
 - (ii) be extended for an additional period or additional periods not exceeding one hundred and twenty (120) days in total, during which time the Vendor will continue to make best efforts to attempt to obtain the Vesting Order, by notice to the Purchaser, in writing, of the Vendor's election to extend prior to 5:00 p.m. on the Court Condition Date;
- (b) The Vendor's obligations contained in this Agreement shall be subject to the fulfilment, at or prior to Closing, of each of the following conditions:
- (i) **Representations and Warranties:** each of the Purchaser's representations and warranties contained in this Agreement shall be true at and as of the date hereof and each of such representations and warranties shall continue to be true as at Closing and shall survive the Closing;
 - (ii) **Covenants/Agreements:** the Purchaser shall have complied with each and every covenant/agreement made by it herein and required to be completed at or prior to Closing;
 - (iii) **Corporate Steps and Proceedings:** all necessary corporate steps and proceedings shall have been taken by the Purchaser to permit the Purchaser's execution of this Agreement and performance of each of the Purchaser's obligations hereunder;
 - (iv) **No Redemption:** the Property shall not have been redeemed pursuant to any statutory right or otherwise; and



- (v) **Vesting Order:** the Vesting Order shall not be stayed and shall be in full force and effect and no Order restraining or prohibiting Closing shall have been made by the Court.

For greater certainty, each of the conditions contained in this Section 16(b) has been inserted for the benefit of the Vendor.

- (c) The Vendor covenants to use its best efforts (which the Vendor represents and warrants shall not be less than reasonable commercial efforts) to fulfil or cause to be fulfilled the conditions contained in Subsection 16(a) and the Purchaser covenants to use its best efforts (which the Purchaser represents and warrants shall be no less than reasonable commercial efforts) to fulfil or cause to be fulfilled the conditions contained in Subsection 16(b)(i) - (iii) hereof prior to Closing.

In the event that any of the foregoing conditions shall not be fulfilled at or prior to Closing, the Vendor may, in its absolute and unfettered discretion, terminate this Agreement by written notice to the Purchaser without any penalty or liability whatsoever to the Vendor, other than the return by the Vendor to the Purchaser of the Deposit, without interest or deduction, and without cost or other compensation and each of the Vendor and the Purchaser shall be released from all other obligations hereunder, except for the obligations of the Purchaser, if any, arising under or as a result of a breach of the provisions of Subsection 8(b) or Section 9 hereof.

17. TERMINATION OF AGREEMENT

Notwithstanding anything to the contrary contained in this Agreement, if at any time or times prior to the Closing Date, the Vendor is unable to complete this Agreement as a result of any action taken by an encumbrancer, any action taken by the present registered owner, the refusal by the present registered owner to take any action, the exercise of any right by the present registered owner or other party which is not terminated upon acceptance of this Agreement, a certificate of pending litigation is registered against the Property, a court judgment or order is made, or if the sale of the Property is restrained at any time by a court of competent jurisdiction, the Vendor may, in its sole and unfettered discretion, elect by written notice to the Purchaser, to terminate this Agreement, whereupon the Deposit shall be returned to the Purchaser without deduction, and neither party shall have any further rights or liabilities hereunder.

The obligation of the Vendor to complete this Agreement is subject to the satisfaction of the following terms and conditions on or prior to the Closing Date, which conditions are for the sole benefit of the Vendor and which may be waived by the Vendor in its sole discretion:

- (a) the representation and warranties of the Purchaser herein are true and accurate as of the Closing Date;
- (b) no action or proceeding at law or in equity shall be pending or threatened by any person, firm, government, government authority, regulatory body or agency, or against the Vendor, its officers, directors, employees or agents with respect to their actions hereunder, or their dealing with the Property, to enjoin, restrict or prohibit the purchase and sale of the Property;



- (c) the Property shall not have been removed from the control of the Vendor by any means or process;
- (d) no party shall have taken any action to redeem the Property; and,
- (e) the Court shall have granted the Vesting Order.

18. PURCHASER'S ACKNOWLEDGMENTS

The Purchaser hereby acknowledges and agrees with and to be subject to the following:

- (a) it is responsible for conducting its own searches and investigations of the current and past uses of the Property and the Building;
- (b) the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Property and/or the Building is or will be lawful or permitted;
- (c) it is satisfied with the Property and the Building and all matters and things connected therewith or in any way related thereto;
- (d) it is relying entirely upon its own investigations and inspections in entering into this Agreement;
- (e) it is purchasing the Property and the Building on an "*as is, where is*" and "*without recourse*" basis in accordance with the terms hereof, including, without limitation, outstanding work orders, deficiency notices, compliance requests, development fee, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any governmental authority having jurisdiction over the Property;
- (f) it relies entirely on its own judgment, inspection and investigation of the Property and the Building;
- (g) any documentation relating to the Property and/or the Building obtained from the Vendor has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Agreement;
- (h) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Property or the Building;
- (i) the Vendor has made no representations or warranties with respect to or in any way related to the Property or the Building, including without limitation, the following:
 - (i) the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value,



location or any other matter or thing whatsoever related to the Property or the Building, either stated or implied; and

- (ii) the environmental state of the Property and/or the Building, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Property, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), or any other statute, regulation, rule or provision of law and the existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Property or the Building or elsewhere;
- (j) the Material Documents are being provided to the Purchaser merely as a courtesy and without any representations or warranties whatsoever; and
- (k) it will ensure that any environmental and/or structural reports on behalf of the Purchaser shall also be addressed to the Vendor and a copy of each such report shall be delivered to the Vendor promptly after the completion thereof, regardless of whether the transaction contemplated by this Agreement closes. If for any reason such transaction is not consummated, the Purchaser agrees to deliver promptly to the Vendor any and all reports and other data pertaining to the Property and the Building and any inspections or examinations conducted hereunder.

19. ENCROACHMENTS

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Property, or encroachments of the Property or the Building onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting the Property and/or the Building.

20. INDEMNIFICATION

The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, agents and representatives (collectively, the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Property or any order, notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws after the Closing Date or as a result of the disposal, storage, release or threat of release or spill on or about the Property and/or the Building of any Hazardous Materials after the Closing Date. For the purposes of the foregoing, "Environmental Laws" shall mean all requirements under or

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prescribed by common law and all federal, provincial, regional, municipal and local laws, rules, statutes, ordinances, regulations, guidelines, directives, notices and orders from time to time with respect to the discharge, generation, removal, storage or handling of any Hazardous Materials. The obligation of the Purchaser hereunder shall survive the Closing Date.

21. RELEASE

The Purchaser agrees to release and discharge the Vendor together with its directors, officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Property and/or the Building. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Property or the Building or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing of the transaction of purchase and sale, contemplated by this Agreement, and shall survive the termination of this Agreement for any reason or cause whatsoever and the closing of this transaction.

22. NON-REGISTRATION

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, instrument or Court order or judgement 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. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 22 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Property any of the items set out in this Section 22.

23. VENDOR'S CLOSING DELIVERIES

The Vendor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date expressly provided herein:

- (a) **Vesting Order:** an order of the Court vesting the Property in the Purchaser or as the Purchaser shall direct, in accordance with the provisions of this Agreement;
- (b) **Bill of Sale:** a bill of sale conveying the Vendor's right, title and interest, if any, in and to any chattels on the Property to the Purchaser;



- (c) **Statement of Adjustments:** a statement of adjustments prepared in accordance with Section 7 hereof;
- (d) **Direction Regarding Funds:** a direction from the Vendor designating the party or parties to which the balance of the Purchase Price described in Subsection 4(b) hereof shall be paid; in the event that the Vendor designates more than one party then it shall also designate amounts payable to each of the parties;
- (e) **Non-Residence Certificate:** the Vendor's certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada);
- (f) **Keys:** all master keys and duplicate keys relating to the Property in the Vendor's possession; and
- (g) **Further Documentation:** any other documentation relative to the completion of this Agreement as may reasonably be required by the Purchaser or its solicitors only if such documentation is in the actual possession of the Vendor.

24. PURCHASER'S CLOSING DELIVERIES

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

- (a) **Purchaser's Certificates:** the Purchaser's certificate and indemnity setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing and, if applicable, the Purchaser's certificate described in Subsection 26(b) hereof;
- (b) **HST Indemnity:** the indemnity provided for under Subsection 26(c) hereof;
- (c) **Direction re Title:** a direction re title to confirm the name in which title to the Property will be taken;
- (d) **Balance Due at Closing:** the balance of the Purchase Price described in Subsection 4(b) hereof;
- (e) **Application for Vesting Order(s):** the Purchaser's solicitor will prepare the application for vesting order in Teraview in accordance with the Purchaser's direction re title; and
- (f) **Further Documentation:** any other documentation relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors.

25. PLANNING ACT (ONTARIO)

This Agreement shall be effective to create an interest in the Property for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing or if a Court orders the



completion of the transaction contemplated herein notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario).

26. HARMONIZED SALES TAX

(a) **Application of HST to this Agreement:** The Purchaser acknowledges and agrees that the transaction contemplated hereunder shall be subject to the goods and services tax and harmonized sales tax ("HST") levied pursuant to the Act and that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the Act.

(b) **Self-Assessment: If:**

- (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 Act; and/or
- (ii) the Purchaser is a "prescribed recipient" under the Act and/or is registered under the Act,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the Act or, if no such form is prescribed, then in form satisfactory to the Vendor and the Vendor's Solicitors, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the transaction contemplated hereunder. If Subsection 26(b)(i) hereof shall be 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 at Closing described in Subsection 24(d) hereof, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.

(c) **HST Indemnity:** The Purchaser shall indemnify and save harmless the Vendor, its directors, officers, employees, agents and representatives from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

27. NOTICE

Any notice given hereunder shall be in writing and delivered or communicated by e-mail to:

in the case of the Purchaser at:



Attention: Prem Ragunathan
Email: gvryp_3@hotmail.com

and in the case of the Vendor at:

RSM Canada Limited
11 King Street West, Suite 700, Box 27
Toronto ON M5H 4C7

Attention: Daniel Weisz
Email: daniel.weisz@rsmcanada.com

with a copy to the Vendor's Solicitors:

Torkin Manes LLP
Barristers and Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Attention: Barry A. Cohen and Stephanie Eiley
Email: bcohen@torkinmanes.com and seiley@torkinmanes.com

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission if such notice is delivered prior to 5:00pm on a Business Day, failing which the notice shall be deemed to have been delivered or transmitted on the next Business Day. A party may change its address and/or email address by providing notice in accordance with this Section 27.

28. WAIVER OF CONDITIONS

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting party without prejudice to the benefiting party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the transaction contemplated hereunder by a party hereof shall be deemed to be a waiver by such party of compliance with any condition inserted for its benefit and not satisfied at Closing.



29. SEVERABILITY

If any provision contained in this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons/entities or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

30. DIVISION/HEADINGS

The division of this Agreement into Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

31. ENTIRE AGREEMENT

This Agreement and the schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Property. Each of the parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive the closing of the transactions contemplated by this Agreement.

32. CUMULATIVE REMEDIES

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

33. INTERPRETATION

This Agreement shall be read with all changes of gender and number as required by the context.

34. REFERENCES TO STATUTES

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

35. TIME OF ESSENCE

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

36. CANADIAN FUNDS

All references to dollar amounts contained in this Agreement shall be deemed to refer to Canadian funds.

37. TENDER

Any tender to notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

38. FURTHER ASSURANCES

Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration therefor co-operate with and take such additional actions as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

39. CONFIDENTIALITY

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any third party. If for any reason Closing does not occur, all such documents (including without limitation, the Material Documents) shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

40. NON-BUSINESS DAYS

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.



41. DOCUMENTATION PREPARATION AND REGISTRATION

The Purchaser shall prepare or cause to be prepared the land transfer tax affidavit to be attached to the Application for Vesting Order described in Subsection 23(a) hereof. The Vendor shall prepare or cause to be prepared all other documentation described in Section 23 hereof. Each of the parties shall deliver draft documentation to the other not less than three (3) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and have substance satisfactory to the Vendor and the Purchaser, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the transaction contemplated in this Agreement. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

42. LAND TRANSFER TAXES AND RETAIL SALES TAXES

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)) and, if applicable, all retail sales taxes (as required pursuant to the *Retail Sales Tax Act* (Ontario)) payable in connection with the transfer of the Property pursuant to this Agreement.

43. GOVERNING LAWS

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario.

44. ASSIGNMENT

No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, the Purchaser shall have the right, until five (5) Business Days prior to the granting of the Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Property hereunder to any company or companies provided by the Purchaser provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

45. VENDOR'S CAPACITY

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-Appointed Receiver and Manager of the undertaking, property and assets of 1651033 and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of certain property of 1651033 and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Property. The Purchaser acknowledges that the Property and the Building are and shall remain in the possession of the Vendor until Closing.



46. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

DATED as of the date first mentioned above.



Per: 

Name: SUNIL BHARDWAJ

Title: (Owner)

I/We have authority to bind the Corporation.

The Vendor hereby accepts this Agreement to purchase and its terms and agrees with the Purchaser to duly complete the transaction contemplated thereunder.

DATED at Toronto, Ontario this _____ day of _____, 2018.

**RSM Canada Limited, solely in its capacity
as Court-appointed Receiver and Manager
of 1651033 Ontario Ltd. and not in its
personal or corporate capacity and without
personal or corporate liability**

Per: _____

Name: Daniel Weisz

Title: Senior Vice President

I have authority to bind the Receiver

SCHEDULE A

LEGAL DESCRIPTION OF THE PROPERTY

MUNICIPAL ADDRESS: 5223 Dundas Street, Burlington, ON

LEGAL DESCRIPTION: PT LT 3, CON 1 NEL NDS, PTS 1 & 2, 20R18227 SAVE & EXCEPT PT 1 20R19559; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 PLAN 20R18227 AS IN HR756568; CITY OF BURLINGTON

PIN: 07201-0178

SCHEDULE B
COURT ORDER

SCHEDULE C

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property; and
10. Without in any way limiting the generality of any of the foregoing, the following specific instruments registered on title against the Property:
 - i. Instrument No. HR746940 registered 2009/04/24 is a NOTICE with THE CORPORATION OF THE CITY OF BURLINGTON.
 - ii. Instrument No. HR756566 registered 2009/06/03 is a NOTICE with THE REGIONAL MUNICIPALITY OF HALTON.

- iii. Instrument No. HR756568 registered 2009/06/03 is a TRANSFER EASEMENT in favour of THE REGIONAL MUNICIPALITY OF HALTON.

Handwritten signature or initials, possibly "SJ", in cursive script.

SCHEDULE D

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ►) ► DAY, THE ► DAY
 JUSTICE ►) OF ►, 2018
)

BETWEEN:

BANK OF MONTREAL

Applicant

-and-

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
 1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
 SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
 s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
 Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and [NAME OF PURCHASER] (the "**Purchaser**") made as of [DATE] and appended to the Report of the Receiver dated [DATE] (the "**Report**"), and vesting in the Purchaser 1651033's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the

service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1651033 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of 1651033's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice **Hailey** dated **August 29, 2018**; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (**#66**) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B

hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 1651033 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 1651033;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 1651033 and shall not be void or voidable by creditors of 1651033, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver's Certificate

Court File No. CV-18-00602537-00CL

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

B E T W E E N:

BANK OF MONTREAL

Applicant

-and-

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC. LTD., 1496765 ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1651033 Ontario Ltd. ("**1651033**"), including all proceeds thereof (collectively, the "**Property**").

B. Pursuant to an Order of the Court dated [DATE] (the "Vesting Order"), the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver and [NAME OF PURCHASER] (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and 1651033's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of

the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement or the Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Date of Closing pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**RSM Canada Limited, solely in its capacity as
Court-appointed Receiver and Manager of 1651033
Ontario Ltd. and not in its personal or corporate
capacity and without personal or corporate liability**

Per: _____

Name: ►

Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 1651033's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 5223 Dundas Street, Burlington, ON

LEGAL DESCRIPTION: PT LT 3, CON 1 NEL NDS, PTS 1 & 2, 20R18227 SAVE & EXCEPT PT 1 20R19559; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 PLAN 20R18227 AS IN HR756568; CITY OF BURLINGTON

PIN: 07201-0178

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

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. HR1172775 registered on April 2, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$3,180,000.00.
2. Instrument No. HR1172775 registered on April 2, 2014, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.
3. Instrument No. HR1196588 registered on July 15, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$1,000,000.00.
4. Instrument No. HR1568135 registered on August 31, 2018 is a Construction Lien in favour of SDM Construction Inc.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

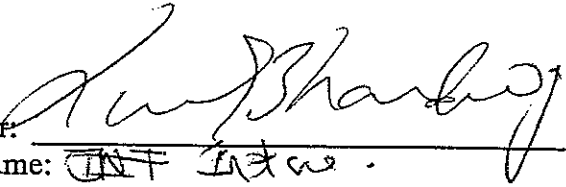
10. The following instruments registered on title to the Property:

- i. Instrument No. HR746940 registered 2009/04/24 is a NOTICE with THE CORPORATION OF THE CITY OF BURLINGTON.
- ii. Instrument No. HR756566 registered 2009/06/03 is a NOTICE with THE REGIONAL MUNICIPALITY OF HALTON.
- iii. Instrument No. HR756568 registered 2009/06/03 is a TRANSFER EASEMENT in favour of THE REGIONAL MUNICIPALITY OF HALTON.

46. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

DATED as of the date first mentioned above.

Per: 
Name: Kim Sharkey
Title: (owner)
I/We have authority to bind the Corporation.

The Vendor hereby accepts this Agreement to purchase and its terms and agrees with the Purchaser to duly complete the transaction contemplated thereunder.

DATED at Toronto, Ontario this _____ day of _____, 2018.

**RSM Canada Limited, solely in its capacity
as Court-appointed Receiver and Manager
of 1651033 Ontario Ltd. and not in its
personal or corporate capacity and without
personal or corporate liability**

Per: _____
Name: Daniel Weisz
Title: Senior Vice President

I have authority to bind the Receiver

CONFIDENTIALITY AGREEMENT AND AGENCY DISCLOSURE FORM

AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO) INC. ("Avison Young")

18 York Street, Suite 400

Toronto, ON M5J 2T8

Fax: 416-955-0724

Email: kelly.avison@avisonyoung.com; ben.sykes@avisonyoung.com

Attention: Kelly Avison and Ben Sykes

Dear Sirs,

For the purposes of evaluating:

- 591 and 595 Goderich Street, Port Elgin, Province of Ontario
- 274 Bayfield Road, Goderich, Province of Ontario
- 633 Main Street West, Port Colborne, Province of Ontario
- 5462 Dundas Street West, Etobicoke, Province of Ontario
- 5223 Dundas Street, Burlington, Province of Ontario

(hereinafter collectively referred to as "the Property")

I/We SMV Financial Service Inc.

(hereinafter referred to as the "Buyer")

warrants and confirms with Avison Young that

Prem RAGUNATHAN.

(hereinafter referred to as the "Buyer's Broker") is representing the Buyer under a Buyer agency agreement and has introduced said Buyer to the Property. The Buyer and the Buyer's Broker request that Avison Young the Seller's Agent, provides the Buyer and the Buyer's Broker with confidential information relating to the Property.

In consideration of Avison Young agreeing to provide the undersigned with said confidential information, the undersigned agrees with

RSM CANADA LIMITED

Solely and in its capacity as Court – Appointed Receiver and Manager of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc.

(collectively, the "Companies")

with no personal or corporate liability

(hereinafter referred to as the "Seller")

and Avison Young as follows:

- (1) To treat confidentially, such information and any other information that Avison Young or the Seller or any of their advisors furnishes to the undersigned, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered by inspection, and regardless of whether specifically identified as "confidential" (collectively, the "Evaluation Material").
- (2) Not to use any of the Evaluation Material for any purpose other than the exclusive purpose of evaluating the possibility of a purchase and sale transaction relating to the Property. The undersigned agrees that the Evaluation Material will not be used in any way detrimental to the Property, the Seller, or Avison Young and that such information will be kept confidential by the undersigned, its directors, officers, employees and representatives and these people shall be informed by the undersigned of the confidential nature of such information and shall be directed to treat such information confidentially.

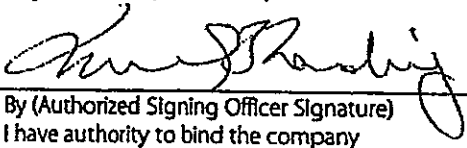




- (3) That if at any time, the undersigned considers a transaction which would involve a third party either purchasing the Property or any interest therein or evaluating the possibility of a purchase and sale transaction relating to the Property, the undersigned must receive the approval by Avison Young or the Seller of such third party as a Buyer, which approval may be unreasonably withheld. Furthermore, the undersigned agrees to obtain from said third party a confidentiality agreement in a form satisfactory to Avison Young or the Seller prior to disclosure to such party of any evaluation material relevant to this transaction.
- (4) The undersigned and its directors, officers, employees and representatives will not, without the prior written consent of Avison Young or the Seller, disclose to any persons either the fact that discussions or negotiations are taking place concerning a possible transaction between the Seller and the undersigned, nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- (5) The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company partnership or individual or any combination of one or more of the foregoing.
- (6) Not to have any contact with any tenant or tenants, nor enter into any discussion with any tenant or tenants, at the Property without the express written permission of the Seller, as such contact may cause irreparable harm to the Seller.
- (7) That any time, at the request of Avison Young or the Seller, the undersigned agrees to promptly return all Evaluation Material without retaining any copies thereof or any notes relating thereto. The undersigned will certify as to the return of all Evaluation Material and related notes.
- (8) That in the event the undersigned is required or requested by legal process to disclose any of the Evaluation Material, the undersigned will provide Avison Young or the Seller with prompt notice of such requirement or request so that Avison Young or the Seller may take appropriate actions.
- (9) That the undersigned agrees that neither Avison Young nor the Seller makes any representations or warranties as to the accuracy or completeness of the Evaluation Material. The undersigned further agrees that neither Avison Young nor the Seller, nor any other author of or person providing Evaluation Material shall have any liability to the undersigned or any of its representatives arising from the use of the Evaluation Material by the undersigned or its representatives.
- (10) The Buyer represents and warrants that it shall be responsible for any costs associated with its review and possible purchase of the Property, including any fees owed to the Buyer's Broker as well as any consultants retained by, or acting on behalf of, the Buyer. Any consultants, agents, and/or advisors retained by the Buyer shall be required to execute, and be bound by, this Confidentiality Agreement.
- (11) Upon successful closing of an agreement of purchase and sale to the Buyer, the Buyer's Broker's commission of **2.25% of the closing sale price** shall be paid by Avison Young as per the terms and conditions governed by the Listing Agreement between Avison Young and the Seller.
- (12) The undersigned hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the Personal Information Protection and Electronic Documents Act (Canada) with respect to personal information which may be contained in the Evaluation Material.
- (13) This Agreement shall be governed by the laws of the Province of Ontario and those of Canada applicable therein.
- (14) This Agreement shall enure to the benefit of Avison Young and the Seller, their respective successors and assigns and shall be binding upon the undersigned and its heirs, executors, administrators, and their successors and assigns.

SB

- (15) **Representation and Customer Service:** The Code of Ethics for the Real Estate Council of Ontario requires Commercial Realtors (e.g., Sales Representatives, Agents, Brokers) to disclose in writing the nature of their relationship and services they are providing. The Buyer acknowledges that Avison Young has provided the Buyer with written information explaining agency relationships (attached hereto as Schedule "A" - Working with a Commercial Realtor). The Buyer acknowledges that the Buyer is being represented by the Buyer's Broker, and that Avison Young is the agent, and represents the interests, of the Seller and has a fiduciary and primary duty to protect and promote the interests of the Seller - Client.

DATED at Toronto, this 30 day of January, 2019.

<u>SMV Financial Services Inc.</u>		<u>PREM RAJUNATHAN</u>	
Buyer's Name (Please Print)		Buyer's Broker Name (Please Print)	
			
By (Authorized Signing Officer Signature) I have authority to bind the company		By (Broker Signature)	
(Officer's Name)		Broker of Record Name (Please Print)	
		<u>KARUNA GOPALAPILLAI</u>	
(Officer's Title)		By (Broker of Record Signature)	
			
(Officer's Address)		(Officer's Address)	
		<u>111 Grangerway Ave, Suite #301</u> <u>Toronto, ON, M1H 3E9.</u>	
(Telephone Number)	(Facsimile Number)	(Telephone Number)	(Facsimile Number)
		<u>416-284-5333</u>	
(Email Address: Buyer)		(Email Address: Buyer's Broker)	
		<u>gv4yp_3@hotmail.com</u>	

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT dated the 27th day of Feb, 2019.

BETWEEN:

RSM Canada Limited, solely in its capacity as Court-appointed receiver and manager (the "**Receiver**") of 1496765 Ontario Ltd., and not in its personal or corporate capacity and without personal or corporate liability.
(the "**Vendor**")

OF THE FIRST PART

And

10211974 Canada Ltd / **shaikh Munir Shami**

A company incorporated in accordance with the laws of the province of Ontario.
(the "**Purchaser**")

OF THE SECOND PART

WHEREAS

- A. 1496765 Ontario Ltd. ("**1496765**") is the registered owner of the property known as 5462 Dundas Street, Etobicoke, Ontario and legally described in Schedule "A" attached hereto (the "**Property**");
- B. On the 29th day of August, 2018, pursuant to an order of the Ontario Superior Court of Justice, Commercial List (the "**Court Order**") attached hereto and marked as Schedule "B", RSM Canada Limited was appointed receiver and manager to, among other things, market and sell, subject to Court approval, property of 1496765; and
- C. Subject to the Court issuing the Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the right, title and interest of 1496765 in and to the Property on the terms and conditions set out herein..

IN CONSIDERATION of the mutual agreements contained in this Agreement, the sufficiency of which is acknowledged by each of the Vendor and the Purchaser, the Vendor and the Purchaser agree as follows:

DEFINITIONS

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

"Act" means, for purposes of Section 26 only, the *Excise Tax Act* (Canada);

"Agreement" means this agreement to purchase executed by the Purchaser and accepted by the Vendor, together with the attached schedules;

"Building" means the building(s) situate on the Property (as hereinafter defined) together with all other structures situate thereon, including all improvements thereto and all fixtures forming a part thereof;

"Business Day" means any day other than a Saturday or a Sunday or a statutory holiday in the Province of Ontario;

"Closing" shall have the meaning ascribed to it in Section 11;

"Condition Date" shall have the meaning ascribed to it in Section 6;

"Court" means the Ontario Superior Court of Justice (Commercial List);

"Court Condition Date" shall have the meaning ascribed to it in Section 16;

"Court Order" shall have the meaning ascribed to it in Recital B;

"Date of Closing" shall have the meaning ascribed to it in Section 11 hereof;

"Deposit" shall have the meaning ascribed to it in Section 4(a);

"Environmental Law" means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;

"Government Authority" means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal governments having or claiming to have jurisdiction over part or all of the Property, the transaction contemplated in this Agreement and/or one or both of the parties hereto;

"HST" shall have the meaning ascribed thereto in Section 26 hereof;

"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

Government 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 and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or polychlorinated biphenyl wastes;

"**Material Documents**" includes copies of all architectural drawings, site plans relating to the Property, existing plan of survey, if any, the lease(s), if any, and operating statements for the Building to the extent that such Material Documents are in the possession of the Vendor;

"**Party**" means the Vendor or Purchaser, as the case may be, and "**Parties**" mean both of them;

"**Permitted Encumbrances**" means those Permitted Encumbrances listed in Schedule "C" attached hereto;

"**Property**" means the lands and/or premises legally described in Schedule "A" hereto, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and inuring to the benefit thereof. The propane tank is not owned by the Vendor and does not form part of the Property;

"**Purchase Price**" shall have the meaning ascribed thereto in Section 3 hereof;

"**Purchaser**" means 10211974 Canada Ltd.

"**Purchaser's Condition**" shall have the meaning ascribed to it in Section 6 hereof;

"**Purchaser's Solicitors**" means _____;

"**Registry Office**" shall have the meaning ascribed thereto in Section 12 hereof;

"**Vendor**" means RSM Canada Limited, solely in its capacity as Court-appointed Receiver and Manager of 1496765, and not in its personal or corporate capacity and without personal or corporate liability;

"**Vendor's Solicitors**" means the firm of Torkin Manes LLP; and

"**Vesting Order**" has the meaning ascribed thereto in Section 16(a) hereof.

NATURE OF TRANSACTION

The Purchaser shall purchase and the Vendor shall sell the Property, upon and

subject to the terms of this Agreement.

PURCHASE PRICE

The aggregate purchase price (the "**Purchase Price**") for the Property shall be the sum of ___Three Million two hundred and fifty thousand Canadian Dollars (\$3,250,000.00).

METHOD OF PAYMENT

The Purchase Price shall be paid, accounted for and satisfied as follows.

• **Deposit:** A deposit amount of (the 100,000.00) to be deposited in the trust account of the Receiver, to be paid as follows:

(i) upon the execution of this Agreement an amount equal to three percent (3%) of the Purchase Price, representing the first portion of the Deposit shall be paid; and

(ii) upon waiver of the Purchaser's Condition as set out in paragraph 6 herein, the remaining amount of the Deposit, representing the second portion thereof, shall be paid.

The Deposit, or any portion thereof, is to be held in accordance with the terms of this Agreement. The Deposit will be held by the Receiver until completion or other termination of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Receiver shall place the Deposit in a non-interest bearing account and no interest shall be earned, received or paid on the Deposit.

Balance Due at Closing: The balance of the Purchase Price, subject to the adjustments contemplated in this Agreement, by payment at Closing to the Vendor or to the order of the Vendor.

Method of Payment: The Deposit and the balance due on Closing shall be made, by way of wire transfer to the Vendor's Solicitors in trust.

Allocation of Purchase Price: The Vendor and the Purchaser acknowledge and agree that they shall each make their own allocations of the Purchase Price between the Property and Building for the purposes of the *Income Tax Act* (Canada) and any filings in accordance with the provisions thereof.

DEPOSIT

The Deposit shall be held in trust by the Vendor's Solicitors and shall be:

- returned to the Purchaser without interest or deduction if the Vendor does not accept this offer;
- credited to the Purchaser as an adjustment against the Purchase Price on the Closing Date if the purchase and sale of the Property is completed pursuant to this Agreement;
- refunded to the Purchaser without interest or deduction if the purchase and sale of the Property is not completed pursuant to this Agreement, provided that the Purchaser is not in default under this Agreement; or,
- retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Agreement and at law, including offering the Property for sale to another person, if the purchase and sale of the Property is not completed pursuant to this Agreement as a result of the Purchaser's breach hereunder.

PURCHASER'S CONDITION

Notwithstanding any terms or provisions to the contrary contained herein, the within Agreement is conditional to the Purchaser for thirty (30) calendar days from the date of acceptance by the Vendor (the "**Condition Date**") and is subject to the following conditions: the Purchaser satisfying itself in its sole, absolute and unfettered discretion with all matters relating to the Property, including without limitation, zoning matters, and the suitability and economic viability of the Property for the Purchaser's use, the physical condition of the Property and the surrounding real property and the results of its other due diligence tests, inspections and investigations (the "**Purchaser's Condition**").

The Purchaser's Condition is for the exclusive benefit of the Purchaser and may be waived in writing in whole or in part by the Purchaser at any time on or before the Condition Date, any such waiver to be made by the Purchaser or its solicitors on its behalf. The day on which the Purchaser waives the Purchaser's Condition or provides the Vendor with written confirmation that the Purchaser's Condition has been satisfied is the "**Condition Waiver Date**". In the event that the Purchaser has not, on or before the Condition Date, waived the Purchaser's Condition or provided the Vendor with written confirmation that the Purchaser's Condition has been satisfied, this Agreement shall be null and void and the first portion of the Deposit shall be returned to the Purchaser without interest and without deduction and the Vendor and the Purchaser shall have no further obligations to each other with respect hereto.

7. CLOSING ADJUSTMENTS

Adjustment shall be made, as of 12:01 a.m. on the Date of Closing, for realty

taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, and utilities. The day of Closing shall be for the account of the Purchaser.

If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Vendor, acting reasonably, as of the Closing Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date after which time neither Party shall have any right to request re-adjustment.

8. DELIVERIES

Unless already made available to the Purchaser by the Vendor prior to the execution of this Agreement, the Vendor covenants to deliver (unless otherwise specified) to, or make available for inspection by, the Purchaser, within five (5) Business Days of the date of execution of this Agreement, the following material:

- **Survey:** a photocopy of a survey of the Property if such survey is in the actual possession of the Vendor, it being understood that such survey is not up to date;

Authorizations for Information: authorizations to be provided by the Vendor in a form and substance satisfactory to the Vendor and the Purchaser both acting reasonably and executed by the Vendor and addressed to the appropriate municipal property department, zoning department and fire department and to all other Government Authorities, authorizing the release of any and all information on file in respect of the Property, but specifically prohibiting inspections and requests for inspections by any of such Government Authorities; and

Tax Notices: copies of real property assessment and realty tax notices/statements in respect of the Property for the current calendar year and the immediately preceding calendar year, to the extent such notices or statements are in the Vendor's actual possession;

(collectively the "**Vendor's Deliveries**").

The Purchaser acknowledges that the Vendor makes no representation and/or

warranty as to the accuracy, correctness, fitness for purpose or comprehensiveness of the Vendor's Deliveries and any information contained therein, or as to the Purchaser's entitlement to use or rely on same, and that the Purchaser shall be required to make its own investigations to satisfy itself in this regard. In the event that this transaction does not close for any reason whatsoever, including the default of the Vendor, the Purchaser agrees to return the Vendor's Deliveries, and all copies thereof made by or on behalf of the Purchaser or its agents and representatives, forthwith to the Vendor.

9. ACCESS

The Vendor agrees to allow the Purchaser and the Purchaser's authorized representatives reasonable access to the Property during normal business hours from time to time, on at least two clear Business Days' advance written notice to the Vendor, solely for the purpose of inspecting the Property. The Purchaser agrees that no destructive or intrusive testing will be requested or allowed.

The Purchaser covenants and agrees to (i) forthwith repair or pay the cost of repair of any damage occasioned during and resulting from the inspection of the Property and/or the Building conducted by the Purchaser or its authorized representatives, as outlined above and to return the Property and/or the Building, as the case may be, to the condition same was in prior to such inspections; and (ii) indemnify and save the Vendor harmless from and against all losses, costs, claims, third party claims, damages, expenses (including legal costs as between a solicitor and its own client) which the Vendor may suffer as a result of the inspection of the Property and/or the Building conducted by the Purchaser or its authorized representatives, as outlined above or as a result of any unauthorized tests or inspections by Government Authorities. The provisions of Subsection 8 (b) and this Section 9 shall survive Closing or other termination of this Agreement, notwithstanding any other provisions hereof.

The provisions in this Section 9 shall not merge and shall survive Closing.

• TERMS OF PURCHASE

"As Is, Where Is": The Purchaser acknowledges that the Vendor is selling and the Purchaser is purchasing the Property and the Building on an **"as is, where is"** basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Date of Closing, including, without limiting the generality of the foregoing, any latent or patent defects in the Property and/or the Building. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Property. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, location, merchantability, quantity, the existence or non-existence of Hazardous Materials, compliance with any or all Environmental Law, condition or quality, or in respect of any other matter or thing whatsoever concerning the Property or the Building,

including any law, by-law, regulation, code, standard or agreement of, or administered by, any municipality, utility or other government or authority, fire insurance underwriters or any other party, or the right of the Vendor to sell 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* of Ontario do not apply hereto and have been waived by the Purchaser. The descriptions of the Property 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 accuracy of such descriptions. Notwithstanding the above, the Vendor will provide title to the assets clear of any and all encumbrances, pursuant to the Vesting Order and the encumbrances set out therein and subject to any Permitted Encumbrances outlined in Schedule "C".

Title and Other Requisitions: The Purchaser acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions of title or in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities and the Purchaser shall accept the title to the Property and the Building subject to those Permitted Encumbrances listed in Schedule "C" attached hereto and in the Vesting Order.

The Purchaser acknowledges to and in favour of the Vendor that, without limiting the generality of the foregoing, the Purchaser has entered into this Agreement and has purchased the Property and the Building from the Vendor on the basis that:

- the Purchaser shall not require the deletion of nor compliance with any registered agreement with any municipality, Government Authority, public or private utility or conservation authority;
- the Purchaser is purchasing the Property and the Building on an "as is, where is" basis subject to any and all zoning and/or other by-laws and regulations and easements affecting the Property and/or the Building, restrictions and covenants which run with the Property, defects and deficiencies, encroachments, work orders, deficiency notices, compliance requests, impost charges, lot levies, sewer charges, development charges and any requirements which may have been, now are or may in the future be imposed by any federal, provincial, municipal or other Government Authority having jurisdiction over the Property and the Building including, but not limited to, the Permitted Encumbrances referenced in this Agreement;
- the Vendor shall not be required to provide any letters of compliance, releases or acknowledgements whatsoever including, without limitation, any confirmations in respect of any registered agreements, restrictions and/or easements. The Purchaser further acknowledges that the Purchaser will be deemed to have received notice of all provisions and obligations contained in any site plan,

development or other registered agreement whether registered by any provincial, regional, municipal, public or private utility or governmental authority or any owner or occupant of adjoining lands;

- the Vendor is not providing and has made no representations, warranties, covenants, agreements, statements, acknowledgements, inducements or promises whatsoever, save and except as expressly contained in this Agreement, with respect to the Property or the Building, whether express or implied, by statute, at law or in equity, to or in favour of the Purchaser, oral or written, legal, equitable, collateral, or otherwise, including without limitation, with respect to:

title, including, without limitation, the existence, validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way relating to the Property and/or the Building;

the fitness for any particular purpose or use, zoning, suitability, description, marketability, access, condition, quality, extent of the Property or the Building, availability of services, permitted use or state of repair of the Property or the Building, compliance or accord of any improvements with municipal building by-laws and/or Ontario building code requirements and/or Ontario or municipal fire code requirements;

the presence, absence, nature and/or extent of Hazardous Materials on, in, under, about or migrating from the Property or the Building; the discharge of such Hazardous Materials from, on, or in relation to the Property or the Building; the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario) or any other applicable law in relation to the Property; nor, the existence, state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfil any obligations with respect to the environmental condition or quality of the Property or the Building. The Purchaser acknowledges that it accepts the Property and the Building subject to the environmental condition and any Hazardous Materials, whether or not such environmental condition and/or Hazardous Materials is or are known by the Vendor prior to the completion date, and acknowledges that the Purchaser will have no recourse against the Vendor for any such pre-existing environmental conditions or Hazardous Materials; and

any defects in workmanship or any existing, executed or partially performed agreement for the supply of materials or services to the Property or the Building or any improvement constructed thereon or therein including any right, license or easement to the use of any portion of the Property or any fixtures or chattels located thereon; or any other matter or thing whatsoever in respect of all or any of the Property or the Building or otherwise affecting this

Agreement or any right or entitlement by which agreement or operation of law may run with and bind the Property.

The provisions in this Section 10 shall not merge and shall survive Closing.

DATE OF CLOSING

The Vendor will seek an appointment with the Court to obtain a Vesting Order (as defined in Section 16 hereof) within seven (7) clear Business Days or otherwise as soon as reasonably possible after the Condition Waiver Date and receipt of the entirety of the Deposit by the Receiver. The transaction contemplated herein will close on the tenth Business Day following the date on which the Vesting Order is granted, or such other date as agreed between the Vendor and Purchaser in writing (the "Date of Closing" or "Closing"). All documents and monies shall be delivered in accordance with the provisions of Sections 12, 23 and 24 of this Agreement.

ELECTRONIC REGISTRATION

In the event that the electronic registration system ("TERS") is operative in the relevant land registry office (the "Registry Office"), the following provisions shall apply:

The Purchaser shall be obliged to retain a solicitor who is both an authorized TERS user and is in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction and shall authorize such solicitor to enter into a document registration agreement with the Vendor's Solicitors in the form as agreed by the parties (the "DRA"), establishing the procedures and timing for completing this transaction.

The delivery and exchange of the closing documents:

shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and

shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitors shall hold all closing documents in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.

The Purchaser expressly acknowledges and agrees that the Vendor will not release the Vesting Order described in Section 23(a) of this Agreement for registration until the balance of funds due on Closing, in accordance with the Statement of Adjustments, are remitted by wire transfer to the Vendor's Solicitors (or in such other manner as the Vendor or Vendor's Solicitors may in writing direct) prior to the release of the Vesting Order for registration, which the

Vendor's Solicitors will hold in escrow.

Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser, or by the Purchaser upon the Vendor, when the Vendor's Solicitors have:

delivered all closing documents required to be delivered by the Vendor to the Purchaser pursuant to Section 23 hereof;

advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's Solicitors, and specifically when the "**completeness signatory**" for the Vesting Order has been electronically "**signed**" by the Vendor's Solicitors,

without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Purchaser upon the Vendor, when the Purchaser's Solicitors have:

delivered the balance due at Closing and all the closing documents required to be delivered by the Purchaser to the Vendor pursuant to Section 24 hereof;

advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Vendor's Solicitors, and specifically when the "**completeness signatory**" for the Application for Vesting Order has been electronically "**signed**" by the Purchaser's Solicitors,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the

foregoing.

If through no fault of the Purchaser's Solicitors or the Vendor's Solicitors TERS is unavailable on the Closing Date, such that the Purchaser's Solicitors are unable to register the Application for Vesting Order, then the transaction contemplated by this Agreement shall be completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitors forthwith and the parties shall arrange to complete the registration of the Vesting Order as expeditiously as possible, whereupon the escrow shall be released.

In the event of any conflict or inconsistency between the terms of this Section 12 and the terms of the DRA, the terms of this Section 12 shall prevail.

PRE-CLOSING RISK AND POST-DAMAGE ENTITLEMENTS

The Property and the Building are and shall remain at the Vendor's risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the parties as their respective interests may appear pending Closing. In the event that the Property and/or the Building shall be materially damaged prior to Closing then the Vendor shall promptly advise the Purchaser in writing of such damage. In the event that the Property and/or the Building shall be materially damaged prior to Closing then the Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement, by delivery of written notice to the Vendor within ten (10) Business Days following receipt of the Vendor's notice of damage and in such event the parties hereto shall be released from all obligations and liabilities hereunder and the Deposit shall be returned to the Purchaser forthwith, without interest or deduction. If the Purchaser does not elect to terminate this Agreement as set out above, then the transaction contemplated hereunder shall be completed and the Vendor shall release its interest in the insurance proceeds, if any, payable in respect thereof to the Purchaser.

VENDOR'S REPRESENTATIONS AND WARRANTIES

The Vendor represents and warrants to the Purchaser that:

Non-Residency: the Vendor is not now and does not intend to become, prior to Closing, a non-resident of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada); and

Authority to Sell: as at the date hereof, the Vendor has been duly appointed as Receiver and Manager of 1496765 by the Court Order and, subject to the Vendor obtaining the Vesting Order, has full right, power and authority to market the Property for sale and on Closing shall have the power and authority to sell

the Property, in accordance with the terms and conditions of this Agreement.

PURCHASER'S REPRESENTATIONS AND WARRANTIES

The Purchaser represents and warrants to the Vendor that, as at the date hereof:

Corporate Matters Regarding Purchaser: the Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of the Province of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement; neither the execution of this Agreement nor the performance (such performance shall include, without limitation, the exercise of any of the Purchaser's rights and compliance with each of the Purchaser's obligations hereunder) by the Purchaser of the transaction contemplated hereunder will violate:

the Purchaser's articles of incorporation and by-laws;

any agreement to which the Purchaser is bound;

any judgement or order of a court of competent authority or any Government Authority; or

any applicable law;

and the Purchaser has duly taken, or has caused to be taken, all requisite corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder;

this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;

there are no proceedings for or pending before any Government Authority, or threatened to be brought by or before any Government Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby by the Purchaser;

the Purchaser has made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price to the Vendor on the Closing Date;

the Purchaser will be responsible for and will remit to or reimburse, as applicable, all taxes, including (without limitation) Land Transfer Tax, levies or the like that arise from the sale of the Property and the Building unless otherwise specified in this Agreement; and

Investment Canada Act (Canada): either (i) the Purchaser is not a "non-Canadian", as defined in the *Investment Canada Act (Canada)* ("ICA"); or (ii) the Purchaser is a "non-Canadian", this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

CONDITIONS OF CLOSING IN FAVOUR OF THE VENDOR

The Vendor's obligations contained in this Agreement shall be conditional upon the Vendor receiving, within thirty (30) days of the Condition Waiver Date (the "**Court Condition Date**"), an Order of the Court substantially in the form attached hereto as Schedule "D" approving the transaction contemplated herein and ordering that 1496765's right, title and interest in the Property and the Building be vested in the Purchaser free and clear of encumbrances except for Permitted Encumbrances upon satisfaction by the Purchaser of its obligations under this Agreement (collectively, the "**Vesting Order**").

The Vendor and the Purchaser acknowledge and agree that the above-noted condition is a true condition precedent to the completion of the transaction contemplated in this Agreement that cannot be waived by either the Vendor or the Purchaser.

The Vendor covenants and agrees to proceed as expeditiously as reasonably possible, to work in a diligent manner and to use reasonable commercial efforts to attempt to satisfy this condition. The Purchaser at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain approval of this Agreement, anticipated currently to be related to financial and financing details. If the Vesting Order is not obtained on or before the Court Condition Date, this Agreement shall, at the Vendor's discretion:

Investment Canada Act (Canada): either (i) the Purchaser is not a "non-Canadian", as defined in the *Investment Canada Act (Canada)* ("ICA"); or (ii) if the Purchaser is a "non-Canadian", this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

CONDITIONS OF CLOSING IN FAVOUR OF THE VENDOR

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The Vendor and the Purchaser acknowledge and agree that the above-noted condition is a true condition precedent to the completion of the transaction contemplated in this Agreement that cannot be waived by either the Vendor or the Purchaser.

The Vendor covenants and agrees to proceed as expeditiously as reasonably possible, to work in a diligent manner and to use reasonable commercial efforts to attempt to satisfy this condition. The Purchaser at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain approval of this Agreement, anticipated currently to be related to financial and financing details. If the Vesting Order is not obtained on or before the Court Condition Date, this Agreement shall, at the Vendor's discretion:

be terminated, by notice, in writing, to the Purchaser, without any penalty or liability whatsoever to the Vendor or the Purchaser, other than the return by the Vendor to the Purchaser of the Deposit, but without cost or other compensation and each of the Vendor and the Purchaser shall be released from all other obligations hereunder except for the obligations of the Purchaser, if any, arising under or as a result of a breach of the provisions of Subsection 8(b) or Section 9

hereof. The Vendor will only choose this option if it is the opinion of the Receiver acting reasonably that there is no commercially appropriate way to complete the transaction, or

be extended for an additional period or additional periods not exceeding one hundred and twenty (120) days in total, during which time the Vendor will continue to make best efforts to attempt to obtain the Vesting Order, by notice to the Purchaser, in writing, of the Vendor's election to extend prior to 5:00 p.m. on the Court Condition Date;

The Vendor's obligations contained in this Agreement shall be subject to the fulfilment, at or prior to Closing, of each of the following conditions:

Representations and Warranties: each of the Purchaser's representations and warranties contained in this Agreement shall be true at and as of the date hereof and each of such representations and warranties shall continue to be true as at Closing and shall survive the Closing;

Covenants/Agreements: the Purchaser shall have complied with each and every covenant/agreement made by it herein and required to be completed at or prior to Closing;

Corporate Steps and Proceedings: all necessary corporate steps and proceedings shall have been taken by the Purchaser to permit the Purchaser's execution of this Agreement and performance of each of the Purchaser's obligations hereunder;

No Redemption: the Property shall not have been redeemed pursuant to any statutory right or otherwise; and

Vesting Order: the Vesting Order shall not be stayed and shall be in full force and effect and no Order restraining or prohibiting Closing shall have been made by the Court.

For greater certainty, each of the conditions contained in this Section 16(b) has been inserted for the benefit of the Vendor.

The Vendor covenants to use its best efforts (which the Vendor represents and warrants shall not be less than reasonable commercial efforts) to fulfil or cause to be fulfilled the conditions contained in Subsection 16(a) and the Purchaser covenants to use its best efforts (which the Purchaser represents and warrants shall be no less than reasonable commercial efforts) to fulfil or cause to be fulfilled the conditions contained in Subsection 16(b)(i) - (iii) hereof prior to Closing.

In the event that any of the foregoing conditions shall not be fulfilled at or prior to Closing, the Vendor may, in its absolute and unfettered discretion, terminate this

Agreement by written notice to the Purchaser without any penalty or liability whatsoever to the Vendor, other than the return by the Vendor to the Purchaser of the Deposit, without interest or deduction, and without cost or other compensation and each of the Vendor and the Purchaser shall be released from all other obligations hereunder, except for the obligations of the Purchaser, if any, arising under or as a result of a breach of the provisions of Subsection 8(b) or Section 9 hereof.

TERMINATION OF AGREEMENT

Notwithstanding anything to the contrary contained in this Agreement, if at any time or times prior to the Closing Date, the Vendor is unable to complete this Agreement as a result of any action taken by an encumbrancer, any action taken by the present registered owner, the refusal by the present registered owner to take any action, the exercise of any right by the present registered owner or other party which is not terminated upon acceptance of this Agreement, a certificate of pending litigation is registered against the Property, a court judgment or order is made, or if the sale of the Property is restrained at any time by a court of competent jurisdiction, the Vendor may, in its sole and unfettered discretion, elect by written notice to the Purchaser, to terminate this Agreement, whereupon the Deposit shall be returned to the Purchaser without deduction, and neither party shall have any further rights or liabilities hereunder.

The obligation of the Vendor to complete this Agreement is subject to the satisfaction of the following terms and conditions on or prior to the Closing Date, which conditions are for the sole benefit of the Vendor and which may be waived by the Vendor in its sole discretion:

- the representation and warranties of the Purchaser herein are true and accurate as of the Closing Date;
- no action or proceeding at law or in equity shall be pending or threatened by any person, firm, government, government authority, regulatory body or agency, or against the Vendor, its officers, directors, employees or agents with respect to their actions hereunder, or their dealing with the Property, to enjoin, restrict or prohibit the purchase and sale of the Property;
- the Property shall not have been removed from the control of the Vendor by any means or process;
- no party shall have taken any action to redeem the Property; and,
- the Court shall have granted the Vesting Order.

PURCHASER'S ACKNOWLEDGMENTS

The Purchaser hereby acknowledges and agrees with and to be subject to the

following:

it is responsible for conducting its own searches and investigations of the current and past uses of the Property and the Building;

the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Property and/or the Building is or will be lawful or permitted;

it is satisfied with the Property and the Building and all matters and things connected therewith or in any way related thereto;

it is relying entirely upon its own investigations and inspections in entering into this Agreement;

it is purchasing the Property and the Building on an "*as is, where is*" and "*without recourse*" basis in accordance with the terms hereof, including, without limitation, outstanding work orders, deficiency notices, compliance requests, development fee, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any governmental authority having jurisdiction over the Property;

it relies entirely on its own judgment, inspection and investigation of the Property and the Building;

any documentation relating to the Property and/or the Building obtained from the Vendor has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Agreement;

the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Property or the Building;

the Vendor has made no representations or warranties with respect to or in any way related to the Property or the Building, including without limitation, the following:

the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Property or the Building, either stated or implied; and

the environmental state of the Property and/or the Building, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Property, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario),

or any other statute, regulation, rule or provision of law and the existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Property or the Building or elsewhere;

the Material Documents are being provided to the Purchaser merely as a courtesy and without any representations or warranties whatsoever; and

it will ensure that any environmental and/or structural reports on behalf of the Purchaser shall also be addressed to the Vendor and a copy of each such report shall be delivered to the Vendor promptly after the completion thereof, regardless of whether the transaction contemplated by this Agreement closes. If for any reason such transaction is not consummated, the Purchaser agrees to deliver promptly to the Vendor any and all reports and other data pertaining to the Property and the Building and any inspections or examinations conducted hereunder.

ENCROACHMENTS

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Property, or encroachments of the Property or the Building onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting the Property and/or the Building.

INDEMNIFICATION

The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, agents and representatives (collectively, the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Property or any order, notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws after the Closing Date or as a result of the disposal, storage, release or threat of release or spill on or about the Property and/or the Building of any Hazardous Materials after the Closing Date. For the purposes of the foregoing, "Environmental Laws" shall mean all requirements under or prescribed by common law and all federal, provincial, regional, municipal and local laws, rules, statutes, ordinances, regulations, guidelines, directives, notices and orders from time to time with respect to the discharge, generation, removal, storage or handling of any Hazardous Materials. The obligation of the Purchaser hereunder shall survive the Closing Date.

RELEASE

The Purchaser agrees to release and discharge the Vendor together with its directors, officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Property and/or the Building. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Property or the Building or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing of the transaction of purchase and sale, contemplated by this Agreement, and shall survive the termination of this Agreement for any reason or cause whatsoever and the closing of this transaction.

NON-REGISTRATION

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, instrument or Court order or judgement 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. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 22 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Property any of the items set out in this Section 22.

VENDOR'S CLOSING DELIVERIES

The Vendor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date expressly provided herein:

Vesting Order: an order of the Court vesting the Property in the Purchaser or as the Purchaser shall direct, in accordance with the provisions of this Agreement;

Bill of Sale: a bill of sale conveying the Vendor's right, title and interest, if any, in and to any chattels on the Property to the Purchaser;

Statement of Adjustments: a statement of adjustments prepared in accordance

with Section 7 hereof;

Direction Regarding Funds: a direction from the Vendor designating the party or parties to which the balance of the Purchase Price described in Subsection 4 (b) hereof shall be paid; in the event that the Vendor designates more than one party then it shall also designate amounts payable to each of the parties;

Non-Residence Certificate: the Vendor's certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada);

Keys: all master keys and duplicate keys relating to the Property in the Vendor's possession; and

Further Documentation: any other documentation relative to the completion of this Agreement as may reasonably be required by the Purchaser or its solicitors only if such documentation is in the actual possession of the Vendor.

PURCHASER'S CLOSING DELIVERIES

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

Purchaser's Certificates: the Purchaser's certificate and indemnity setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing and, if applicable, the Purchaser's certificate described in Subsection 26(b) hereof;

HST Indemnity: the indemnity provided for under Subsection 26(c) hereof;

Direction re Title: a direction re title to confirm the name in which title to the Property will be taken;

Balance Due at Closing: the balance of the Purchase Price described in Subsection 4(b) hereof;

Application for Vesting Order(s): the Purchaser's solicitor will prepare the application for vesting order in Teraview in accordance with the Purchaser's direction re title; and

Further Documentation: any other documentation relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors.

PLANNING ACT (ONTARIO)

This Agreement shall be effective to create an interest in the Property for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing or if a Court orders the completion of the transaction contemplated

herein notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario) .

HARMONIZED SALES TAX

Application of HST to this Agreement: The Purchaser acknowledges and agrees that the transaction contemplated hereunder shall be subject to the goods and services tax and harmonized sales tax ("HST") levied pursuant to the Act and that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the Act.

Self-Assessment: If:

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 Act; and/or

the Purchaser is a "prescribed recipient" under the Act and/or is registered under the Act,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the Act or, if no such form is prescribed, then in form satisfactory to the Vendor and the Vendor's Solicitors, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the transaction contemplated hereunder. If Subsection 26(b)(i) hereof shall be 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 at Closing described in Subsection 24(d) hereof, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.

HST Indemnity: The Purchaser shall indemnify and save harmless the Vendor, its directors, officers, employees, agents and representatives from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

NOTICE

Any notice given hereunder shall be in writing and delivered or communicated by e-mail to:

in the case of the Purchaser at:

●
Attention:
Email:

and in the case of the Vendor at:

RSM Canada Limited
11 King Street West, Suite 700, Box 27
Toronto ON M5H 4C7

Attention: Daniel Weisz
Email: daniel.weisz@rsmcanada.com

with a copy to the Vendor's Solicitors:

Torkin Manes LLP
Barristers and Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Attention: Barry A. Cohen and Stephanie Eiley
Email: bcohen@torkinmanes.com and seiley@torkinmanes.com

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission if such notice is delivered prior to 5:00pm on a Business Day, failing which the notice shall be deemed to have been delivered or transmitted on the next Business Day. A party may change its address and/or email address by providing notice in accordance with this Section 27.

WAIVER OF CONDITIONS

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting party without prejudice to the benefiting party's right of termination in the event of the non-fulfilment of any

other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the transaction contemplated hereunder by a party hereof shall be deemed to be a waiver by such party of compliance with any condition inserted for its benefit and not satisfied at Closing.

SEVERABILITY

If any provision contained in this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons/entities or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

DIVISION/HEADINGS

The division of this Agreement into Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

ENTIRE AGREEMENT

This Agreement and the schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Property. Each of the parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive the closing of the transactions contemplated by this Agreement.

CUMULATIVE REMEDIES

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

INTERPRETATION

This Agreement shall be read with all changes of gender and number as required by the context.

REFERENCES TO STATUTES

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

TIME OF ESSENCE

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

CANADIAN FUNDS

All references to dollar amounts contained in this Agreement shall be deemed to refer to Canadian funds.

TENDER

Any tender to notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

FURTHER ASSURANCES

Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration therefor co-operate with and take such additional actions as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

CONFIDENTIALITY

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any third party. If for any

reason Closing does not occur, all such documents (including without limitation, the Material Documents) shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

NON-BUSINESS DAYS

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

DOCUMENTATION PREPARATION AND REGISTRATION

The Purchaser shall prepare or cause to be prepared the land transfer tax affidavit to be attached to the Application for Vesting Order described in Subsection 23(a) hereof. The Vendor shall prepare or cause to be prepared all other documentation described in Section 23 hereof. Each of the parties shall deliver draft documentation to the other not less than three (3) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and have substance satisfactory to the Vendor and the Purchaser, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the transaction contemplated in this Agreement. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

LAND TRANSFER TAXES AND RETAIL SALES TAXES

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)) and, if applicable, all retail sales taxes (as required pursuant to the *Retail Sales Tax Act* (Ontario)) payable in connection with the transfer of the Property pursuant to this Agreement.

GOVERNING LAWS

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario.

ASSIGNMENT

No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, the Purchaser shall have the right, until five (5) Business Days prior to the granting of the Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Property hereunder to any company or companies provided by the Purchaser provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

VENDOR'S CAPACITY

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-Appointed Receiver and Manager of the undertaking, property and assets of 1496765 and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of certain property of 1496765 and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Property. The Purchaser acknowledges that the Property and the Building are and shall remain in the possession of the Vendor until Closing.

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

DATED as of the date first mentioned above.

	Per: <i>Sh. F. M. Shaw</i>
	Name: <i>SHAIK SHAW</i> Title: <i>OWNER of 10211974</i> I/We have authority to bind the Corporation.

The Vendor hereby accepts this Agreement to purchase and its terms and agrees with the Purchaser to duly complete the transaction contemplated

thereunder.

DATED at Toronto, Ontario this _____ day of _____, 2018.

	RSM Canada Limited, solely in its capacity as Court-appointed Receiver and Manager of 1496765 Ontario Ltd. and not in its personal or corporate capacity and without personal or corporate liability
	Per: Name: Daniel Weisz Title: Senior Vice President I have authority to bind the Receiver

SCHEDULE A

LEGAL DESCRIPTION OF THE PROPERTY

MUNICIPAL ADDRESS: 5462 Dundas Street, Etobicoke, ON

LEGAL DESCRIPTION: PT LT 8, CON 5 COLONEL SMITH'S TRACT , PART 3 ,
64R7025; ETOBICOKE, CITY OF TORONTO

PIN: 072548 - 0145

SCHEDULE B

COURT ORDER

SCHEDULE C

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property; and
10. Without in any way limiting the generality of any of the foregoing, the following specific instruments registered on title against the Property:
 - Instrument No. EB187575 registered on 1957/08/19 being a CERTIFICATE.
 - Instrument No. EB481910 registered on 1977/08/12 being an AGREEMENT

with BOROUGH OF ETOBICOKE.

- Instrument No. EB512494 registered on 1979/07/23 being an AGREEMENT with BOROUGH OF ETOBICOKE.

SCHEDULE D

Court File No. CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ►)	► DAY, THE ► DAY
JUSTICE ►)	OF ►, 2018

BETWEEN:

BANK OF MONTREAL

Applicant

-and-

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020
ONTARIO INC., 1651033 ONTARIO INC. LTD., 1496765
ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C.
1985 c-B-3, s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver and manager (the "Receiver") of all of the assets, undertakings and properties of 1496765 Ontario Ltd. ("1496765"), including all proceeds thereof (collectively, the "Property") for an order approving the sale

transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and **[NAME OF PURCHASER]** (the "**Purchaser**") made as of **[DATE]** and appended to the Report of the Receiver dated **[DATE]** (the "**Report**"), and vesting in the Purchaser 1496765's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 1496765 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of 1496765's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including,

without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated August 29, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (#66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a

copy of the Receiver's Certificate, forthwith after delivery thereof.

THIS COURT ORDERS that, notwithstanding:

the pendency of these proceedings;

any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 1496765 and any bankruptcy order issued pursuant to any such applications; and

any assignment in bankruptcy made in respect of 1496765;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 1496765 and shall not be void or voidable by creditors of 1496765, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

Schedule A – Form of Receiver's Certificate

Court File No. CV-18-00602537-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

-and-

**2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020
ONTARIO INC., 1651033 ONTARIO INC. LTD., 1496765
ONTARIO INC. LTD. and
SUNSHINE PROPANE INC.**

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C.
1985 c-B-3, s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure***

RECEIVER'S CERTIFICATE

RECITALS

• Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 1496765 Ontario Ltd. ("**1496765**"), including all proceeds thereof (collectively, the "**Property**").

Pursuant to an Order of the Court dated [DATE] (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver and [NAME OF PURCHASER] (the "**Purchaser**") and provided for the vesting in the

Purchaser of the Receiver's and 1496765's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement or the Vesting Order.

THE RECEIVER CERTIFIES the following:

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

The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;

The Transaction has been completed to the satisfaction of the Receiver; and

This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**RSM
Canada
Limited,
solely in
its
capacity
as
Court-
appointed
Receiver
and
Manager
of
1496
765
Ontario
Ltd.
and
not
in its
personal
or
corporate
capacity
and
without
personal
or
corporate
liability**

Per:	
Name:	▶
Title:	▶

Schedule B – Purchased Assets

All of the Receiver's (if any) and 1496765's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 5462 Dundas Street, Etobicoke, ON

LEGAL DESCRIPTION: PT LT 8, CON 5 COLONEL SMITH'S TRACT, PART 3, 64R7025; ETOBICOKE, CITY OF TORONTO

PIN: 072548 - 0145

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

The following Instruments are to be discharged upon registration of the Vesting Order:

- Instrument No. AT3551060 registered on April 2, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$1,000,000.00.
- Instrument No. AT3633478 registered on July 15, 2014, being a Charge in favour of Bank of Montreal in the principal amount of \$2,450,000.00.
- Instrument No. AT3633479 registered on July 15, 2014, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.
- Instrument No. AT3633480 registered on July 15, 2014, being a Postponement in favour of Bank of Montreal

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having

jurisdiction;

9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:

- Instrument No. EB187575 registered on 1957/08/19 being a CERTIFICATE.
- Instrument No. EB481910 registered on 1977/08/12 being an AGREEMENT with BOROUGH OF ETOBICOKE.
- Instrument No. EB512494 registered on 1979/07/23 being an AGREEMENT with BOROUGH OF ETOBICOKE.

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S.S.

(PROCEEDING COMMENCED AT TORONTO)

AND1496765 ONTARIO LTD

Suite 102

L4W 0A5

Telephone: 1-866-840-5167
Facsimile: 1-877-201-3476

1496765 ONTARIO LTD