

ONTARIO  
SUPERIOR COURT OF JUSTICE

**B E T W E E N:**

**THE POLISH ALLIANCE OF CANADA**

**Plaintiff**

**- and -**

**POLISH ASSOCIATION OF TORONTO LIMITED,  
MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka  
LOUIS JOHN ELIE ARGYRIS aka LOUIS JOHN ARGYRIS aka JOHN ARGYRIS,  
WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN,  
EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN  
ROGOZ, ALBERT JOSEPH FLIS AND RICHARD RUSEK**

**Defendants**

**FIFTH REPORT OF THE RECEIVER  
(Dated as of April 28, 2016)**

1. The Report is being prepared by Collins Barrow Toronto Limited in its capacity as receiver and manager (the “Receiver”) of all of the assets, undertakings and properties of Branch 1-7 of The Polish Alliance of Canada and Polish Association of Toronto, Limited (together, “PATL”), in respect of: (a) the opposition by PATL to the Receiver’s fees and disbursements, including the fees and disbursements of its counsel Gowling WLG (Canada) LLP (“Gowling”) for the period from October 20, 2015 to March 18, 2016 (the “Receiver Costs”); and (b) the request by PATL that the net proceeds realized from the sale of the Property be paid to PATL.

**I. Background**

2. The Receiver was appointed over the property and assets of PATL pursuant to an Order dated June 20, 2014 (the “Appointment Order”). The Appointment Order, *inter alia*:

- (a) provides that the Receiver and its counsel are to be paid their reasonable fees and disbursements at standard rates and charges unless otherwise ordered by the Court;
  - (b) grants to the Receiver a charge over the assets and property of PATL to secure its fees and disbursements; and
  - (c) provides that the Receiver will render accounts to The Polish Alliance of Canada (“PAC”) and PATL and that the accounts will be paid on receipt.
3. The Receiver has rendered accounts to PAC and PATL, but neither PAC nor PATL has paid any of the accounts rendered by the Receiver.
  4. Over the objection of PAC, the Receiver’s fees and disbursements for the period to June 18, 2015 were ultimately approved on October 19, 2015 and January 8, 2016 and, on October 19, 2015, the Receiver was authorized to sell the property located at 32 Twenty Fourth Street, Toronto, Ontario (the “**Property**”) to recover its fees and disbursements.
  5. Immediately prior to the return of the Motion by the Receiver seeking an Order with respect to the sale of the Property and the approval of the Receiver Costs, PATL indicated that: (a) it opposed the approval of the Receiver Costs; and (b) wished to schedule a Motion seeking to have the net proceeds from the sale of the Property paid over to PATL.
  6. On April 1, 2016, the Court: (a) approved the sale of the Property; (b) approved the payment of the Receiver’s fees and disbursements, including the fees and disbursements of Gowling, to March 2016 as set forth in the Fourth Report of the Receiver dated March 23, 2016 (the “**Fourth Report**”); and (c) scheduled time on May 2, 2016 for the Court to hear: (i) PATL’s opposition to the Receiver Costs; and (ii) a Motion by PATL to have the remaining net proceeds from the sale of the Property turned over to PATL.
  7. On April 15, 2016, PATL served *via* e-mail a Motion Record in respect of a Motion seeking to have the remaining net proceeds from the sale of the Property paid over to PATL. No materials were delivered in respect of the approval of the Receiver Costs. On

April 15, 2016, Gowling sought confirmation from PATL's counsel as to whether PATL would be opposing the Receiver Costs.

8. On April 18, 2016, counsel to PATL advised Gowling via e-mail:

*I have been instructed to oppose your fees and the Receiver's fees. The argument will not be that the work was not done, but that the amounts claimed are excessive having regard to the circumstances of the sale of a residential property to collect payment of your accounts.*

*The costs of approximately \$40,000 are disproportionate to the amounts in issue and ought not to be borne by the PATL. That is a succinct summary of the argument.*

9. On April 18, 2016, Gowling sought confirmation as to whether PATL would be filing any materials in respect of its opposition to the Receiver Costs. Counsel to PATL confirmed:

*I am not filing any further materials, just our motion record. I thought you already delivered your materials. I am trying to keep the costs down.*

10. Gowling advised counsel to PATL that the Receiver would file a Report, and perhaps a Factum, addressing the issues raised in his e-mail of April 18, 2016.
11. The Property was sold by the Receiver for \$586,500 and the sale transaction closed on April 12, 2016. A copy of the Statement of Adjustments in respect of the sale of the property is attached as **Schedule 1**. The Receiver has paid its previously-approved fees and disbursements, including the commission payable to the real estate engaged to market the Property, and the previously-approved fees and disbursements of Gowling, and is holding \$214,752.12 from the sale of the Property. A statement re the disposition of the proceeds realized from the Property is attached at **Schedule 2**.
12. The Receiver filed a Confidential Brief in connection with the April 1, 2016 Motion seeking, *inter alia*, approval to sell the Property. That Confidential Brief included a copy of the Agreement of Purchase and Sale in respect of the transaction that was approved on April 1, 2016 and closed on April 12, 2016. A copy of that Agreement of Purchase and Sale is attached as **Schedule 3**.

## II. Receiver Costs

13. As detailed in the Fourth Report, from October 16, 2015 to March 17, 2016, Gowling incurred a total of \$18,170 in professional fees. Gowling is not seeking to recover any disbursement for this period and all disbursements incurred were written-off by Gowling.
14. The breakdown of Gowling's account is as follows<sup>1</sup>:
  - (a) Opposed fee approval in Fall of 2015: \$5,885
  - (b) Appeal: \$1,035
  - (c) Sale of Property: \$11,250
15. The Receiver or a representative of the Receiver was required to be in attendance when a real estate agent toured the Property on November 23, 2015. The Receiver was not available and E. Patrick Shea of Gowling attended at the Property to represent the Receiver. Mr. Shea's hourly rate was reduced from \$650 per hour to \$400 per hour to reflect the nature of the work being performed.
16. As detailed in the Fourth Report, from October 20, 2015 to March 18, 2016, the Receiver incurred \$16,909 in fees. The Receiver did not incur any disbursements during that period.
17. The entire amount of the Receiver's fees are attributable to the sale of the Property.
18. The actions of the Receiver and Gowling in connection with the marketing and sale of the Property, up until the acceptance of the offer that was approved on April 1, 2016, are described in the Fourth Report.
19. The marketing and sale of the Property was complicated by:
  - (a) the fact that the Property is a residential as opposed to a commercial property;
  - (b) title to the Property was registered in the name of individuals in trust; and

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<sup>1</sup> In the case of entries where multiple tasks are reflected the time was allocated between the tasks.

- (c) the Receiver was selling the property as secured creditor “as is, where is” and was relying on an Approval and Vesting Order to convey title.
20. The real estate agents and potential purchasers involved in the process involving the sale of the Property were, by reason of the fact that the Property was a residential property, not necessarily familiar with sales by a receiver enforcing its security. This resulted in the Receiver and Gowling spending time with the broker retained by the Receiver and with the real estate lawyer retained by the ultimate purchaser addressing issues relating to the structure of the transaction.
21. As noted in the Fourth Report, the necessary structure of the transaction also resulted in there being two rounds of marketing since the first offer the Receiver accepted for the Property was aborted by the offeror. PATL was informed in general by the Receiver, through counsel, of the issues being encountered in selling the Property.
22. Notwithstanding being advised of the necessary structure of the transaction, all of the potential purchasers who submitted offers in the first round of marketing submitted their offers in the “standard form” used for residential real estate transactions. When the Receiver made amendments to the highest offer and introduced provisions to reflect the necessary structure of the transaction to the highest offer submitted in the first round, the purchaser refused to proceed with the transaction. The Receiver attempted to complete a transaction with the other party which had submitted a viable offer, but was unable to do so for the same reason. The Receiver made reasonable attempts to save the transaction by attempting to explain to the purchaser, through the real estate agent retained by the Receiver, why the changes to the standard form offer were necessary but the purchaser refused to proceed with the transaction. Ultimately, the Receiver determined that a second round of marketing was required.
23. To ensure that similar issues would not be encountered in the second round of marketing, the Receiver and Gowling took reasonable steps to ensure that the process for marketing the Property would result only in offers that included the provisions that were required given the necessary structure of the transaction. The Receiver insisted, for example, that all offers be submitted using a form prepared by Gowling and include a \$20,000 deposit.

24. The second round of marketing resulted, as noted above, in a successful transaction for the Property. While that transaction realized a price that was \$8,600 less than the highest offer submitted in the first round of marketing, the Receiver notes that with the concurrence of both PAC and PATL, the listing price for the Property was set at \$549,000. The selling price attained of \$586,500 is \$37,500 higher than the listing price.
25. The total professional fees incurred in connection with the sale of the Property up to March 17 and 18, 2016 were \$28,159. This represents less than 5% of the purchase price realized by the Receiver. The Receiver believes its and Gowling's fees are reasonable given the issues encountered in selling the Property. The Receiver notes that none of these fees would have been incurred had PATL or PAC paid the Receiver's fees and disbursements as required by the Appointment Order.
26. Further Receiver and legal fees and disbursements have been incurred since March 17, 2016. Those fees and disbursements relate to the Motion returnable on April 1, 2016 and closing the sale of the Property. Gowling's fees and disbursements associated with the sale of the Property may be higher than would be the case for a vendor in an ordinary residential sale transaction. This is, however, largely as a result of the nature of the transaction, being an "as is, where is" sale with title being transferred by way of a vesting order. More time than normal was required to be spent dealing with the lawyer retained by the purchaser, who was not, for example, particularly familiar with the use of vesting orders to convey title<sup>2</sup>.

### **III. Distribution of Net Proceeds**

27. The Receiver takes no position with respect to whether the net proceeds realized from the sale of the Property by the Receiver ought to be paid over to PATL. The Receiver notes that pursuant to an Order made on November 28, 2015, the receiver was authorized and directed to turn over possession and control of the property over which it was originally appointed to PATL.

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<sup>2</sup> This is not intended as a critique of counsel, who is a well-respected real estate lawyer with a great deal of familiarity with residential real estate transactions. The sale by a receiver enforcing its security and transferring property by way of a vesting order is not something that is regularly encountered in day-to-day practice and it would have been unreasonable to expect the purchaser to have retained a lawyer with insolvency expertise.

28. The Receiver will, however, continue to incur fees and disbursements, primarily fees and disbursements of Gowling, over the coming months and requests that \$30,000 be held back by the Receiver in respect of these fees and disbursements<sup>3</sup> from any amount that may be ordered to be paid to PATL from the sale of the Property.
29. On November 6, 2015, the Divisional Court indicated that it expected that the Receiver would remain in place pending the appeal of the Order from May of 2014 that underlies the Receiver's appointment in June of 2014. The Receiver has been, to a very limited extent, participating in the appeal and will incur fees and disbursements in connection with the appeal. The Receiver has, for example, been participating in case conference telephone calls, has been asked to prepare a chronology of orders and endorsements since the making of the Appointment Order and will be represented by counsel at the appeal.
30. In addition, both PAC and PATL have appealed the Order made on October 19, 2015 with respect to the allocation of the Receiver's fees and disbursements as between PAC and PATL. While the issue is primarily between PAC and PATL, the Receiver is a party.
31. The Receiver will retain its charge over the other property of PATL to secure any fees and disbursements incurred through to discharge, but would like to avoid the need to sell any further property to recover its going-forward fees and disbursements.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of April 2016.

**COLLINS BARROW TORONTO LIMITED**

In its capacity as Court-Appointed Receiver  
and Manager of Branch 1-7 of The Polish Alliance  
of Canada and Polish Association of Toronto, Limited  
and not in its personal capacity

Per: 

\_\_\_\_\_  
**Daniel Weisz, CPA, CA, CIRP, LIT**  
**Senior Vice-President**

TOR\_LAW\8933672\1

<sup>3</sup> The Receiver is also holding a \$25,000 retainer provided by PAC and has in its trust account relating to this matter approximately \$3,500.

## **SCHEDULE 1**



**STATEMENT OF ADJUSTMENTS**

**VENDOR:** Collins Barrow Toronto Limited  
**PURCHASER:** Carla Dovigo, Jessie Ward & Patrick Ryan Ward  
**PROPERTY:** 32 Twenty Fourth Street, Toronto, Ontario  
**ADJUSTED AS OF:** April 12, 2016

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<b>Purchase Price:</b>		\$586,500.00
<b>Deposit:</b>	\$20,000.00	
<b>Realty Taxes</b>		
2016 taxes = \$2930.58 (Est.)		
Vendor's share = \$816.71		
Vendor has paid = \$964.49		
Credit Vendor		\$147.78
<b>Water Account Overpayment</b>		\$386.80
<b>Balance due on closing</b>	<b>\$567,034.58</b>	
<b>TOTAL</b>	<b>\$587,034.58</b>	<b>\$587,034.58</b>

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**E&O E.**

**Prepared on April 8, 2016.**

TOR\_LAW\ 8920999\1

**SCHEDULE 2**

**Sale of 32 Twenty Fourth Street, Toronto  
Disposition of Sale Proceeds**

Purchase price		\$ 586,500.00
Less: Deposit		(20,000.00)
Adjustments:		
Realty taxes		147.78
Water account		386.80
<b>Balance paid on closing</b>		<b><u>\$ 567,034.58</u></b>
Balance paid to Receiver		\$ 567,034.58
Less: Professional fees (including HST)		
Receiver's fees	\$ 155,311.77	
Legal fees	190,460.88	
Commission payable to Re/Max	26,509.81	
Less: commission paid from Deposit	<u>(20,000.00)</u>	
Total professional fees		<u>352,282.46</u>
<b>Balance invested in short term investment</b>		<b><u>\$ 214,752.12</u></b>

**SCHEDULE 3**

This Agreement of Purchase and Sale dated this 15 day of March 2016

**BUYER**, Carla Davigo, Jessie Ward and Patrick Ryan Ward agrees to purchase from  
(full legal names of all buyers)

**SELLER**, Colins Barrow Toronto Limited, the following  
(full legal names of all Sellers)

**REAL PROPERTY:**

Address 32 Twenty Fourth St

fronting on the West side of 32 Twenty Fourth St

in the Toronto

and having a frontage of 25 more or less by a depth of 125 more or less

and legally described as PT LT 98, PL 1571, AS IN EB462486

(legal description of land including easements not described elsewhere) (the "property")

**PURCHASE PRICE:** Dollars (CDN) 586,500.00

Five Hundred Eighty-Six Thousand Five Hundred Dollars

**DEPOSIT** Buyer submits Herewith  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Twenty Thousand Dollars (CDN) 20,000.00

by negotiable cheque payable to RE/MAX PROFESSIONALS INC. BROKERAGE "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S)** A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 8:00 p.m. on the 29 day of March 2016, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 12 day of April 2016. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S) [Handwritten initials]

INITIALS OF SELLER(S) [Handwritten initials]

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: ..... (for delivery of Documents to Seller)      FAX No.: ..... (For delivery of Documents to Buyer)  
 Email Address: dwiersz@colliersbarrow.com (For delivery of Documents to Seller)      Email Address: jessieward@rogers.com (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:** .....

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:** .....

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and ~~not~~ included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

Hot water tank, if rented.


*JW*  
*C.D.W.*

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the Property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be included in ..... the Purchase Price. If the sale of the Property is not subject to HST, Seller agrees to certify on or before included in/in addition to closing, that the sale of the Property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): JW

INITIALS OF SELLER(S): [Signature]

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7  
29 April  
March  
C.O. W. W. W.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 29 day of March, 2016, (Requisition Date) to examine the title to the Property at Buyer's own expense and until the earlier of (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or (ii) five days prior to completion, to satisfy Buyer that there are no outstanding

~~work orders or deficiency notices affecting the Property, and that in particular Single Family Residence, may be lawfully commenced and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to create and deliver such further authorizations in this regard as Buyer may reasonably require.~~

n/a  
C.O. W. W. W.  
PW

9. **FUTURE USES:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing each have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagees, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.


12. **DOCUMENTS AND DISCHARGES:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Co-op Societies or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on file within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTIONS:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the Property.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S): C.O. W. W. W.

INITIALS OF SELLER(S): [Signature]


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15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
17. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
20. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless Seller's spouse has executed the consent hereinafter provided.
23. **UPP:** ~~Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not covered any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple-unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.~~
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

*[Handwritten initials]*  
initial

INITIALS OF BUYER(S): *[Handwritten initials]*

INITIALS OF SELLER(S): *[Handwritten initials]*

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**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

*Carla Dorigo*  
(Buyer)

(Seal)

DATE *March 15, 2016*

(Witness)

*J Ward*  
(Buyer)

(Seal)

DATE *March 15, 2016*

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

*Patricia Shea*  
(Seller)

(Seal)

DATE *MARCH 15, 2016*

(Witness)

*Patricia Shea*  
(Seller)

(Seal)

DATE .....

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE .....

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at *11:40 a.m.* on this *21<sup>st</sup>* day of *MARCH*, 2016.

*COLLINS BARROW REALTY LIMITED, IN ITS CAPACITY AS SECURED CREDITOR OF THE PROPERTY*  
*DANIEL WEISS, SENIOR VICE PRESIDENT*

IN ITS CAPACITY AS SECURED CREDITOR OF THE PROPERTY WITH NO PERSONAL OR CORPORATE LIABILITY

INFORMATION ON BROKERAGE(S)	
Listing Brokerage <b>RE/MAX PROFESSIONALS INC.</b>	Tel.No. <b>(416) 236-1241</b>
<i>Jody Thompson</i> (Salesperson / Broker Name)	
Co-op/Buyer Brokerage <b>RE/MAX PROFESSIONALS INC.</b>	Tel.No. <b>(416) 236-1241</b>
<i>JESSIE WARD</i> (Salesperson / Broker Name)	

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

*COLLINS BARROW REALTY LIMITED*  
DATE *MARCH 15, 2016*

*Carla Dorigo*  
DATE *March 15, 2016*

*Daniel Weiss*  
DATE .....

*J Ward*  
DATE *March 15, 2016*

Address for Service .....

Address for Service .....

Tel.No. ....

Tel.No. ....

Seller's Lawyer *Colleen Shea*

Buyer's Lawyer *Gary Steinberg*

Address .....

Address .....

Email *patricia.shea@geowestwlg.com*

Email *gary@manysteinberg.com*

Tel.No. *416-369-7399*

Tel.No. *416-531-4105*

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.	
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.	Authorized by .....
(Authorized to bind the Listing Brokerage)	(Authorized to bind the Co-operating Brokerage)

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\* IN ITS CAPACITY AS SECURED CREDITOR OF THE PROPERTY WITH NO PERSONAL OR CORPORATE LIABILITY

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER, Carla Dovigo, Jessie Ward and Patrick Ryan Ward** ....., and

**SELLER, Colins Barrow Toronto Limited** .....

for the purchase and sale of 32 Twenty Fourth St Toronto

M8V3N6 dated the 15 day of March, 2016

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

~~The Seller agrees to allow 2 accesses for viewing on this property before closing, subject to providing 24 hours notice.~~

~~The Seller warrants that the Property will be delivered to the Buyer in broom swept condition, and that all debris and garbage will be removed from the Property at the time of closing.~~

*JW C.D. P.R.*

*JW C.D. P.R.*

The Seller will make reasonable commerial efforts to allow 2 accesses for viewing on this property before Closing, Subject to the purchaser providing 24 hours notice.

*JW C.D. P.R.*

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): *[Handwritten initials]*

INITIALS OF SELLER(S): *[Handwritten initials]*

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**Schedule  
Agreement of Purchase and Sale**

This Schedule B is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Carla Dougo, Jessie Ward, Patrick Ryan Ward, and  
SELLER, Colins Barrow Toronto Ltd.  
for the property known as 32 Thicket Four St.  
Agreement of Purchase and Sale dated March 15, 2016.

The Buyer agrees to provide the Listing Brokerage with the deposit money by way of a certified cheque or bank draft, payable to RE/MAX Professionals Inc.

The deposit holder, RE/MAX Professionals Inc., advises that the Real Estate Trust account in which the deposit for this transaction ("the deposit") shall be placed attracts interest at a variable rate, calculated using the Bank of Canada prime rate, minus between 2.25% and 3.25%, dependent upon the combined total of all monies in the real estate accounts for the same period. All interest earned by the monies held in the Real Estate Trust Account shall be retained by RE/MAX Professionals Inc.

For the purposes of this Agreement, the terms "banking days" or "business days" shall mean 11:59 p.m. any day, other than Saturday, Sunday and Statutory Holiday recognized in the Province of Ontario.

This page must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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RE/MAX Professionals Inc.

easyOFFER 2015 by



Reaganoy Systems Corp.  
www.Reaganoy.ca

Form 105 Revised 2008

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This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Carla Dovigo, Jessic Ward & Patrick Ryan Ward....., and

**SELLER,** Collins Barrow Toronto Limited.....

for the property known as 32 Twenty Fourth Street, Toronto, Ontario M8V 3N6

Toronto..... dated the 15<sup>th</sup>..... day of March..... 2016.....

1. The Buyer acknowledges and agrees that the Property will be purchased on an 'as is, where is' and 'without recourse' basis and that it has inspected the Property and is relying entirely on its own investigations and its inspections.

2. The Buyer hereby acknowledges and agrees:

(a) It is responsible for conducting its own searches and investigations of the current and past uses of the Property;

(b) It is relying entirely upon its own investigations and inspections in making this Offer;

(c) It is purchasing the Property on an 'as is, where is' basis including without limitation, outstanding work orders, title, deficiency notices, compliance requests, developments fees, 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;

(d) Save and except as expressly provided otherwise herein, it shall assume, at its cost, complete responsibility for compliance with all municipal, provincial and federal laws in so far as the same apply to the Property;

(e) Collins Barrow Toronto Limited is acting solely in its capacity as secured creditor of the Property, with no personal or corporate liability (the 'Receiver');

(f) The Receiver is a secured creditor holding a court-ordered charge over the Property and is not the legal and beneficial owner of the Property. The Receiver is selling the Property in its capacity as a secured creditor holding a court-ordered charge over the Property;

(g) The Receiver shall have no liability or obligation with respect to the value, state or condition of the Property or of any buildings or structures on the Property, whether or not the matter is within the knowledge or imputed knowledge of the Receiver, or its officers, directors, employees, agents, representatives, and contractors before Closing, at Closing or thereafter;

(h) The Receiver has made no representations or warranties with respect to or in any way related to the Property, including, without limitation, the following:

\* The title, quality, quantity, marketability, fitness for any purpose, state, description, cost, size, condition, merchantability, valuation, revenues, expenses, assignability or location of the Property;

Continued on next page...

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** Carla Davigo, Jessie Ward & Patrick Ryan Ward, and

**SELLER:** Collins Barrow Toronto Limited

for the property known as 32 Twenty-Fourth Street, Toronto, Ontario M8V 3N6

Toronto dated the 15<sup>th</sup> day of March, 2016.


- \* Any set-off claims, lien claims or any other claims by any third parties against the Property;
- \* The environmental state of the Property, the existence, nature, kind, state or identity of any hazardous substances 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 nor the existence, state, nature, kind, identity, extent and effect of any liability to fulfil any obligation with respect to the environmental state of the Property including, without limitation, any obligation to deal with any discharge of any hazardous substances on, under or about the Property and 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 substances whether on, under or about the Property or elsewhere.

3. The Buyer acknowledges that title to the Property will be conveyed to it by means of a Transfer, which the Buyer will register on delivery by the Receiver, or its solicitors, to the Buyer.
4. The Buyer acknowledges that the sale of the Property is subject to approval by the Court. The Receiver shall be solely responsible for procuring such approval prior to the closing of the transaction.
5. In the event of any inconsistency between the printed text of the Agreement of Purchase and Sale and this Schedule, the terms of this Schedule shall govern.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): [Handwritten initials]

INITIALS OF SELLER(S): [Handwritten initials]

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