

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF SMURFIT-STONE  
CONTAINER CANADA INC. AND THE OTHER  
APPLICANTS LISTED ON SCHEDULE "A"

Applicants

**MOTION RECORD  
(Returnable December 1, 2009)**

November 26, 2009

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Sean F. Dunphy LSUC#: 24941J**  
Tel: (416) 869-5662

**Alexander Rose LSUC#: 49415P**  
Tel: (416) 869-5261  
Fax: (416) 861-0445

Lawyers for the Applicants

**TO: THE ATTACHED SERVICE LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED  
AND IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND IN  
THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE CONTAINER CANADA  
INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"**

**SERVICE LIST  
Last updated on October 6, 2009**

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>ANDRIESSEN &amp; ASSOCIATES, P.C.</b> 701 Evans Ave, Suite 900, Toronto Ontario, M9C 1A3  PAUL H. VOORN E-mail: <a href="mailto:pvoorn@andriessen.ca">pvoorn@andriessen.ca</a>	416.620.7020 Ext. 23	416.620.1398	Master Lift Truck Service
<b>ANDRITZ (USA) INC.</b> 1115 Northmeadow Parkway Roswell, Georgia 30076  DEBORAH B. ZINK (Senior Counsel) E-mail: <a href="mailto:Deborah.Zink@andritz.com">Deborah.Zink@andritz.com</a>	770.640.2591	770.640.2598	Andritz Ltd. (Brampton)
<b>AURELIUS CAPITAL MANAGEMENT, LP</b>  DAN GROPPER E-mail: <a href="mailto:dgropper@aurelius-capital.com">dgropper@aurelius-capital.com</a>  GABRIELLA SKIRNICK E-Mail: <a href="mailto:GSkirnick@aurelius-capital.com">GSkirnick@aurelius-capital.com</a>			Aurelius Capital Management, LP
<b>BEARD WINTER LLP</b> Barristers and Solicitors 130 Adelaide St. West Suite 701 Toronto, Ontario M5H 2K4  ROBERT C. HARASON E-mail: <a href="mailto:rharason@beardwinter.com">rharason@beardwinter.com</a>	416.593.5555          416.306.1707	416.593.7760	Modern Railings & Metalcraft Ltd.

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>BENNETT JONES LLP</b> 3400 One First Canadian Place P.O. Box 130 Toronto, Ontario M5X 1A4  KEVIN J. ZYCH E-mail: <a href="mailto:zychk@bennettjones.com">zychk@bennettjones.com</a>  S. RICHARD ORZY E-mail: <a href="mailto:orzyr@bennettjones.com">orzyr@bennettjones.com</a>  DEREK FRUEH E-mail: <a href="mailto:fruehd@bennettjones.com">fruehd@bennettjones.com</a>  RAJ SAHNI E-mail: <a href="mailto:sahnir@bennettjones.com">sahnir@bennettjones.com</a>  GAVIN H. FINLAYSON E-mail: <a href="mailto:finlaysong@bennettjones.com">finlaysong@bennettjones.com</a>	   416.777.5738  416.777.5737  416.777.6237  416.777.4804  416.777.5762	416.863.1716	Canadian Counsel for the Official Committee of Unsecured Creditors of Smurfit-Stone Container Corporation, <i>et al</i>
<b>BLAKE, CASSELS &amp; GRAYDON LLP</b> Box 25, Commerce Court West 199 Bay Street, Suite 2800, Toronto ON M5L 1A9 Canada  SUSAN M. GRUNDY E-mail: <a href="mailto:susan.grundy@blakes.com">susan.grundy@blakes.com</a>  LINC ROGERS E-mail: <a href="mailto:linc.rogers@blakes.com">linc.rogers@blakes.com</a>	416.863.2400  416.863.2572  416.863.4168	416.863.2653	JPMorgan Chase Bank, N.A., Toronto Branch and DIP Facility Lender (Canada)
<b>BRYAN CAVE LLP</b> 211 N. Broadway, Suite 3600 St. Louis, MO 63102  GREG WILLARD E-mail: <a href="mailto:gdwillard@bryancave.com">gdwillard@bryancave.com</a>  HAL BURROUGHS E-mail: <a href="mailto:hrburroughs@bryancave.com">hrburroughs@bryancave.com</a>  BART WALL E-mail: <a href="mailto:bdwall@bryancave.com">bdwall@bryancave.com</a>  KAREN FRIES E-mail: <a href="mailto:kwfries@bryancave.com">kwfries@bryancave.com</a>  JAMES BUELL E-mail: <a href="mailto:jgbuell@bryancave.com">jgbuell@bryancave.com</a>	314.259.2000  314.259.2370  314.259.2706  314.259.2765  314.259.2635  314.259.2373	314.259.2020	DIP Facility Lender (US)

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>CALEYWRAY            LABOUR/EMPLOYMENT LAWYERS</b> 1600-65 Queen Street West Toronto, ON, M5H 2M5  HAROLD F. CALEY E-mail: <a href="mailto:caleyh@caleywrap.com">caleyh@caleywrap.com</a>  JESSE B. KUGLER Email: <a href="mailto:kuglerj@caleywrap.com">kuglerj@caleywrap.com</a>	   416.775.4672   416).775.4677	416.366.3293	Communications, Energy and Paperworkers Union of Canada (CEP)
<b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza, 40 King Street West Toronto, Ontario, M5H 3C2  JOHN N. BIRCH E-mail: <a href="mailto:jbirch@casselsbrock.com">jbirch@casselsbrock.com</a>	416.860.5225	416.640.3057	Chemtrade Logistics Inc.
<b>COLUMBUS HILL CAPITAL MANAGEMENT, L.P.</b> 830 Morris Turnpike 2nd FL Short Hills, NJ 07078  DAVID W. AMBROSIA E-mail: <a href="mailto:david.ambrosia@columbushill.com">david.ambrosia@columbushill.com</a>	973.921.3425	973.921.3455	Noteholders of Stone Container Finance Company of Canada II
<b>DELOITTE &amp; TOUCHE INC.</b> 181 Bay Street Brookfield Place, Suite 1400 Toronto, Ontario M5J 2V1  PAUL CASEY E-mail: <a href="mailto:paucasey@deloitte.ca">paucasey@deloitte.ca</a>  CATHERINE HRISTOW E-mail: <a href="mailto:christow@deloitte.ca">christow@deloitte.ca</a>	416.601.5999 1-866-859-6954   416.775.7172   416.775.8831	416.601.6690	Monitor
<b>FLUXGOLD IZSAK JAEGER LLP</b> 100 York Blvd., Suite 220 Richmond Hill, ON L4B 1J8  BRUCE R. JAEGER E-mail: <a href="mailto:bjaeager@fijlaw.com">bjaeager@fijlaw.com</a>	905.763.3770   Ext. 212	905.763.3772	Torbram Electric Supply Corporation
<b>FTI CONSULTING</b> Suite 2733, TD Canada Trust Tower 161 Bay Street Toronto, ON, M5J 2S1  NIGEL D. MEAKIN E-mail: <a href="mailto:nigel.meakin@fticonsulting.com">nigel.meakin@fticonsulting.com</a>	416.572.2285	416.572.2201	Financial advisor to the unsecured creditors' committee

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>GOODMANS LLP</b> 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6  ROB CHADWICK E-mail: <a href="mailto:rchadwick@goodmans.ca">rchadwick@goodmans.ca</a>  CHRIS ARMSTRONG E-mail: <a href="mailto:carmstrong@goodmans.ca">carmstrong@goodmans.ca</a>	416.979.2211   416.597.4285   416.849.6013	416.979.1234	Deloitte & Touche Inc.
<b>GOWLING LAFLEUR HENDERSON LLP</b> 1 Place Ville Marie 37th floor Montréal, QC H3B 3P4  LOUISE LALONDE E-mail: <a href="mailto:louise.lalonde@gowlings.com">louise.lalonde@gowlings.com</a>	514.878.9641   514.392.9557	514.878.1450	Industries Wajax
<b>HARRISON PENZA LLP</b> 450 Talbot Street P.O. Box 3237 London, ON N6A 4K3  MICHAEL CASSONE E-mail: <a href="mailto:mcassone@harrisonpenza.com">mcassone@harrisonpenza.com</a>	519.679.9660   519.661.6765	519.667.3362	
<b>KOSKIE MINSKY LLP</b> 20 Queen Street West, Suite 900 Toronto, Ontario M5H 3R3  ANDREW J. HATNAY E-mail: <a href="mailto:ahatnay@kmlaw.ca">ahatnay@kmlaw.ca</a>  ANDREA MCKINNON E-mail: <a href="mailto:amckinnon@kmlaw.ca">amckinnon@kmlaw.ca</a>	416.977.8353   416.595.2083	416.977.3316   416.204.2872	Smurfit-Stone SERP Retirees Protection Committee
<b>KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP</b> 1177 Avenue of the Americas New York, NY 10036 U.S.A.  ROBERT T. SCHMIDT E-mail: <a href="mailto:rschmidt@kramerlevin.com">rschmidt@kramerlevin.com</a>  DOUGLAS MANNAL E-mail: <a href="mailto:dmannal@kramerlevin.com">dmannal@kramerlevin.com</a>  JENNIFER SHARRET E-mail: <a href="mailto:jsharret@kramerlevin.com">jsharret@kramerlevin.com</a>  JASON RAPPAPORT E-mail: <a href="mailto:jrappport@kramerlevin.com">jrappport@kramerlevin.com</a>	212.715.9527   212.715.9313   212.715.9516   212.715.9364	212.715.8000	U.S. Counsel for the Official Committee of Unsecured Creditors of Smurfit-Stone Container Corporation, <i>et al</i>

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>LOOPSTRA NIXON LLP</b> Woodbine place, 135 Queens Plate Drive, Suite 600 Toronto, ON M9W 6V7  MICHAEL B. MCWILLIAMS E-mail: <a href="mailto:mmcwilliams@loonix.com">mmcwilliams@loonix.com</a>	416.748.4766	416.746.8319	Preferred Polymer Coatings Ltd.
<b>MACLEOD DIXON LLP</b> Canadian Pacific Tower The Toronto-Dominion Centre 100 Wellington Street West, Suite 500 Toronto, ON M5K 1H1  ROBERT FRANK E-mail: <a href="mailto:robert.frank@macleoddixon.com">robert.frank@macleoddixon.com</a>	416.202.6741	416.360.8277	Shell Energy North America (Canada), Inc.
<b>MARTIN SHEPPARD FRASER LLP</b> Downtown Professional Building 4701 St. Clair Avenue, 2nd Floor P.O. Box 900, Niagara Falls ON L2E 6v7  GARY H. ENSKAT E-mail: <a href="mailto:enskat@martinshep.com">enskat@martinshep.com</a>	905.354.1611	905.354.5540	Pacific Northern Rail Contractors Inc.
<b>MCCARTHY TÉTRAULT LLP</b> Suite 5300, Toronto Dominion Bank Tower Toronto ON M5K 1E6  KEVIN MCELCHERAN E-mail: <a href="mailto:kncelcheran@mccarthy.ca">kncelcheran@mccarthy.ca</a>  MALCOLM M. MERCER E-mail: <a href="mailto:mmercerc@mccarthy.ca">mmercerc@mccarthy.ca</a>  HEATHER L. MEREDITH E-mail: <a href="mailto:hmeredith@mccarthy.ca">hmeredith@mccarthy.ca</a>	416.601.7539  416.763.0832  416.601.7856	416.868.0673	Aurelius Capital Management, LP and Columbus Hill Capital Management, L.P.
<b>MINISTRY OF THE ATTORNEY GENERAL  LEGAL SERVICES BRANCH  FINANCIAL SERVICES COMMISSION OF  ONTARIO</b> 17th Floor - Box 85 5160 Yonge Street Toronto ON M2N 6L9  MARK BAILEY E-mail: <a href="mailto:mbailey@fSCO.gov.on.ca">mbailey@fSCO.gov.on.ca</a>	416.590.7555	416.590.7070	Superintendent of Financial Services

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>ONTARIO MINISTRY OF REVENUE</b> 6-33 King St W Oshawa, ON L1H 8H5  CHANTALE BOURRE E-mail: <a href="mailto:chantale.bourre@ontario.ca">chantale.bourre@ontario.ca</a>	1.866.668.8297  Ext. 18515	905.436.4524	Province of Ontario
<b>PRICEWATERHOUSECOOPERS INC.</b> 77 King Street West, Toronto, ON, M5K 1G8  JOHN MCKENNA E-mail: <a href="mailto:john.p.mckenna@ca.pwc.com">john.p.mckenna@ca.pwc.com</a>	416.941.8314	416.814.3210	Advisor to the Applicants and Partnerships
<b>SEPB QUEBEC</b> 1200, avenue Papineau Bureau 250 Montréal, Québec H2K 4R5  PIERRE GINGRAS E-mail: <a href="mailto:pgingras@sepb.qc.ca">pgingras@sepb.qc.ca</a>	514.522.6511	514.522.9000	SEPB Quebec
<b>SIDLEY AUSTIN LLP</b> One South Dearborn Street Chicago, IL 60603  JAMES F. CONLAN E-mail: <a href="mailto:jconlan@sidley.com">jconlan@sidley.com</a>  MATTHEW A. CLEMENTE E-mail: <a href="mailto:mclemente@sidley.com">mclemente@sidley.com</a>  DENNIS M. TWOMEY E-mail: <a href="mailto:dtwomey@sidley.com">dtwomey@sidley.com</a>  BOJAN GUZINA E-mail: <a href="mailto:bguzina@sidley.com">bguzina@sidley.com</a>	312.853.7000  312.853.6890  312.853.7539  312.853.7438  312.853.7323	312.853.7036	Smurfit-Stone Container Corporation (US counsel)
<b>SIMPSON THACHER &amp; BARTLETT LLP</b> 425 Lexington Avenue New York, NY 10017-3954 USA  STEFANIE BIRKMANN E-mail: <a href="mailto:sbirkmann@stblaw.com">sbirkmann@stblaw.com</a>  PETER V. PANTALEO E-mail: <a href="mailto:ppantaleo@stblaw.com">ppantaleo@stblaw.com</a>	212.455.2000  212.455.2694  212.455.2220	212.455.2502	Pre-petition lenders (US counsel)



<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>STIKEMAN ELLIOT LLP</b> 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9  <b>SEAN DUNPHY</b> E-mail: <a href="mailto:sdunphy@stikeman.com">sdunphy@stikeman.com</a>  <b>ALEXANDER ROSE</b> E-mail: <a href="mailto:arose@stikeman.com">arose@stikeman.com</a>	416.869.5500  416.869.5662  416.869.5261	416.947.0866	Smurfit-Stone Container Canada Inc.
<b>SUPERINTENDENT OF FINANCIAL SERVICES FINANCIAL SERVICES COMMISSION OF ONTARIO PENSION PLANS BRANCH</b> 5160 Yonge Street, 4th Floor P.O. Box 85 North York, ON M2N 6L9  <b>ANNA VANI</b> E-mail: <a href="mailto:Anna.Vani@fsc.gov.on.ca">Anna.Vani@fsc.gov.on.ca</a>	416.226.7793	416.226.7777	Superintendent of Financial Services
<b>THORNTONGROUTFINNIGAN LLP</b> Suite 3200, Canadian Pacific Tower 100 Wellington Street West Toronto, Canada, M5K 1K7  <b>JOHN T. PORTER</b> E-mail: <a href="mailto:jporter@tgf.ca">jporter@tgf.ca</a>  <b>KIM G. FERREIRA</b> E-mail: <a href="mailto:kferreira@tgf.ca">kferreira@tgf.ca</a>	416.304.1616  416.304-0778  416.304.0591	416.304.1313	Casco Inc. & Corn Products International, Inc.
<b>THORNTONGROUTFINNIGAN LLP</b> Suite 3200, Canadian Pacific Tower 100 Wellington Street West Toronto, Canada, M5K 1K7  <b>ROBERT I THORNTON</b> E-mail: <a href="mailto:rthornton@tgf.ca">rthornton@tgf.ca</a>  <b>SEEMA AGGARWAL</b> E-mail: <a href="mailto:saggarwal@tgf.ca">saggarwal@tgf.ca</a>	416.304.1616	416.304.1313	Manufacturers and Traders Trust Company, in its capacity as Indenture Trustee
<b>TRANSFORCE INC.</b> 8585 Trans-Canada Hwy, Suite 300 St. Laurent, QC H4S 1Z6  <b>PATRICK-JAMES BLAINE</b> E-mail: <a href="mailto:pblaine@transforce.ca">pblaine@transforce.ca</a>	514.331.4000  514.331.4154	514.337.4200	Besner Transport TFI 2 SEC Gregoire Transport (TFI 15 Sec) TFI Transport 2 L P TFI Transport 2 L P (Landry) Patriot Freight Services Inc. Transport Thibodeau

<i>Lawyers</i>	<i>Telephone</i>	<i>Fax</i>	<i>Lawyers For</i>
<b>UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS)</b> 800-234 Eglinton Ave. East Toronto, ON M4P 1K7  PAULA TURTLE E-Mail: <a href="mailto:pturtle@usw.ca">pturtle@usw.ca</a>	416.487.1571	416.482.5548	United Steelworkers
<b>YOUNG CONAWAY STARGATT &amp; TAYLOR</b> The Brandywine Building 1000 West Street, 17th Floor P.O. Box 391 Wilmington, DE 19899-0391  ROBERT S. BRADY E-mail: <a href="mailto:rbrady@ycst.com">rbrady@ycst.com</a>  EDMON L. MORTON E-mail: <a href="mailto:emorton@ycst.com">emorton@ycst.com</a>	302.571.6600	.302.571.1253	Smurfit-Stone Container Corporation (US counsel)
	302.571.6690	302.576.3283	
	302.571.6637	302.576.3320	

\5762263

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF SMURFIT-STONE  
CONTAINER CANADA INC. AND THE OTHER  
APPLICANTS LISTED ON SCHEDULE "A"

Applicants

**INDEX**

<u>TAB</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1.	Notice of Motion	1 - 9
2.	Affidavit of Dean Jones, sworn November 26, 2009	10 - 23
A.	Edmonton Agreement	24 - 32
B.	Whitby Agreement	33 - 55
C.	Amended and Restated Initial Order	56 - 83
D.	Memorandum from Brett Elogson, Avison Young Commercial Real Estate (Ontario) Inc.	84 - 86
3.	Draft Order (Edmonton)	87 - 101
4.	Draft Order (Whitby)	102 - 116

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF SMURFIT-STONE  
CONTAINER CANADA INC. AND THE OTHER  
APPLICANTS LISTED ON SCHEDULE "A"

Applicants

**NOTICE OF MOTION  
(Returnable December 1, 2009)**

The Applicants listed on Schedule "A" hereto will make a motion before a judge of the Ontario Superior Court of Justice on December 1, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. Orders:
  - (a) approving the sales transactions contemplated by:
    - (i) the offer to purchase and agreement between MBI Limited and General Realty Group or its nominee ("General Realty") made as of November 4, 2009 (the "Edmonton Agreement"); and

- (ii) the offer to purchase and agreement between MBI Limited and Andreas Apostolopoulos, in trust for a company to be formed or an existing corporation and without personal liability, made as of September 10, 2009 (the "Whitby Agreement"); and
  - (b) vesting the property subject to the Edmonton Agreement (the "Edmonton Property") and the property subject to the Whitby Agreement (the "Whitby Property") free and clear of all encumbrances, save for those specified in the Edmonton and Whitby Agreements; and
2. Such further and other relief as to this Honourable Court seems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. Each of the Applicants is either a direct or indirect subsidiary of Smurfit-Stone Container Corporation, a Delaware corporation ("SSCC"). SSCC and certain of its direct and indirect subsidiaries, including the Applicants and the Partnerships listed on Schedule "B" hereto, filed for protection from their creditors under title 11 of chapter 11 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1532, in the United States Bankruptcy Court for the District of Delaware on January 26, 2009.
2. On January 26, 2009, SSC Canada, MBI Limited and the other Applicants and the Partnerships obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and the initial order of the Ontario Superior Court of Justice (the "Court"), as subsequently amended and restated (the "Initial Order").

3. The Initial Order provides at paragraph 11(a) that the Applicants and Partnerships have the right to permanently or temporarily cease, downsize, or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction, or \$25 million in the aggregate. As each of the Whitby and Edmonton Properties is proposed to be sold for consideration greater than \$2 million, Court approval is required.

#### **Closure and Marketing**

4. In an effort to limit future operating losses and to consolidate production and the customer base, the Whitby facility was closed in the fall of 2008 and the Edmonton facility was closed in September 2009.
5. The Applicants employed the brokerage firm Avison Young to conduct a marketing process aimed at generating multiple buyers for the two facilities. That process culminated in the Edmonton Agreement and the Whitby Agreement.
6. The Edmonton Agreement and the Whitby Agreement are commercially reasonable and are in the best interests of the Applicants and Partnerships and their stakeholders.

### **The Edmonton Sale**

7. The Edmonton Property generated considerable interest, receiving two unconditional and two conditional offers.
8. MBI Limited accepted General Realty's unconditional offer (the "Accepted Offer"). Closing is to occur on the 40<sup>th</sup> day following full acceptance of the offer to purchase, being December 14, 2009.
9. The offer price of the Accepted Offer exceeded that of the other unconditional offer and the terms of the Accepted Offer, taken as a whole, were superior to the conditional offers. In particular, the price differential between the conditional offers and the Accepted Offer would be offset by the costs of carrying and maintaining the property during the longer closing period associated with the conditional offers and the increased closing risk.

### **The Whitby Sale**

10. After ten months of active marketing, MBI Limited only received one conditional offer for the Whitby Property, which was accepted. Closing is to occur after 90 days of due diligence, with an additional ten days to close following completion of the due diligence process, being the end of December, 2009.



11. By achieving the desired purchase price and in the absence of alternate bidders, the Whitby Agreement represents the best available disposition of the Whitby Property.
12. Rule 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Affidavit of Dean Jones, to be sworn;
2. The Ninth Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

November 25, 2009

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9

**Sean F. Dunphy LSUC #24941J**  
Tel: (416) 869-5662  
**Alexander D. Rose LSUC #49415P**  
Tel: (416) 869-5261  
Fax: (416) 947-0866

Lawyers for the Applicants

**SCHEDULE "A"**

Smurfit-Stone Container Canada Inc.

3083527 Nova Scotia Company

MBI Limited/Limitée

639647 British Columbia Ltd.

B.C. Shipper Supplies Ltd.

Specialty Containers Inc.

605681 N. B. Inc.

Francobec Company

Stone Container Finance Company of Canada II

**SCHEDULE "B"**

Smurfit-MBI

SLP Finance General Partnership

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36 AS AMENDED  
AND IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE  
CONTAINER CANADA INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Court File No: CV-09-7966-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Sean F. Dunphy LSUC#24941J**  
Tel: (416) 869-5662  
**Alexander D. Rose LSUC#49415P**  
Tel: (416) 869-5261  
Fax: (416) 947-0866

Lawyers for the Applicants

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SMURFIT-STONE CONTAINER CANADA  
INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Applicants

**AFFIDAVIT OF DEAN JONES  
(sworn November 26, 2009)**

I, Dean Jones, of the City of Montreal in the Province of Québec, **MAKE OATH AND SAY:**

**I. Introduction**

1. I am the Senior Counsel, International Affairs & Assistant Secretary, of Smurfit-Stone Container Canada Inc. ("**SSC Canada**") and as such have knowledge of the matters to which I hereinafter depose, except where stated to be based on information and belief and, where so stated, I verily believe same to be true.

2. As Senior Counsel of International Affairs, I have been charged with directing the sale of the Smurfit-MBI ("**SMBI**") Edmonton and Whitby facilities. In doing so, I relied upon the assistance of a number of persons, including

PricewaterhouseCoopers Inc. ("PWC"), financial advisors to the Applicants and the Partnerships listed on Schedules "A" and "B" hereto, and Smurfit-Stone Container Corporation's internal accounting group. I also relied upon the brokerage firm Avison Young to effectively market and sell the Edmonton and Whitby facilities in a timely and efficient manner. I understand from its marketing materials and website that Avison Young is Canada's largest independently-owned commercial real estate services company.

## II. Overview

3. This affidavit is made in support of a motion for Orders:
  - (a) approving the sales transactions contemplated by:
    - (i) the offer to purchase and agreement between MBI Limited and General Realty Group or its nominee ("**General Realty**") made as of November 4, 2009 and attached hereto as **Exhibit "A"** (the "**Edmonton Agreement**"); and
    - (ii) the offer to purchase and agreement between MBI Limited and Andreas Apostolopoulos, in trust for a company to be formed or an existing corporation and without personal liability ("**Apostolopoulos**"), made as of September 10, 2009 and attached hereto as **Exhibit "B"** (the "**Whitby Agreement**"); and
  - (b) vesting the property subject to the Edmonton Agreement (the "**Edmonton Property**") and the property subject to the Whitby Agreement (the "**Whitby Property**") free and clear of all encumbrances, save for those specified in the Edmonton and Whitby Agreements.

## III. Insolvency Proceedings

4. On January 26, 2009, Smurfit-Stone Container Corporation and certain of its direct and indirect subsidiaries, including Smurfit-Stone Container Enterprises Inc.



and the Applicants and Partnerships (collectively, the "U.S. Debtors") filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. in the United States Bankruptcy Court (the "U.S. Court") for the district of Delaware (the "Chapter 11 Proceedings").

5. Later that day, the Applicants and the Partnerships applied for, and obtained, protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA"), pursuant to an order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (Commercial List) dated January 26, 2009, as subsequently amended and restated (the "Initial Order"). A copy of the Initial Order is appended to this my affidavit as Exhibit "C".

6. The Initial Order granted a stay of proceedings until February 25, 2009, or such later date as this Honourable Court may order (the "Stay Period"). The Stay Period has now been extended to December 24, 2009 by a Stay Extension Order dated September 25, 2009. The Initial Order further provides at paragraph 11(a) that the Applicants and Partnerships have the right to permanently or temporarily cease, downsize, or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction, or \$25 million in the aggregate.

7. In anticipation of the Chapter 11 Proceedings and these CCAA proceedings, the U.S. Debtors, including the Applicants and Partnerships, entered into a credit agreement in order to, amongst other things, finance the Applicants' and

Partnerships' post-filing working capital requirements, general corporate purposes and permitted capital expenditures and to refinance the accounts receivable securitization program in Canada (the "DIP Facility").

### III. Overview of the Transactions

8. In order to limit future operating losses and out of a desire to consolidate production and the customer base, SMBI's Whitby facility was closed in the fall of 2008 and its Edmonton facility was closed in September 2009. Continuing to hold the two closed facilities meant that SMBI continued to incur various carrying costs, including taxes, insurance, and environmental and maintenance costs. In addition, because amounts remain outstanding under the DIP Facility, SMBI was in a position of holding and maintaining unproductive assets when they could be sold and the proceeds used to pay down the DIP Facility and reduce the associated interest expense.

9. In an effort to sell the two facilities, Avison Young developed a marketing plan aimed at generating multiple buyers. After ten months of active marketing, however, SMBI only received one offer for the Whitby facility. Brett Elofson, Vice President, Principal of Avison Young, advises me that the lack of significant interest in the Whitby facility was principally a function of prevailing economic conditions as well as the lack of a market in the area for light industrial facilities, which is not expected to improve in the near future. By contrast, the Edmonton facility generated considerably more interest, with an offer being made even before Avison Young

formally listed the property. After listing, the Edmonton facility received three additional offers and SMBI was able to generate an informal bidding process by playing the bids against each other.

(a) **The Edmonton Sale Process**

10. In the fall of 2009, on Avison Young's advice, SMBI listed the land and buildings comprising the Edmonton Property (excluding the equipment) for \$4,700,000 CDN, being the upper end of Avison Young's valuation range for the Edmonton Property.

11. Of the four offers SMBI received on the Edmonton Property, two were unconditional and two were conditional offers.

12. The first unconditional offer for \$4,000,000 CDN was a firm and final offer made by an investment firm that, according to Avison Young, intended to flip or lease the Edmonton Property (the "**First Unconditional Offer**"). The second unconditional offer was initially for \$3,500,000 CDN. It was made by General Realty, which was well-known to SMBI and Avison Young, and which verbally indicated that it would be prepared to offer a higher purchase price for the Edmonton Property (the "**Second Unconditional Offer**").

13. The two other offers were for \$4,700,000 CDN (the "**First Conditional Offer**") and \$4,800,000 CDN (the "**Second Conditional Offer**") but they entailed significant closing risk and would, in any event, take substantially longer to close than the

Unconditional Offers. I was advised by Avison Young that both conditional offerors intended to use the Plant for manufacturing purposes. Both Avison Young and I were apprehensive about the First Conditional Offer, as the offeror company was unknown to either SMBI or Avison Young, little information about the proposed purchaser could be found and assurances could not be given as to financing or closing. With respect to the Second Conditional Offer, while seeming to be a reliable and credible purchaser, this offer was conditional upon the sale of an existing building in Edmonton, which sale was not assured.

14. After extensive negotiations, General Realty raised its offer by \$1 million to \$4.5 million and removed certain potentially onerous conditions, notably the requirement to remove all piping and conduits to bring the building back to its base building standard, as well as the removal of all asbestos from the building, as contemplated in the original offer to purchase.

15. Both Avison Young and I considered General Realty's offer to be superior to either of the two Conditional Offers. After consulting with (i) Damian Poluso at PWC, in order to determine the amount of interest expense related to carrying the Edmonton Property, and (ii) SMBI's accounting department in order to determine the other carrying costs associated with the Edmonton Property, it was readily apparent to me that the price differential between the Conditional Offers and General Realty's offer was likely offset by the costs of carrying and maintaining the property during

the longer closing period associated with the Conditional Offers, and that, in addition, the Conditional Offers had increased closing risk.

16. On November 4, 2009, MBI Limited, the registered property owner and General Realty executed the Edmonton Agreement, agreeing to the sale of the Edmonton Property for \$4,500,000 CDN, with closing to occur on the 40th day following full acceptance of the Offer to Purchase, being December 14, 2009 (the "Edmonton Closing Date"), and on condition that the Edmonton Sale is approved by the Court. General Realty provided a deposit to the Brokers to be held in a trust account pending the closing or earlier termination of the Edmonton Agreement. The proceeds of the sale are intended to repay amounts outstanding under the DIP Facility.

17. The Edmonton Agreement provides that, except for the representations and warranties stated therein, General Realty is acquiring the Edmonton Property on an "as-is" and "where is" basis. Title to the Edmonton Property will vest in the purchaser free and clear of all encumbrances except for those outlined in Schedule "A" to the Edmonton Agreement.

**(b) The Whitby Sale Process**

18. Shortly after closing the Whitby facility in the fall of 2008, SMBI listed the land and the existing industrial building comprising the Whitby Property (but not the associated equipment).

19. In October 2008, Avison Young began to market the Whitby Property. The marketing campaign consisted of, in part:

- (a) compiling a marketing package and detailed investment memorandum and circulating hundreds of email and hard copies to every commercial real estate agent in the Whitby and Greater Toronto area (the "GTA");
- (b) cold calling every company of significant size in the Whitby area;
- (c) compiling a list of over 600 commercial and residential developers in Whitby and the GTA and sending a marketing package to all the developers positioning the site as a redevelopment opportunity;
- (d) listing the Whitby Property with the City of Whitby's Business Development Office;
- (e) placing monthly advertisements in the local Whitby newspapers highlighting the Whitby Property; and
- (f) compiling a list of over 1000 manufacturing companies in Ontario and distributing a marketing package to all of them.

20. Attached hereto and marked as **Exhibit "D"** to this my affidavit is a memo from Brett Elofson outlining the marketing efforts pertaining to the sale of the Whitby Property.

21. In June 2009, SMBI received a letter of intent (the "**Letter of Intent**") to purchase the Whitby Property from Apostolopoulos. The Letter of Intent contemplated a conditional offer for \$1,500,000 CDN (the "**Offer**") to purchase the Whitby Facility.

22. Upon receipt of the Offer, Avison Young began informing all previously interested potential purchasers of the Offer in an effort to increase the number of offers on the Whitby Property. No additional offers were presented.

23. SMBI and Apostolopoulos entered into negotiations pursuant to which Apostolopoulos raised his offer by \$650,000. Those negotiations culminated in a conditional agreement of purchase and sale that was accepted on September 10, 2009. As per the terms of the Whitby Agreement, the Whitby Property will be sold to Apostolopoulos for \$2,150,000 CDN. A deposit was provided and is being held in trust by the Brokers. The Whitby Agreement contemplates a closing date after 90 days of due diligence with an additional ten days to close following completion of the due diligence process (the "Whitby Closing Date"). The proceeds of the sale are intended to repay amounts outstanding under the DIP Facility.

24. The Whitby Agreement of Purchase and Sale is conditional upon, amongst other things:

- (a) Apostolopoulos satisfying himself as to the potential economic performance of the Whitby Property and SMBI's deliveries;
- (b) the physical condition and state of repair of the building;
- (c) the Whitby Property not being subject to any conservation restrictions, planning designations and other restrictions;
- (d) engineering inspections, structural inspections, environmental inspections, and other investigations and inspections as required;
- (e) the Whitby Property not containing any hazardous substances;
- (f) the suitability of the permitted encumbrances;
- (g) the lands being zoned to permit the existing use;
- (h) a determination that the existing use of the lands is suitable for Apostolopoulos' intended use of the Whitby Property; and
- (i) approval of this Honourable Court.

25. Pursuant to the Whitby Agreement, on the Whitby Closing Date, title of the Whitby Property must be free and clear of all encumbrances, except for those listed in Schedule "A" to the Whitby Agreement.

26. The Whitby Agreement states that, except for the covenants, representations and warranties as expressly contemplated therein, Apostolopoulos agrees to acquire the Whitby Property on an "as is" and "where is" basis, free of any other representations or warranties, expressed or implied.

27. I believe, and I am advised by Brett Elofson of Avison Young that he believes, that the Whitby Agreement represents the best available disposition of the Whitby facility. SMBI has achieved its desired purchase price in the absence of alternate bidders. Furthermore, Mr. Elofson has advised, and I believe, that it is unlikely that any other potential purchaser will emerge during the due diligence period or the foreseeable future.

28. As of the date of swearing this affidavit, Apostolopoulos has not indicated that his diligence has revealed any issue which would delay or prevent a closing of the sale of the Whitby Property in accordance with the Whitby Agreement, which closing is anticipated by the end of December, 2009.



SWORN BEFORE ME at the City of  
Montreal, on November 26, 2009.

Pascal  
Commissioner for Taking Affidavits

[Signature]  
Dean Jones



**SCHEDULE "A"**

Smurfit-Stone Container Canada Inc.

3083527 Nova Scotia Company

MBI Limited/Limitée

639647 British Columbia Ltd.

B.C. Shipper Supplies Ltd.

Specialty Containers Inc.

605681 N. B. Inc.

Francobec Company

Stone Container Finance Company of Canada II

**SCHEDULE "B"**

Smurfit-MBI

SLP Finance General Partnership

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36 AS AMENDED  
AND IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE  
CONTAINER CANADA INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Court File No: CV-09-7966-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF DEAN JONES  
(SWORN NOVEMBER 26, 2009)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Sean F. Dunphy LSUC#: 24941J**  
Tel: (416) 869-5662


**Alexander Rose LSUC#: 49415P**  
Tel: (416) 869-5261  
Fax: (416) 861-0445

Lawyers for the Applicants

# TAB A

This is Exhibit "A" referred to in the Affidavit of  
**Dean Jones**  
solemnly declared before me in Montreal  
this 26<sup>th</sup> day of November, 2009



  
\_\_\_\_\_  
Commissioner of Oaths for all of the  
districts of the province of Quebec

OFFER TO PURCHASE

TO: AVISON YOUNG  
REAL ESTATE ALBERTA INC.  
2500 Scotia Place, Tower 1  
10060 Jasper Avenue  
EDMONTON, Alberta T5J 3R8

ATTENTION: Thomas Ashcroft

General Realty Group Ltd. Or Nominee (hereinafter referred to as the "Purchaser") hereby Offers to Purchase from MBI Limited/Limitee (hereinafter referred to as the "Vendor") the land and buildings legally described as:

PLAN 3328TR;  
BLOCK 3;  
LOT 7

Excepting there out all mines and minerals

(hereinafter referred to as the "said lands")

This Offer to Purchase is made on the following terms and conditions:

1. PRICE

1.1 The total purchase price shall be FOUR MILLION FIVE HUNDRED THOUSAND (~~\$4,500,000.00~~ ~~4,000,000.00~~) DOLLARS, to be paid in lawful money of Canada at Edmonton, Alberta, in the following manner:

\$500,000.00 (FIVE HUNDRED THOUSAND DOLLARS) as a deposit (the "Deposit") paid within seventy two hours of acceptance to AVISON YOUNG COMMERCIAL REAL ESTATE ALBERTA INC. (the "Escrow Agent") to be held in a trust account pending the closing or earlier termination of this Agreement. The ~~deposit~~ Deposit shall be placed in an interest bearing account with interest accruing to the Purchaser.

~~\$4,000,000.00~~ (~~THREE FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS~~) ~~more~~ or less subject to adjustment in accordance with Clause 2.1, payable in cash on the ~~closing date~~ Closing Date (as hereafter defined).

~~\$4,500,000.00~~ 4,000,000.00 TOTAL PURCHASE PRICE

1.2 The aforesaid total purchase price shall include the building, all appurtenances thereon and improvements fixed or otherwise now therein or hereafter put therein together with all fixtures and equipment and other apparatus pertinent thereto and necessary for the running of the building, (except such fixtures and equipment as are owned by the ~~tenant~~ Vendor and were used in the course of its business (the "Vendor Equipment")), all of which fixtures and equipment are to be free and clear of all encumbrances.

## 2. CLOSING AND TITLE

2.1 All expenditures, taxes, interest and revenue of whatsoever nature shall be adjusted to the ~~90~~<sup>40</sup> day following full acceptance of this Offer to Purchase, (the "Closing Date") on which date (or on such other date as may be mutually agreed upon in writing by the Purchaser and the Vendor) the Transfer of Title and exchange of formal documents in registerable form shall take place. It is understood that on the ~~closing date~~ Closing Date, the title to the said lands will be free and clear of all encumbrances except for those outlined on Schedule "A". It is also understood that should the Vendor require reasonable additional time to ~~remove the Vendor Equipment and vacate the premises~~ that this shall be acceptable, and that the Closing Date shall be postponed accordingly. Closing shall occur when the Transfer of Title and exchange of formal documents in registerable form shall take place and the total purchase price has been paid to Vendor ("Closing"). ~~On closing~~ Upon Closing, Purchaser shall receive sole possession of the premises.

2.2 The Vendor and Purchaser hereby agree that the Purchaser may elect to Close the transaction as soon as may be reasonably possible with the proper coordination of Closing documents and transfer of Title. Both parties will work cooperatively toward this end should the Purchaser elect to Close sooner than ~~90~~ 40 days as noted in Clause 2.1. If Vendor has not completed the removal of the Vendor Equipment by the earlier Closing Date, Purchaser will afford Vendor an additional 30-day period after the Closing to complete said removal and vacate the premises

~~2.3 The Vendor and Purchaser hereby agree that all equipment, piping and conduit lines that are not a part of the building for the buildings normal functioning are to be removed to bring building back to general base building standards by the closing date.~~

~~2.4 The Vendor hereby agrees that all asbestos will be removed from the building prior to the closing date.~~

## 3. CANADIAN RESIDENT

3.1 The Vendor shall on ~~closing~~ Closing, either deliver to the Purchaser such assurance or evidence as the Purchaser may reasonably require to establish that the Vendor is a resident in Canada as at the ~~date of closing~~ Closing date for the purposes of S.116 of the Income Tax Act, or deliver to the Purchaser the Certificate or Certificates obtained from the Minister of National Revenue of Canada pursuant to S.116(2) of the Income Tax Act and pursuant to which the Purchaser shall be entitled to withhold and pay as tax on behalf of the Vendor, the amount of tax calculated in accordance with S.116(5).

## 4. VENDOR'S COVENANTS, WARRANTIES AND AGREEMENTS

4.1 The Vendor undertakes that from the date of acceptance hereof until the ~~closing date~~ Closing Date or earlier termination of this Agreement, it will not enter into any lease, agreement to lease, tenancy or any other agreement related to the said lands and improvements thereon unless the Purchaser shall in advance consent thereto in writing, such consent not to be unreasonably nor arbitrarily withheld. ~~As a condition of closing, the~~ The Vendor shall be deemed to represent and warrant that it has not entered into any such lease or agreement at Closing time.



4.2 The said lands shall be held by the Vendor at the Vendor's risk until Closing and the Vendor will hold all policies of insurance effected on the said lands and the proceeds thereof in trust for the parties hereto, as their interests may appear. In the event of damage to, or destruction of the building situated upon the said lands before Closing, the Purchaser will have the right to elect to take such proceeds and complete the purchase as set forth herein or ~~cancel~~ terminate this Agreement by written notice to Vendor, whereupon the Purchaser shall be entitled to the return of ~~all monies theretofore the Deposit paid on account of this purchase and, notwithstanding Clause 16 hereof, neither party shall be liable in any manner whatsoever to the other party as a result of such termination.~~

## 5. DELIVERY OF DOCUMENTS

5.1 The Vendor will exercise its best good faith efforts to deliver to the Purchaser the following documents (or copies thereof) as soon as practicable before the ~~closing date~~ Closing Date, all other documents will be the responsibility of the Purchaser:

- a) Any and all plans and specifications, detailed work drawings, construction drawings and soil test reports in the possession of or available to the Vendor including any drawings for future expansion.
- b) Notices, accounts, assessments, valuations and any other documents relating to property taxes for the said lands.
- c) An up to date Real Property Report and Compliance Certificate with respect to the said lands. ~~(Should one not be available then the Vendor shall have one completed and provided to the Purchaser for review prior to the expiry of the Purchaser's Conditional period.)~~
- d) All contracts, agreements and undertakings relating to the operation, maintenance and repair of the property including without limitation service, maintenance and employment contracts.
- e) All plans, studies, reports or permits relating to the property or any proposed changes or expansions therein or thereof, including roof reports, structural reports, boiler certifications, HVAC maintenance reports, environmental reports, etc.

## 6. VENDOR'S WARRANTIES

6.1 The Purchaser is aware and acknowledges that the Vendor has sought and received relief and protection from its creditors in Canada pursuant to the Companies Creditors Arrangement Act and in the United States pursuant to Chapter 11 of the Bankruptcy Code. As a result, Vendor may be in default in the payment of moneys owed to creditors under various contracts which may or may not be related to said lands. Purchaser also understands and acknowledges that the Closing of the transactions specified herein is subject to approvals of the relevant courts having jurisdiction over Vendor's insolvency and restructuring proceedings in Canada and the United States. Notwithstanding Clause 16 hereof, in the event such approvals are not obtained, Vendor shall have the right to terminate this Agreement and the Purchaser shall be entitled to the return of the Deposit from the Escrow Agent, in which case neither party shall be liable in any manner whatsoever to the other party as a result of such termination. The Vendor does not have any reason to believe however that such approvals and the required

order vesting title in the said lands to the Purchaser won't be obtained in a timely fashion. Subject to the foregoing. The the Vendor warrants to the Purchaser the following:

- a) That there is no legal action outstanding with respect to the said lands.
- b) That the Vendor is not in breach of any contract with respect to the said lands that would prevent the consummation of the transactions contemplated by this Offer.
- c) That the Vendor is not in breach on his part to any third party with respect to the said lands for any monetary or other obligation that would prevent the consummation of the transactions contemplated by this Offer.

6.2 Subject to obtaining the approvals as set forth in the preamble of Clause 6.1. In accepting this Offer to Purchase the Vendor warrants that it is empowered and authorized to enter into this Agreement.

**7. PURCHASER'S AND VENDOR'S WARRANTIES**

7.1 The Purchaser and Vendor warrant as follows:

- a) The Purchaser represents and warrants that it is registered pursuant to sub-division (d) of Division V of Part 9 of the Excise Tax Act R.S.C. 1985 c. E-15 (the "Excise Tax Act"), for the purposes of remission of Goods and Services Tax on taxable supplies made by the Purchaser. The Purchaser's registration number for the Goods and Services Tax is 8518 70782 RT0001.
- b) The Vendor represents and warrants that the within sale does not constitute, in whole or in part, a "taxable supply" of a "residential complex" in accordance with the terms of the Excise Tax Act.

7.2 The parties acknowledge that:

- a) The Vendor has represented and warranted that no part of the within sale of the said lands constitutes a "taxable supply" of a "residential complex"; or
- b) The Purchaser is not an "Individual";

in accordance with the terms of Section 123 of the Excise Tax Act, and that the Purchaser has represented and warranted that it is registered in accordance with sub-division (d) of Division V of Part 9 of the Excise Tax Act. Accordingly, pursuant to the provisions of Section 221(2) of the Excise Tax Act, no amount is required to be remitted or shall be remitted by the Purchaser to the Vendor in respect of any Goods and Services Tax payable by the Purchaser in relation to its acquisition of the said lands.

7.3 Except for the representations and warranties stated in this offer, Purchaser agrees that it is acquiring the property in its "as-is" and "where is" condition, free of any other representations or warranties, expressed or implied, including, without limitation, with respect to (i) the environmental, physical or structural condition of the property, (ii) the compliance of the property with any laws, ordinances or regulations of any government or other body, and (iii) the habitability, tenability or suitability for commercial purposes, merchantability, or fitness of the property for a particular purpose, all of which warranties Vendor hereby expressly disclaims.

#### 8. INSPECTION AND ACCESS

8.1 The Purchaser will have inspected the property prior to the Closing Date and agrees that neither the Vendor nor the agent has made any representation, warranty, collateral agreement or condition regarding the property or any adjacent lands or lands in close proximity to the property or otherwise which may in any way directly or indirectly affect the property or regarding this contract other than is contained herein. The Vendor shall give the Purchaser and its Agents access to the Property at any time upon 24 hours notice. The Closing shall not be postponed in the event Purchaser has not completed its inspection and the foregoing shall in no way be construed as a condition to Closing.

#### 9. ENUREMENT

9.1 This Agreement shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto respectively.

#### 10. AGENCY

10.1 ~~Where a prospective buyer is not represented by another agent, we consent to the agent representing the interests of both ourselves and the prospective buyer, as dual agent. In such case, the agent will disclose to us and to the prospective buyer all facts known to the agent that may reasonably be expected to materially affect the marketability or value of the Property except that the agent will not disclose to the buyer the reasons that we are selling, the terms and conditions of any competing offers, or that we are willing to accept a price less than the asking price (or a countered price). The agent will not disclose to us the reasons that the buyer is buying or that the buyer is willing to pay a price higher than the asking price (or a countered price).~~ Vendor represents and warrants that it has not dealt with any real estate broker in connection with this transaction other than Grubb & Ellis and also Avison Young Commercial Real Estate ("Vendor's Agents"). Vendor agrees to indemnify, defend and hold Purchaser harmless against any claim for brokerage fees arising out of a breach of this representation and warranty.

10.2 Purchaser represents and warrants that it has not dealt with any real estate broker in connection with this transaction other than the Vendor's Agents. Purchaser agrees to indemnify, defend and hold Vendor harmless against any claim for brokerage fees arising out of a breach of this representation and warranty.

#### 11. REAL ESTATE COMMISSION

11.1 It is understood and agreed that a real estate commission payable to ~~Avison Young Commercial Real Estate Vendor's Agents~~ shall be the sole responsibility of the Vendor and shall become due and payable on the ~~date of closing~~ Closing Date at the time of Closing.

11.2 The ~~deposit money~~ Deposit shall always apply firstly to pay the commission and we, the Vendor, authorize ~~Avison Young Commercial Real Estate Alberta Inc~~ the Escrow Agent to deduct from the ~~deposit~~ Deposit their commission payable. We hereby irrevocably assign out of the proceeds of the sale any unpaid balance of the commission and we direct our solicitor to pay the same to Avison Young Commercial Real Estate upon the completion of the sale. WE HEREBY NOTIFY BOTH THE PURCHASER AND OUR SOLICITOR OF THIS ASSIGNMENT.

12. NOTICES

12.1 All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall, unless otherwise specifically provided for herein, be given in writing and be personally served or prepaid express messenger or sent by electronic facsimile transmission, addressed to such other party or delivered to such other party as follows:

THE VENDOR: MBI LIMITED/LIMITEE  
C/o ~~Smurfit Stone Container Canada Inc.~~  
Attention: Dean R. Jones, Senior Counsel, International Affairs &  
Assistant Secretary  
~~2070 Hadow Road~~ 1035 Hodge Street, Suite A  
~~Mississauga, Ontario~~ Montreal, Quebec  
~~L5K 2C6~~ H4N 2E4  
Fax: 1.866.414.6954  
Email: drjones@smurfit.com

THE PURCHASER: General Realty Group Ltd.  
Attention: Mr. Justin Pertman Private and Confidential  
4120 - 84 Avenue  
Edmonton, AB  
T6B 3H3  
Phone: (780) 461-5555  
Email: jp@generalrealty.ca

12.2 Any notice, requests, demands or other communication given by messenger as aforesaid, shall be deemed to have been received on the next business day following the sending thereof. Any notice, requests, demands or other communication given by electronic facsimile transmission shall be deemed to have been received on the same day as the sending thereof. Either party may change its address for service by notice in writing to the other given as aforesaid.

13. GOVERNING LAW

13.1 This agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract.

  
Page 6 of 9

14. EFFECT OF HEADINGS

14.1 The division of this agreement into Articles and sections and the insertion of headings and marginal notes are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

15. ACCEPTANCE

15.1 This Offer to Purchase must be executed by the Vendor and delivered to the Purchaser or his agent before 5:00 o'clock p.m., Edmonton time, on the 22<sup>nd</sup> day of ~~October~~ November, 2009. If not executed and delivered within the time so limited, this Offer to Purchase shall be null and void and of no further effect.

15.2 Time shall be of the essence of this Offer and the Agreement constituted by the acceptance thereof.

16. TERMINATION

*the breach of this Agreement by the Purchaser*

16.1 In the event the consummation of the transactions contemplated by this Agreement and the Closing do not occur due to any reason other than the breach of this Agreement by the Vendor, Vendor may terminate this Agreement upon written notice to Purchaser and Vendor shall be entitled to payment of the Deposit from the Escrow Agent. In the event the consummation of the transactions contemplated by this Agreement and the Closing do not occur due solely to the breach of this Agreement by the Vendor, Purchaser may terminate this Agreement upon written notice to Vendor and Purchaser shall be entitled to the return of the Deposit from the Escrow Agent. Termination by a party due to a breach of this Agreement by the other party shall be without prejudice to any other rights and recourses of the parties.

(next page is the signature page)

**PURCHASER'S ACCEPTANCE**

DATED at the City of Edmonton, in the Province of Alberta, this 4<sup>th</sup> day of ~~October~~ November, A.D. 2009.

**GENERAL REALTY GROUP LTD. OR NOMINEE**

PER: [Signature]

PER: \_\_\_\_\_

**VENDOR'S ACCEPTANCE**

WE HEREBY ACCEPT this Offer and agree to be bound by the terms and conditions herein.

Quebec, DATED at the City of Montreal, in the Province of Quebec, this 30<sup>th</sup> day of ~~October~~ November, A.D. 2009.

**MBI LIMITED/LIMITEE.**

PER: [Signature]

PER: \_\_\_\_\_

Schedule "A" - Permitted Encumbrances

- 1. Registered Document 4738TV - Restrictive Covenant From 1973 regarding development restrictions.
- 2. Any subsisting reservations, exceptions, limitations, provisos and conditions (including royalties) contained in any original grant from the Crown of the said lands or any interest therein.
- 3. Any liens accruing but not yet due for unpaid taxes, rates, assessments and other governmental charges or levies (including, without limitation, charges for municipal services and utilities and charges for local improvements) and all liabilities in respect thereto, including interest and penalties and irrigation and drainage district rates.
- 4. Any public highway or right-of-way or other public easement, howsoever created, on, over or in respect of the said lands.
- 5. Any right of expropriation that may by statute be vested in any person or corporation or the Crown.
- 6. Any permit, right-of-way, condition, reservation, lease, easement, right in the nature of an easement, prohibition, limitation, encroachment, profit à prendre, royalty, licence, servitude, restriction or other similar right or privilege (including, without limitation, any permit, right-of-way, condition, reservation, lease, easement, right in the nature of an easement, prohibition, limitation, encroachment, profit à prendre, royalty, licence, servitude, restriction or other similar right or privilege for sewers, drains, gas and water mains and electric light, power, telephone and telegraph conduits, poles, wires and cables) upon, over, under, through or in respect of the said lands, which is granted or acquired under any act or law in force in the Province of Alberta.
- 7. Any encumbrances constituted by encroachments by buildings or any other improvements constructed on the said lands or any facilities used in connection with the buildings or other improvements constructed on the said lands on, over or under adjacent properties, and any encumbrances constituted by encroachments by improvements constructed on properties adjacent to the said lands on, over or under the said lands.
- 8. Any by-law infractions or encroachments which might be disclosed by an up-to-date survey or real property report, or by a review of such survey or real property report and the locations of the improvements to the said lands evidenced thereon by Strathcona County in respect of the said lands.
- 9. The exceptions, reservations, conditions and qualifications set forth in Section 61 of the Land Titles Act (Alberta), to the extent not already set out herein.



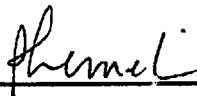
Page 9 of 9

# TAB B



This is Exhibit "B" referred to in the Affidavit of  
**Dean Jones**  
solemnly declared before me in Montreal  
this 26<sup>th</sup> day of November, 2009



  
\_\_\_\_\_  
Commissioner of Oaths for all of the  
districts of the province of Quebec

**AGREEMENT OF PURCHASE AND SALE**

BETWEEN:

**ANDREAS APOSTOLOPOULOS, IN TRUST  
FOR A COMPANY TO BE FORMED OR AN EXISTING CORPORATION AND  
WITHOUT PERSONAL LIABILITY**

(hereinafter called the "Buyer")

OF THE FIRST PART

- and -

**MBI LIMITED/LIMITÉE**

(hereinafter collectively called the "Seller")

OF THE SECOND PART

Article 1

**DEFINITIONS**

1.1 In this Agreement, the following terms shall have the following meanings:

- (a) "Agreement" means the agreement of purchase and sale to be constituted by the acceptance of the offer herein.
- (b) "Building" means the existing industrial building located on Parcel 1 of the Lands, owned, operated and maintained by the Seller containing approximately 207,700 square feet of rentable floor space comprised of approximately (i) 196,500 square feet for industrial use and (ii) 11,200 square feet for ancillary office space, together with surface parking spaces for passenger and commercial vehicles and trailers and including without limitation all the fixtures and improvements relating thereto, all existing heating units, air-conditioning units, heating and air-conditioning ductwork and associated thermostats and systems, ventilating, plumbing and electrical systems, fire protection sprinkler systems, fire and burglar alarm systems, computer building control systems, if any, hot water tanks, if not on rental, loading and shipping facilities, including truck level doors, rail doors, rail siding access and bays, hydraulic dock levellers, dock locking systems, trailer dolly pads, and all existing boilers, compressors, transformers, fluorescent and halide lighting fixtures, drainage and all other fixtures and mechanical systems annexed thereto or located therein.
- (c) "Business Day" means any day other than a Saturday, Sunday or Statutory Holiday in Ontario.

- (d) **“Chattels”** means all chattels owned by the Seller and located at and used in connection with the Property.
- (e) **“Closing Date”** means that date being ten (10) days after the satisfaction or waiver of the Buyer’s conditions set out in Section 4.1 which run to the Condition Date, or, if such is not a Business Day, the next following Business Day, or at such other time as may be agreed to in writing by the parties or their respective solicitors.
- (f) **“Closing”** means the completion of the transaction contemplated herein.
- (g) **“Condition Date”** means that date being ninety (90) days from the date of delivery to the Buyer of the documentation pursuant to Section 5.1.
- (h) **“Contracts”** mean those service agreements relating to the Property, if any, and the current rail siding agreement which the Buyer may, but is not obligated to assume.
- (i) **“Existing Use”** means the current industrial use of the Building located on Parcel 1 and the current use of Parcel 2 of the Lands.
- (j) **“Hazardous Substances”** means any substance, hazardous waste, material, effect or thing declared or defined to be hazardous, toxic, a contaminant or a pollutant under or pursuant to any enforceable federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives.
- (k) **“Lands”** means the lands situate in the Town of Whitby, in the Regional Municipality of Durham, in the Province of Ontario, measuring 25.26 acres municipally described as 220 Water Street, Town of Whitby, Ontario, and composed of two parcels, namely:
  - (i) Parcel 1: Part of Lots 25 and 26, Concession Broken Front, being Parts 1, 2, 3 and 4 on Plan 40R-8086, Town of Whitby, Regional Municipality of Durham, more particularly described in Schedule B attached hereto (herein referred to as **“Parcel 1”**), measuring 24.41 acres, being irregular with frontage on the east side of Water Street of 204 feet more or less, having one designated vehicular and pedestrian access point from Water Street and having surface parking for about 150 vehicles; and
  - (ii) Parcel 2: Part Beach and Water Lots in front of Lot 26 Broken Front Concession, being Part 6 on Plan 40R-8086, Town of Whitby, Regional Municipality of Durham (herein referred to as **“Parcel 2”**), measuring 0.85 acres, being irregular with frontage on the west side of Water Street of 388

feet more or less and having no designated vehicular and pedestrian access point from Water Street.

- (l) **"Municipality"** means the Town of Whitby or the Regional Municipality of Durham, in the Province of Ontario.
- (m) **"Permitted Encumbrances"** means the registered encumbrances, agreements and interests listed in Schedule "A" annexed hereto.
- (n) **"Property"** means:
  - (i) the Lands; and
  - (ii) the Building.
- (o) **"Warranties"** mean all outstanding warranties, guarantees, indemnities and similar rights, if any, which the Seller may have relating to the Property.

#### Article 2


#### PURCHASE PRICE AND TERMS

2.1 The Buyer, through Avison Young Commercial Real Estate (Ontario) Inc., agent for the Seller (the "Agent") hereby agrees to purchase from the Seller and the Seller hereby agrees to sell to the Buyer the Property at a purchase price of **TWO MILLION ONE HUNDRED AND FIFTY THOUSAND (\$2,150,000.00) DOLLARS** (the "Purchase Price") of lawful money of Canada, payable as follows:

- (a) The sum of **FIFTY THOUSAND (\$50,000.00) DOLLARS** as a deposit on the second Business Day following acceptance of this offer by certified cheque or bank draft payable to the Agent, in Trust, to be held in trust by the Agent pending completion of or other termination of the Agreement and to be credited on account of the Purchase Price on completion. The Seller and the Buyer agree that the said deposit shall be invested in accordance with the Buyer's directions in an interest bearing trust account or term deposit of one of the five (5) largest Schedule 1 Canadian chartered banks bearing the highest rate of interest available for such accounts or deposits. Interest accrued on the deposit shall be paid to the Buyer at or as soon as reasonably possible following Closing.
- (b) The sum of **FIFTY THOUSAND (\$50,000.00) DOLLARS** as a further deposit by certified cheque or bank draft payable to the Agent, in Trust, on the second Business Day following the Buyer satisfying itself or waiving those conditions set out in Section 4.1 which run to the Condition Date, to be held in trust by the Agent pending completion or other termination of the Agreement and to be credited on account of the Purchase Price on the Closing Date. The Seller and the

Buyer agree that the said deposit shall be invested in accordance with the Buyer's directions in an interest bearing trust account or term deposit of one of the five (5) largest Schedule 1 Canadian chartered banks bearing the highest rate of interest available for such accounts or deposits. Interest accrued on the deposit shall be paid to the Buyer at or as soon as reasonably possible following Closing.

- (c) The balance of the Purchase Price shall be payable by wire transfer in immediately available funds, certified cheque or bank draft to the Seller on completion, subject to the adjustments herein.
- 2.2 The Seller and the Buyer agree that, if requested by either party, the Purchase Price shall be allocated, as to the consideration being paid for the Lands, the consideration being paid for the Building and the consideration being paid for the Chattels, on or before 5:00 p.m. on the Condition Date by mutual agreement, both parties acting reasonably, and, failing mutual agreement shall be allocated by the Seller and by the Buyer in their own discretion.
- 2.3 In the event that the Agreement is not completed, the deposit monies paid pursuant to the Agreement shall be dealt with in the following manner:
- (a) In the event that the Agreement is terminated in accordance with Section 4.1 hereof, the deposit monies pursuant to Section 2.1 hereof shall be immediately thereupon returned to the Buyer without deduction and with accrued interest thereon;
  - (b) In the event that the Agreement is not completed due to the default of the Seller, the deposit monies paid pursuant to Section 2.1 hereof shall be immediately thereupon returned to the Buyer without deduction and with accrued interest thereon and the Buyer shall be entitled to all rights and remedies that the Buyer may have pursuant to this Agreement or at law;
  - (c) In the event that the Agreement is not completed due to the default of the Buyer, the deposit monies paid pursuant to the Section 2.1 hereof shall be immediately paid to the Seller together with accrued interest thereon and the Seller thereupon shall be entitled to all rights or remedies that the Seller may have under this Agreement or at law;
  - (d) In the event that the Agreement is terminated in accordance with Section 6.1(o) hereof, the deposit monies pursuant to Section 2.1 hereof shall be immediately thereupon returned to the Buyer without deduction and with accrued interest thereon; and
  - (e) In the event that the Agreement is terminated in accordance with Section 7.1 hereof, the deposit monies paid pursuant to Section 2.1 shall immediately



thereupon be returned to the Buyer without deduction and with accrued interest thereon.

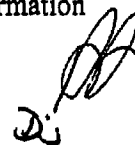
Article 3  
CLOSING

- 3.1 The Agreement shall be completed on or before the Closing Date.
- 3.2 Except as otherwise provided herein, each of the Seller and the Buyer shall be responsible for its own costs (including without limitation the cost of its solicitors) in respect of this transaction. The Buyer shall be responsible for the cost of registering the transfer/deed of land including all applicable land transfer taxes.

Article 4  
CONDITIONS

- 4.1 The Agreement is conditional upon the following, each of which shall form a condition which only the Buyer may at its option waive, in part or in its entirety, provided that it is also agreed that if any condition is not fulfilled, the Agreement shall be deemed null and void and the Buyer shall be entitled to receive the return of the deposit forthwith with interest and without deduction and the parties shall be released from their obligations hereunder, except for the confidentiality provisions of Article 13 and the indemnity provisions of Section 4.2, without further recourse one against the other:
  - (a) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date with respect to the potential economic performance of the Property and the Seller's Deliveries (as hereinafter defined);
  - (b) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date with respect to the physical condition and state of repair of the Building;
  - (c) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date that the Property is not subject to any conservation restrictions, planning designations and other restrictions;
  - (d) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date with the results of any investigations that the Buyer may undertake with respect to the Property in accordance with Section 4.2, including, but not limited to (i) engineering inspections, structural inspections and such other investigations and inspections that the Buyer in its sole and absolute discretion may require, and (ii) environmental investigations and inspections;

- (e) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date that the Property does not contain any Hazardous Substances in violation of enforceable federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives ;
- (f) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date with respect to suitability of the Permitted Encumbrances;
- (g) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date that Lands are zoned to permit the Existing Use, in accordance with applicable zoning by-laws and regulations of the Municipality and other governmental authorities. The expression "zoned" used herein shall mean that the by-laws of the Municipality and other governmental authorities permit the Existing Use of the Lands and that such by-laws have received the approval of the Ontario Municipal Board and that there are no outstanding appeal periods with respect thereto;
- (h) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date that the Existing Use of the Lands is suitable for the Buyer's intended use of the Property;
- (i) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date that Building was constructed, including all renovations and improvements, pursuant to Building permits validly issued and in accordance with all applicable zoning and building by-laws;
- (j) That the Buyer satisfy itself in its sole and absolute discretion on or before 5:00 p.m. on the Condition Date with the results of the Buyer's review of title to the Property and that title to the Property is good and marketable and free and clear of all liens, mortgages, charges, restrictions, encumbrances, any municipal or other governmental authority infractions, requirements, directives, work orders or deficiencies, outstanding building permits, tax arrears and adverse claims and interests other than the Permitted Encumbrances, and that the Property and its existing uses comply with all applicable laws and regulations;
- (k) That the Buyer shall have reviewed the Contracts and shall have elected on or before 5:00 p.m. on the Condition Date whether or not the Buyer shall be assuming the Contracts;
- (l) That on the Closing Date the Property shall be delivered to the Buyer fully vacant;
- (m) That on the Closing Date no material adverse change shall have occurred with respect to the condition of the Property or the accuracy of the information



disclosed in the Seller's Deliveries from the date of the Condition Date to Closing; and

- (n) That on the Closing Date all covenants and agreements of the Seller in the Agreement have been performed as at the Closing Date and all representations and warranties of the Seller in the Agreement shall be true, complete and effective in all material respects at the Closing Date.

The Buyer shall have the period of time specified in an individual condition above to satisfy itself with respect to said condition. In the event that the Buyer is so satisfied, the Buyer shall notify the Seller in writing within the period of time so specified that the said condition or conditions have been satisfied. In the event that no such written notice is provided to the Seller confirming satisfaction of the said condition or conditions, the Agreement shall be deemed terminated by the Buyer, whereupon the deposit monies paid hereunder shall be returned to the Buyer without deduction and with interest as provided for herein and the Agreement shall be null and void. The conditions are for the sole benefit of the Buyer and may be waived by the Buyer at any time or times in whole or in part.

4.2 Subject to the terms and conditions set forth in this Section, Buyer and Buyer's representatives shall have the right and shall be entitled to enter upon the Property, at reasonable times prior to the Condition Date to inspect the Property. Buyer shall indemnify, defend and hold Seller, its affiliates, and their respective officers, directors, employees and agents harmless from any liability, cost or expense arising from injuries to persons or property caused by Buyer's or Buyer's representatives' activities on the Property pursuant to this Section 4.2. Buyer shall be responsible for returning the Property to the condition in which it was prior to the time of any entry. Buyer's obligations pursuant to this Section 4.2 shall survive the expiration or earlier termination of this Agreement. Seller's representative shall have the right, but not the obligation, to be in attendance during any phase I environmental site assessment or other environmental inspection/investigation activities. Buyer shall notify Seller of Buyer's intention to enter the Property to conduct any environmental assessment or inspection activities no less than five (5) days prior to the proposed date of entry.

At least ten (10) days prior to any environmental examination beyond that customarily performed in a phase I environmental site assessment, including, without limitation, any soils, groundwater or other environmental examination, inspection or test requiring invasive methods ("Invasive Testing"), Buyer shall provide Seller with a written plan describing the activities Buyer and/or its representative intend to conduct on the Property in connection with such Invasive Testing. Buyer's plan shall include, at a minimum: (i) a description of the proposed sampling locations; (ii) a description of how the samples will be collected, and (iii) the test methods that will be used to analyze the samples. Seller reserves the right to review and approve all examinations, inspections and tests to be

Handwritten signature and initials, possibly 'D. [Signature]'.



conducted on the Property, including, without limitation, the locations of environmental samples. Buyer shall permit Seller, at Seller's expense, to split any samples collected by Buyer or its representatives in the course of such Invasive Testing. Buyer agrees to provide Seller copies of all data, reports, calculations or other documents or information generated in connection with Buyer's Invasive Testing of the Property. Buyer and its representatives shall treat all information regarding the Property as confidential and shall not disclose any confidential information to third parties without the prior written consent of Seller, unless required by law. All examinations, inspections, testing and related activities shall be conducted in compliance with applicable laws and regulations.

Article 5  
**DELIVERY OF DOCUMENTS**

5.1 The Seller shall deliver forthwith after its execution and delivery of this Agreement to Buyer and in any event within three (3) Business Days thereof, the following (collectively, the "Seller's Deliveries"):

- (a) A full size, legible plan of survey of the Lands prepared by a duly qualified Ontario Land Surveyor and depicting thereon the dimensions of the Lands, the setbacks of the Building, all other existing structures and additions, outbuildings, fences, easements, rights-of-way, means of ingress and egress and any encroachments;
- (b) A copy of any and all available "as built" building plans and specifications (architectural, mechanical, structural and electrical), building permits and occupancy permits for all existing renovations, documents, certificates, licenses, service and maintenance records, service agreements, warranties, guarantees and insurance coverage placed by the Seller with respect to the Property;
- (c) A copy of any and all environmental reports and of any and all structural, engineering and similar consulting reports relating to the Property which, in both cases, were prepared by third parties, including documentation, if any, relating to the removal of the underground storage tank and any reports relating to the testing of the area surrounding the underground storage tank (the "Reports");
- (d) Copies of all title documents and encumbrances relating to the Property;
- (e) Authorizations as the Buyer and the Buyer's solicitors may require to applicable governmental authorities, departments and utilities, in order to authorize the release of information pertaining to the Property, such authorizations to specifically exclude any invitation to actual inspections by any such governmental authorities, departments and utilities;

- (f) A list of and copies of the Contracts and the Warranties, if any;
- (g) The current realty tax bill for Parcel 1 and Parcel 2 and any current notices of assessments and supplementary notice of assessments and information relating to reassessments or appeals, if any, together with any realty tax bills relating to prior years in the possession or control of the Seller and a statement as to any arrears of real property taxes as of the date of execution of this Agreement;
- (h) A list and description of the Chattels;
- (i) The utility bills for the Property covering the period from and after **August 1, 2007** to date and a statement as to any arrears as of the date of execution of this Agreement;
- (j) Copies of any pending application for rezoning, minor variances and/or building permits, if any, commenced by the Seller in respect of the Property;
- (k) Copies of any outstanding municipal or other governmental deficiencies, work orders, open permits and similar matters in respect of the Property; and
- (l) A list of and copies of all documents relating to all insurance claims made by the Seller in the past 5 years, if any, related to the Property; and
- (m) Any other documents relating to the Property and the Seller's ownership, maintenance and operation as may be reasonably required by the Buyer and which are in the Seller's possession.

5.2 For greater certainty and without limiting and in addition to any other provision of the Agreement, from and after the date of the Agreement, the Buyer and its agents shall have access at any time and from time to time upon reasonable prior notice to the books, files and records of the Seller in Seller's possession pertaining to the ownership, operation, management and maintenance of the Property at the Seller's office during normal business hours and the Seller shall, as soon as is reasonably possible after any and all requests by the Buyer, provide copies to the Buyer and/or its agents of any such books, files and/or records or make copying facilities available to the Buyer for it to make copies.

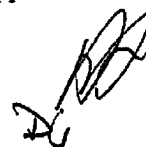
Article 6  
COVENANTS, REPRESENTATIONS AND WARRANTIES

6.1 The Seller covenants and agrees with, and represents and warrants to the Buyer, and acknowledges that the Buyer has relied thereon in entering into the Agreement and in completing the transaction contemplated hereby, as follows:

- (a) That the Seller is and shall be on Closing the registered owner and beneficial owner of the Property and with a good and marketable title free and clear of any liens, charges, security interests or encumbrances, save and except for the Permitted Encumbrances and that the Seller shall have the absolute right to sell, transfer and convey same to the Buyer;
- (b) That no other person, firm, corporation, association or entity other than the Buyer has any written or oral agreement, option, right of first refusal, understanding or commitment for the purchase from the Seller of any interest in the Property or any part thereof;
- (c) That the Property does not comprise all or substantially all of the assets of the Seller;
- (d) That the Seller shall discharge at its expense on or before the Closing Date all registered mortgages, liens, restrictions, agreements, encumbrances, security interests, adverse claims and other interests registered against the Property (save and except the Permitted Encumbrances);
- (e) That the Seller shall insure the Building or cause the Building to be insured until the Closing Date;
- (f) That the Seller shall not enter into any lease agreements, service and/or maintenance contracts, labour contracts or any other contracts or liabilities for which the Buyer will be liable after the Closing Date;
- (g) That on the Closing Date vacant possession of the Lands shall be given to the Buyer with the Building in broom-swept condition;
- (h) That the Seller is not aware of any suits, actions or other proceedings pending or threatened against the Seller at law or equity or in or by any board or administrative tribunal which may affect the title of the Seller to the Property, the continued operation of the Building, or, subject to Section 6.1(n), the right of the Seller to complete this Agreement in accordance with its terms;
- (i) That on the Closing Date there shall be no easements, rights-of-way, encumbrances, encroachments or agreements, which interfere with the Existing Use of the Lands, save and except the Permitted Encumbrances;
- (j) That the Seller shall exercise its best commercial efforts to obtain any consents and approvals which may be required in order to assign to the Buyer any Contracts that the Buyer, in its sole discretion, has elected to assume, provided Seller shall be under no obligation to pay any consideration whatsoever in order to obtain consents and approvals to assign any of the Contracts;



- (k) That the Buyer and its agents shall be entitled to enter upon the Lands and the Building prior to the Closing Date, during normal business hours upon reasonable notice, to show the Property to prospective tenants;
- (l) That on the Closing Date there are no realty taxes, local improvement charges or special levies, hydro, development charges of any nature, gas or water or sewage accounts outstanding with respect to the Property (other than current accounts either to be paid by the Seller at Closing or to be adjusted for in the Statement of Adjustments), and that no written agreement has been, or shall be, entered into with the Municipality or with any other governmental authority which would have the effect of making the Lands subject to or assessed for any sewer charges, local improvement rates, capital improvement charges or other assessments, rates or charges of a similar nature;
- (m) That, to the best knowledge and belief of the Seller (other than as disclosed to the Buyer pursuant to Section 5.1 hereof), there are not any municipal or other governmental authority infractions, requirements, directives, work orders or deficiencies, building permits (the "Deficiencies") outstanding in connection with the Property or the Existing Use as of the date hereof and there will be no Deficiencies outstanding as at the Closing Date;
- (n) That the Seller shall have obtained and delivered to the Buyer any required statutory and other consents and approvals necessary to sell the Property to the Buyer as contemplated by this Agreement, other than such consents set forth in sub-paragraph (n) below;
- (o) That, as soon as practicable following notice by Buyer to Seller that the conditions contained in Section 4.1(a) to (j) inclusively have been satisfied, Seller shall use its reasonable best efforts to obtain, at its sole cost, taking into account normal advance discussions which may be required with any of its creditors and its monitor, orders of the relevant courts in Canada and in the United States (i) approving and authorizing the Seller to enter into and complete the transactions set forth herein, and (ii) vesting the Property in the Buyer, free and clear from all claims, liabilities, obligations, rights of first refusal, or other pre-emptive rights in favour of third parties, or liens other than Permitted Encumbrances as the case may be. In the event that any relevant court denies Seller's motion to obtain the necessary court orders and Seller determines not to appeal said judgment, Seller shall so advise the Buyer and this Agreement shall thereupon be automatically terminated except for the confidentiality provisions of Article 13 and the indemnity provisions of Section 4.2 which shall survive;
- (p) That the Building, including all additions and renovations, have been erected pursuant to building permits validly issued and in compliance with applicable



building and zoning by-laws and restrictions and that the Existing Use of the Building is lawful and permitted;

- (q) That the Seller will use commercially reasonable efforts to satisfy any objections to title;
- (r) That the Seller will have complied with the relevant provisions of the *Retail Sales Tax Act* (Ontario) and the *Bulk Sales Act* (Ontario) in relation to the sale of the Chattels; and
- (s) That the information contained in the Seller's Deliveries is true in all material respects and is materially complete.

6.2 The covenants, agreements, representations and warranties of the Seller contained in this Agreement shall not merge on, but shall survive Closing and shall continue to be in full force and effect for a period of six (6) months after Closing for the benefit of the Buyer.

6.3 EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS ARTICLE 6, BUYER AGREES THAT IT IS ACQUIRING THE PROPERTY IN ITS "AS-IS" AND "WHERE IS" CONDITION, FREE OF ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, OF ANY KIND, EITHER ORAL OR WRITTEN, LEGAL OR OTHERWISE, MADE BY SELLER OR ANY AGENT OR REPRESENTATIVE OF SELLER WITH RESPECT TO THE ENVIRONMENTAL, PHYSICAL OR STRUCTURAL CONDITION OF THE PROPERTY OR WITH RESPECT TO THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES OR WASTES, OR POLLUTION CONDITIONS IN, ON, UNDER OR AFFECTING THE PROPERTY OR THE GROUND WATER THEREUNDER OR WITH RESPECT TO THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY OR WITH RESPECT TO SELLER'S TITLE TO THE PROPERTY OR ANY ENCUMBRANCES WHICH MAY AFFECT SUCH PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPLICITLY STATED IN THIS AGREEMENT, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES, OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE HABITABILITY, TENANTABILITY OR SUITABILITY FOR COMMERCIAL PURPOSES, MERCHANTABILITY, OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES SELLER HEREBY EXPRESSLY DISCLAIMS.

Article 7  
TITLE

7.1 Title to the Property shall be good and marketable and free and clear of all liens, mortgages, charges, restrictions, encumbrances, any municipal or other governmental authority infractions, requirements, directives, work orders or deficiencies, outstanding building permits, tax arrears, adverse claims and interests, except for the Permitted Encumbrances, and shall comply with all applicable by-laws and regulations. Title is to be examined by the Buyer at the Buyer's expense and the Buyer is not to call for the production of any title deeds or abstracts of title, proof or evidence of title or to have furnished any copies thereof other than those in the Seller's possession or under its control, or as provided for herein. The Buyer shall be allowed until the Condition Date set out in Sub-Article 4.1(j), to investigate title to the Property. If within such time the Buyer shall furnish the Seller in writing with any objections to the title of the Property, including with respect to any municipal or other governmental authority infractions, requirements, directives, work orders or deficiencies, outstanding building permits, tax arrears, adverse claims and interests or any instances of non-compliance of the Property or its existing uses with any applicable laws and regulations, and the Seller shall not, prior to the expiry of the Condition Date set out in Sub-Article 4.1(j), have covenanted and agreed to remove, remedy or satisfy same on or prior to the Closing Date and the Buyer shall not have waived such objections prior to the expiry of the Condition Date set out in Sub-Article 4.1(j), the Agreement notwithstanding any intermediate acts or negotiations with respect to such objections shall be null and void and the deposit monies shall be returned with interest and without deduction and the Seller shall not be liable for any costs or damages. Save as to any objection so made by such date and except for any objection going to the root of title, the Buyer shall be deemed to have accepted the Seller's title to the Property. The Buyer reserves the right to submit further valid objections to title in the event that documents are registered against title to the Property subsequent to the Buyer completing its investigation of title and prior to the Closing Date.

Article 8  
ADJUSTMENTS

- 8.1 Real property taxes, local improvement rates and charges, unmetered utility charges, the cost of fuel and other applicable and usual items subject to adjustment shall be apportioned and allowed to the Closing Date (the day itself to be apportioned to the Buyer). The Seller acknowledges that the Buyer shall be arranging its own insurance coverage to be effective on the Closing Date and no adjustment shall be made in this regard.
- 8.2 The Buyer and Seller agree that if the final cost or amount of any item which is to be adjusted under this Article 8 hereof cannot be determined at Closing, then an initial

adjustment for such item shall be made at Closing, such amount to be estimated by the Seller as at the end of the day preceding the adjustment 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 Seller or Buyer, as the case may be, shall within thirty (30) days of determination, provide a complete statement thereof to the other and within thirty (30) days thereafter the parties hereto shall make a final adjustment as of the end of the day preceding the adjustment date for the item in question, provided that in any event such final adjustment shall be made no later than twelve (12) months from the Closing Date. In the absence of agreement by the parties hereto within twelve (12) months of the Closing Date, the final cost or amount of an item shall be determined by the Seller's accountants with the cost of such accountants' determination being shared equally between the parties hereto.

- 8.3 In the event that the Seller is in the process of appealing realty tax assessments with respect to the Property prior to the Closing Date, the Buyer acknowledges and agrees that if successful any rebate in this regard shall be paid to the Seller. The Buyer agrees to execute and deliver such directions and authorizations in this regard which are reasonably required by the Seller.

#### Article 9

#### GST

- 9.1 It is understood and agreed that:

- (a) subject to Article 12, the Buyer shall be purchasing the Property on the Closing Date as principal for its own account and not as an agent, trustee or otherwise on behalf of another person;
- (b) the Buyer shall be registered under subdivision d of Division V of Part IX of the Excise Tax Act (Canada) (the "Act") for the collection and remittance of goods and services tax ("GST");
- (c) the Buyer shall be liable, shall self-assess and remit to the appropriate governmental authority all GST which is payable under the Act in connection with the transfer of the Property made pursuant to the Agreement, all in accordance with the Act;
- (d) the Seller shall not collect GST on Closing and shall allow the Buyer to self-assess and remit GST to the Receiver General in accordance with the Act;
- (e) the Buyer shall indemnify and save harmless the Seller from and against any and all GST, penalties, costs and/or interest which may become payable by or assessed against the Seller as a result of any inaccuracy, misstatement or misrepresentation made by the Buyer on the Closing Date in connection with any

matter raised in this paragraph or contained in any declaration referred to herein;  
and

- (f) the Buyer shall tender on Closing a certificate and indemnity including verification of its registration number issued by Revenue Canada under the Act (the "GST Certificate").

Article 10

**SELLER'S CLOSING DOCUMENTS**

10.1 The Seller agrees to deliver or cause to be delivered the following to the Buyer on or before the Closing Date; all documents to be executed and delivered by the Seller to the Buyer on the Closing Date shall be in form and substance satisfactory to the Buyer's solicitors acting reasonably and shall be prepared and produced by and at the Seller's expense:

- (a) Registrable Transfer/Deed (in electronic registration format where applicable) conveying the Property, including completion of the Planning Act compliance statements by the Seller and Seller's solicitor;
- (b) Statutory Declaration of a senior officer of the Seller without personal liability to such individual wherein he declares:
  - (i) As to the Seller's possession, ownership and use of the Property until the Closing Date;
  - (ii) That the Seller is not a non-resident of Canada pursuant to Section 116 of the *Income Tax Act (Canada)*;
  - (iii) That the Seller's covenants and agreements herein contained have been performed as at the Closing Date and all representations and warranties herein contained are true, complete and effective as at the Closing Date;
  - (iv) As to other matters relative to the completion of the Agreement as the Buyer may reasonably require.
- (c) Statement of Adjustments (three (3) Business Days prior to the Closing Date);
- (d) A bill of sale with respect to the Chattels and a bulk sale statement and affidavit in compliance with the *Bulk Sales Act (Ontario)*;
- (e) Any and all master and duplicate keys;
- (f) An assignment of all outstanding guarantees, warranties and indemnities relating to the Property, if any;



- (g) An assignment (the "Assignment Agreement") of the Contracts, if any, which the Buyer has elected to assume and an indemnity of the Buyer in favour of the Seller from any claim arising thereafter as a result of a cause which occurred after Closing, together with an indemnity of the Seller in favour of the Buyer from any claims arising prior thereto as a result of a cause which occurred prior to Closing;
- (h) Certified copy of a Director's Resolution of the Seller whereby the execution and completion of this Agreement is approved by the board of directors of the Seller;
- (i) Undertaking to readjust all items on the Statement of Adjustments;
- (j) Undertaking to pay final utilities, including but not limited to water and sewage charges and to deliver vacant possession, free and clear of any liens, mortgages or other encumbrances, other than the Permitted Encumbrances, in accordance with the terms of this Agreement;
- (k) Notice of termination of employment regarding all employees of the Seller associated with the Property (the "Employees"), if any, and an Acknowledgement of Termination by the Employees, if and only to the extent they are Employees of the Seller associated with the Property;
- (l) An assignment of the Warranties, if any;
- (m) All assurances, approvals, consents, court orders, directives or other material which may be required to ensure that this transaction does not offend the bankruptcy and insolvency laws of Canada and any foreign jurisdiction under which the Seller has sought protection against bankruptcy nor any laws relating to preferred or fraudulent conveyances; and
- (n) All other documentation required by the terms of this Agreement and not specifically set forth in this Article 10 or reasonably required by the Buyer or its solicitors, acting reasonably.

Article 11

**BUYER'S CLOSING DOCUMENTS**

11.1 The Buyer agrees to deliver or cause to be delivered the following to the Seller on or before the Closing Date; all documents to be executed and delivered by the Buyer to the Seller on the Closing Date shall be in form and substance satisfactory to the Seller's solicitors acting reasonably and shall be prepared and produced by and at the Buyer's expense:

- (a) The balance of the Purchase Price pursuant to Article 2;

- (b) Undertaking to readjust all items on the Statement of Adjustments;
- (c) Certified copy of a Director's Resolution of the Buyer whereby the execution and completion of this Agreement is approved by the board of directors of the Buyer;
- (d) The GST Certificate;
- (e) The Assignment Agreement; and
- (f) All other documentation required by the terms of this Agreement and not specifically set forth in this Article 11 or reasonably required by the Seller or its solicitors, acting reasonably.

Article 12  
**ASSIGNMENT**

12.1 The Seller acknowledges that the Buyer is entering into this Agreement as bare trustee and without personally liability whatsoever and the Buyer shall have the right at any time to assign the Agreement to a company or companies incorporated or to be incorporated or to any other person or persons or entity or entities (the "Assignee") without giving prior notice to the Seller. Upon assigning the Agreement, upon giving notice to the Seller of such assignment and the assumption of the obligations of the Buyer under this Agreement by the Assignee, the Assignee shall be entitled to the benefits and subject to the liabilities of the Buyer under the Agreement and Buyer shall cease to be entitled to such benefits and shall cease to be subject to such liabilities. In any event, the Buyer named herein shall have no liability under this Agreement whatsoever other than as set out in Sub-Article 2.3(c) of this Agreement. In addition, the Seller acknowledges that the Buyer shall have the right to direct that title to the Property be taken in a name other than the Buyer or Assignee.

Article 13  
**GENERAL**

13.1 The Agreement shall be effective to create an interest in the Lands only if the subdivision control provisions of the *Planning Act (Ontario)* are complied with on or before completion. The Seller hereby covenants to proceed diligently at its expense to obtain any necessary consent on or before the Closing Date.

13.2 The Buyer shall be credited towards the Purchase Price with the amount, if any, which it shall be necessary for the Buyer to pay to the Minister of National Revenue in order to satisfy the Buyer's liability in respect of tax payable by the Seller under the non-residency provision of the *Income Tax Act (Canada)* by reason of completion of the Agreement. The Buyer shall not claim such credit if the Seller delivers on the Closing Date the

Handwritten signature and initials, possibly 'DJ' or similar, located at the bottom right of the page.

prescribed certificate or a statutory declaration that the Seller is not a non-resident of Canada.

- 13.3 The Property shall be and remain until Closing at the risk of the Seller. Pending completion, the Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear. In the event of damage to the Property where the cost of repair is reasonably estimated to exceed \$50,000.00, the Buyer may either terminate the Agreement and have all deposit monies returned to the Buyer with interest and without deduction, or else take the proceeds of any insurance and complete the Agreement.
- 13.4 Time shall in all respects be of the essence hereof provided that the time for doing or the completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Seller and the Buyer or by their respective solicitors, who are hereby expressly appointed in this regard. Saturdays, Sundays and statutory holidays shall be excluded from the calculation of any time period provided for in the Agreement. In the event that any date or expiration of time period provided for in the Agreement falls upon a Saturday, Sunday or statutory holiday, it is understood and agreed that such date or time period shall be deemed extended to the business day next following such Saturday, Sunday or statutory holiday.
- 13.5 Any tender of documents or money hereunder may be made upon the Seller or the Buyer or their respective solicitors on the Closing Date. Money may be tendered by bank draft or certified cheque of a Canadian chartered bank or trust company.
- 13.6 Any notice, document, or communication required or permitted to be given shall be given by delivery, facsimile transmission, electronic mail or other means of electronic communication to the recipient as follows:

to the Buyer:

Andreas Apostolopoulos  
186 Bartley Drive  
Toronto, Ontario M4A 1R1

Tel. No.: (416) 751-4242  
Fax No.: (416) 750-8884  
Email: tripleproperties@rogers.com

and to the Buyer's solicitor:

Demetrius Pantazis  
Barrister and Solicitor



870 Danforth Avenue  
Toronto, Ontario M4J 1L7

TelNo.: (416) 469-8136  
Fax No.: (416) 469-8136  
Email: [dpantazis@on.aibn.com](mailto:dpantazis@on.aibn.com)

to the Seller:  
MBI Limited/Limitée  
c/o Avison Young Commercial Real Estate (Ontario) Inc.  
30 Eglinton Avenue West, Suite 2300  
Mississauga, ON L5R 3E7

Attention: Mr. Martin Dockrill  
Tel: ■  
Facsimile: 905 712-2937  
Email: ■

and to the Seller's solicitors:

Stikeman Elliott LLP  
5300-199 Bay Street  
Commerce Court West  
Toronto, Ontario M5L 1B9  
Attention: Ms. Brenda Hebert

Tel: (416) 869-5578  
Facsimile: (416) 947-0866  
Email: [bhebert@stikeman.com](mailto:bhebert@stikeman.com)

or to such other address, facsimile number or email address as either party may in writing advise by notice given in accordance with this Section. Any notice, document or communication will be conclusively deemed to have been given, in the case of delivery, on the day of actual delivery thereof, and, in the case of facsimile transmission, or electronic mail or other means of recorded electronic communication, at the time and on the date of transmittal.

- 13.7 The Seller and the Buyer acknowledge and agree that they will use their respective reasonable commercial efforts to keep and maintain the terms and conditions of the Agreement on a strictly confidential basis both before and after Closing. The Seller and the Buyer and their respective principal shareholders or partners, employees, agents and representatives will keep in strict confidence and will not disclose the subject matter or



terms of this Agreement or the transaction contemplated hereby unless: (1) written consent is obtained from the other, which written consent may be withheld at the other's sole discretion; or (2) except (i) as may be required by law or legal process; (ii) pursuant to the order of a court of competent jurisdiction; or (iii) to enforce this Agreement. Notwithstanding the foregoing, the Seller and the Buyer may disclose this Agreement and the information obtained with respect to the Property to their respective agents, employees and professional advisors directly involved in the transaction, including legal counsel and environmental consultants, and, in the case of the Buyer, to any Assignee or prospective assignee and to the Buyer's mortgage brokers, bankers or other lenders.

13.8 The Agreement shall constitute the entire agreement between the Buyer and the Seller and there is no representation, warranty, collateral agreement or condition affecting the Agreement of the Property or supported hereby other than expressed hereby in writing. The Agreement shall be read with all changes of gender or number required by the context and shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

13.9 The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

13.10 Until Closing or earlier termination of this Agreement, the Seller will not undertake any negotiations respecting a sale of the Property with any third parties nor offer for sale or transfer, agree to sell or transfer, or sell or transfer (or cause any other person or entity to do any of the foregoing) all or any part of the Property or any interest therein.

13.11 The Seller and the Buyer covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") to govern the electronic submission of the transfer/deed for the Property to the applicable Land Registry Office. The DRA shall outline or establish the procedures and timing for completing all registrations electronically and provide for all closing documents and closing funds to be held in escrow pending the submission of the transfer/deed to the Land Registry Office and its acceptance by virtue of being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on Closing, the Closing Date shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Registry Office applicable to the Property.

13.12 This Agreement may be executed in any number of counterparts and all such counterparts shall for all purposes constitute one agreement binding all the parties hereto, notwithstanding that all parties are not signatories to the same counterpart. The Seller and the Buyer acknowledge and agree that this offer, acceptance of this offer or counter-offer and any notices required to be given hereunder may be communicated by facsimile transmission which shall be equally binding and duly accepted as an original agreement.

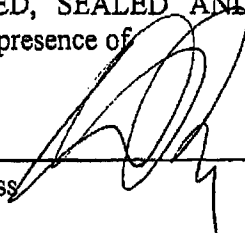
Such acceptance shall be deemed communicated at the time and on the date of faxing. The Seller and the Buyer agree to execute two (2) copies of the Agreement on the same document and provide to each other an original copy of such Agreement immediately following acceptance of this offer or counter-offer.


13.13 The Buyer and the Seller acknowledge that the Agent is acting as a dual agent with separate teams representing each party and each such team shall be responsible for its respective costs and each of the Buyer and the Seller shall be responsible for payment of their own separate commissions to their own separate teams. Vendor shall be solely liable for any and all other real estate commissions.

13.14 This offer shall be irrevocable by the Buyer until 5:00 p.m. on the 10th day of September, 2009, after which time if not accepted this offer shall be null and void and the deposit monies returned to the Buyer without interest or deduction.

DATED at the City of Toronto, this *2nd* day of September, 2009.

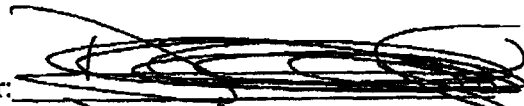
SIGNED, SEALED AND DELIVERED  
in the presence of

Witness 

  
ANDREAS APOSTOLOPOULOS, IN TRUST

The Seller hereby accepts the above offer, this *10th* day of September, 2009.

**MBI LIMITED/LIMITÉE**

Per:   
Name: *Dean Jones*  
Title: *Assistant Secretary*

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the corporation.

**SCHEDULE "A"****PERMITTED ENCUMBRANCES**

1. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown.
2. The exceptions and qualifications set out in Section 44(1) of the Land Titles Act.
3. Order registered as Instrument No. LT656978 on October 18, 1993.



## SCHEDULE "B"

PCL B.F.C.-25-2 SEC WHITBY; PT LT 25 & 26 CON BROKEN FRONT, TOWNSHIP OF WHITBY, PTS 1, 2, 3 & 4, 40R8086; S/T AN EXCLUSIVE ROW FOR ALL PURPOSES, AS APPURTENANT TO THE WHOLE AND ANY PT OR PTS OF THE LAND WHICH, FORTHWITH AFTER THE REGISTRATION OF THIS TRANSFER, WILL COMPRISE THE REMAINDER OF THE LAND ENTERED IN THE OFFICE OF LAND TITLES AT WHITBY AS PCL WHITBY BFC-25-1 IN THE REGISTER FOR COUNTY OF ONTARIO, OVER, ALONG AND UPON THE WLY 20' IN PERPENDICULAR WIDTH OF THIS LAND, THE SAID WLY 20' BEING DESCRIBED AS FOLLOWS; COMM AT THE POC AFORESAID; THENCE NLY, ALONG THE ELY LIMIT OF THE SAID RAILWAY LAND, 300' TO A POINT; THENCE ON A COURSE OF ABOUT S 12 DEG 7' 30" E, 60' 9 3/4", MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN PARALLEL TO THE ELY LIMIT OF THE SAID RAILWAY LAND AT A PERPENDICULAR DISTANCE OF 20' MEASURED ELY THEREFROM; THENCE SLY, ALONG THE SAID PARALLEL LINE, 239' 1 1/4", MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN ON A COURSE S 87 DEG 14" W. THROUGH THE POC: THENCE S 87 DEG 14' W, 20' 3 3/4", MORE OR LESS, TO THE POC; S/T A FREE AND UNINTERRUPTED ROW FOR ALL PURPOSES, IN COMMON WITH CANADIAN WIREBOUND BOXES LIMITED, OVER, ALONG AND UPON THE LAND HERINAFTER PARTICULARLY DESCRIBED, NAMELY: THAT PT LT 26, BF CON OF THE TWP OF WHITBY, NOW PT OF THE TOWN OF WHITBY, DESCRIBED AS FOLLOW: COMM AT THE POC, WHICH MAY BE LOCATED IN THE FOLLOWING MANNER: BEGINNING AT A STONE MONUMENT IN THE ELY LIMIT OF LT 25 BF CON DISTANT S 16 DEG E IN SAID LIMIT 1,588 FT FROM THE INTERSECTION OF THE SAID LIMIT WITH THE SLY LIMITED OF WATSON ST AS SHOWN ON GALT'S AMENDED PL (NO. 70) IN THE TOWN OF WHITBY; THENCE S 87 DEG 14 MINUTES W 1,706 FT AND 4 INCHES, MORE OR LESS, TO THE INTERSECTION WITH THE ELY LIMIT OF THE OLD WHITBY AND PORT PERRY RAILWAY ROW, BEING THE POC; THENCE S 7 DEG, 13 MINUTES & 30 SECONDS W, IN AND ALONG THE SAID ELY LIMIT OF ROW, 891 FT, MORE OR LESS, TO THE INTERSECTION OF THE SAID LIMIT WITH THE NELY LIMIT OF A TRAVELLED ROAD COMMONLY CALLED WATER ST EXTENTION AS DEDICATED BY BY-LAW 2023 OF THE CORPORATION OF THE TOWN OF WHITBY, PASSED ON 16TH DAY OF MAY 1955; THENCE S 73 DEG & 48 MINUTES E, IN AND ALONG SAID LIMIT OF ROAD, 20 FT & 3 INCHES, MORE OR LESS, TO A POINT DISTANT 20 FT MEASURED ELY FROM ELY LIMIT OF THE SAID OLD WHITBY & PORT PERRY RAILWAY ROW AND AT A RIGHT ANGLE THERETO; THENCE N 7 DEG 13 MINUTES & 30 SECONDS E, PARALLEL WITH THE LAST-MENTIONED LIMIT AND A CONSTANT PERPENDICULAR DISTANCE OF 20 FT THEREFROM, 897 FT & 8 1/4 INCHES, MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN ON A COURSE N 87 DEG 14 MINUTES E THROUGH THE POC; THENCE S 87 DEG & 14 MINUTES W, 20 FT 3 3/4 INCHES, MORE OR LESS, TO THE POC AS IN TW193 ; WHITBY