

**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 A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC.,  
3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS  
INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC,  
NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN  
LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU  
SP.Z OO and NAFA POLSKA SP. Z OO

(the "Applicants")

**MOTION RECORD OF THE APPLICANTS  
(Re: Stay Extension Motion returnable November 5, 2020)**

**Date:** October 30, 2020

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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SP.Z OO and NAFA POLSKA SP. Z OO

(the “Applicants”)

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**(Updated as of October 30, 2020)**

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# INDEX

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LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU  
SP.Z OO and NAFA POLSKA SP. Z OO

(the “Applicants”)

**I N D E X**

<b>Tabs</b>	<b>Document</b>
<b>1</b>	<b>Notice of Motion dated October 30, 2020</b>
<b>2</b>	<b>Affidavit of Doug Lawson sworn October 30, 2020</b>
<i>Non-Confidential Exhibits</i>	
A	Exhibit A – Affidavit of Doug Lawson dated October 30, 2019 (without exhibits)
B	Exhibit B – City Long Term Ground Lease re 65 Skyway
C	Exhibit C – Private Landlord Long Term Ground Lease re 65 Skyway
D	Exhibit D – Parcels 07424-0200 (LT) re 65 Skyway dated July 29, 2020
E	Exhibit E – Parcels 07424-0195 (LT) re 65 Skyway dated July 29, 2020
F	Exhibit F – Ground Lease Order of Justice McEwen dated November 28, 2019
G	Exhibit G – CBRE’s Overview

H	Exhibit H – Agreement of Purchase and Sale of the Ground Leases dated October 1, 2020 between NAFA and Niche (Redacted)
I	Exhibit I – Email from Jack Harvey, City Landlord dated October 13, 2020
J	Exhibit J – Letter to the City Landlord dated October 22, 2020
K	Exhibit K – Letter to the Private Landlord dated October 22, 2020
L	Exhibit L – Rental Rate Agreement as amendment to Ground Lease dated March 1, 2014
M	Exhibit M – Email from Private Landlord’s counsel dated October 28, 2020
<i>Confidential Exhibit found in the Confidential Exhibit Brief</i>	
A	Confidential Exhibit A
B	Confidential Exhibit B
<b>3</b>	<b>Affidavit of Jeff Wood sworn October 28, 2020</b>
<i>Non-Confidential Exhibits</i>	
A	Exhibit A - Proposed Form of Sublease with Niche Bakers Corp.
<i>Confidential Exhibit found in the Confidential Exhibit Brief</i>	
B	Confidential Exhibit B
<b>4</b>	<b>Draft Stay Extension Order</b>
<b>5</b>	<b>Draft Approval and Vesting Order</b>

**TAB 1**

Court File No. CV-19-00630241-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC  
(WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE  
B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the "**Applicants**")

**NOTICE OF MOTION  
(Returnable November 5, 2020)**

The Applicants ("**NAFA**" or the "**Applicants**") will make a motion for an Order seeking the relief set out herein to Justice McEwen of the Ontario Superior Court of Justice (Commercial List), on Thursday, November 5, 2020, at 9:00 a.m. or as soon after that time as the motion can be heard by Zoom video conference due to the COVID-19 pandemic.

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

**THE MOTION IS FOR:**

1. An Order, substantially in the form attached at **Tab 4** hereto (the "**Stay Extension and Ancillary Order**");

- 2 -

- (a) To extend the stay of proceedings (“**Stay Period**”) from November 9, 2020 to and including April 9, 2021;
- (b) to approve the fees and conduct of Deloitte Restructuring Inc. and its counsel, Miller Thomson LLP, as set out in its Fifth Report to Court to be filed;
- (c) to amend the Initial Order of Justice McEwen dated October 31, 2019 (as amended and restated, the “**Initial Order**”) to enhance the power of the Monitor as set out in the Affidavit of Douglas Lawson Affirmed on October 30, 2020;
- (d) to reduce the reporting requirements to once per month, rather than bi-weekly;
- (e) to clarify that the Applicants shall be entitled to facilitate and/or broker the purchase and sale of fur pelts and skins between third parties, provided that NAFA may not take delivery of physical inventory without the consent of the Monitor prior to taking any such delivery; and
- (f) to seal certain confidential exhibits and appendices of the Affidavit of Douglas Lawson Affirmed on October 30, 2020, the Affidavit of Jeffrey Wood Affirmed October 28, 2020, and in the Fifth Report of the Monitor, to be filed.

and an Order, substantially in the form attached at **Tab 5** hereto (the “**Approval and Vesting Order**”):

- (g) to approve a transaction to sell the Ground Leases (as defined below) of the principal premises of the business at 65 Skyway Ave, Toronto (the “**Skyway**”

- 3 -

**Property**”) to an arms-length third party, and to vest the Ground Lease in the purchaser, Niche Bakers Properties Inc. (“**Niche Bakers Properties**”); and

- (h) if necessary, an Order assigning NAFA Properties Inc.’s interest as a tenant to the City Ground Lease and Main Ground Lease (as defined in the Agreement of Purchase and Sale between NAFA Properties and Niche Bakers Properties dated October 1, 2020) to Niche Bakers Properties, including any and all options to purchase and rights of first refusal contained in the City Ground Lease and the Main Ground Lease, upon the closing of said agreement of purchase and sale and the delivery of the Monitor’s Certificate to the Niche Bakers Properties; and

**THE GROUNDS FOR THE MOTION ARE:**

- (i) Capitalized terms not defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order;
- (j) The Applicants are acting with good faith and due diligence, and they require more time to continue their restructuring efforts. They seek an extension of the Stay Period to April 9, 2021;
- (k) It remains NAFA’s expectation that an orderly restructuring will result in proceeds sufficient to repay the Agent, and funds which will be available to stakeholders behind the Agent;
- (l) It is not projected that the Agent will be repaid in the proposed extension period, although it is projected a further \$4,300,000 will be paid to the Agent during this period;



- 4 -

- (m) There are a number of other stakeholders that are owed a substantial amount of money from the Applicants that rank behind the Agent, including the shareholders, who have material loans owing to them;
- (n) The shareholders are composed of various mink and fur industry associations with in excess of 15,000 members;
- (o) The other key stakeholders are mainly farmers, trappers, buyers, employees and ordinary trade creditors;
- (p) NAFA continues with its restructuring efforts, which since the Applicants last reported to the Court in August, have included the sale of its remaining fur inventory, the sale of its remaining redundant equipment and chattels, the sale of its main business premises along with the transfer of its business operations to smaller office space from which it intends to continue to operate;
- (q) NAFA is also in the process of pursuing long-term debts owing to the Company owed to it by farmers previously financed by the company, which debts are material; NAFA believes the pursuit of these debts will be essential in generating surplus for its stakeholders;

### **Skyway Sale**

- (a) NAFA Properties (one of the Applicants) is the registered owner of two ground leases (“**Ground Leases**”) at the Skyway Property;

- 5 -

- (b) Pursuant to the Order of Justice McEwen dated November 28, 2019, NAFA, led by their broker CBRE, entered into a vigorous sale process for the Ground Leases beginning on or about January 21, 2020;
- (c) NAFA worked closely with the Monitor throughout the sale process with frequent reporting and consultation with the Agent and BDC;
- (d) Over the course of nine months, NAFA entered into negotiations with several potential purchasers and received several bids for the Ground Leases;
- (e) On or about October 7, 2020, NAFA Properties entered into an agreement of purchase and sale with Niche Bakers Properties for the purchase of the Ground Leases (the “**Niche APS**”), which has a closing date of November 15, 2020;
- (f) The Niche APS and sale of the Skyway Property has the support of BDC, the Agent, NAFA and the Monitor and will result in BDC being paid in full and a surplus to be paid to the Agent;
- (g) The sale transaction is in the best interests of the Applicants and their stakeholders;

### **Ground Leases**

- (a) The landlord for one of the Ground Leases is the City of Toronto (“**City Landlord**”) and the landlord for the other ground lease is a group of individuals and trust known as the Black family (the “**Private Landlord**”) (collectively the “**Landlords**”);

- 6 -

- (b) On or about October 22, 2020, NAFA wrote to the Landlords to, inter alia, to advise that if it did not receive the Landlords' consent to the sale by the November 5, 2020, motion return date that it would seek a forced consent pursuant to the provisions of the CCAA;
- (c) To date, NAFA has not been able to obtain the consent of its Landlords;
- (d) Niche Baker Properties will sublease the Ground Leases to its operating companies. This is similar to the current arrangement being NAFA Properties has subleased the ground leases to NAFA;
- (e) The Private Landlord is concerned that the proposed tenant will not provide an indemnity for the entire 53 years remaining on the lease;
- (f) There is no provision pursuant to the Ground Leases that requires an indemnity;
- (g) The Niche operating companies have agreed to provide an indemnity;
- (h) The City Landlord has not expressed any specific concerns with the sale, but has not provided its consent. The City Landlord has advised that it requires at least 6-8 weeks to provide its consent, which is past the proposed closing date;
- (i) Niche Bakers Properties has delivered supporting documentation with respect to its plans for the Skyway property and its financial information to the Private Landlord;
- (j) They intend to occupy the Skyway Property for the entirety of the Ground Lease term (being 2073);

- (k) The completion of the Niche APS provides important recovery for the Applicants' stakeholders and is the best price available;
- (l) The assignment of the Ground Leases is fair and reasonable for all stakeholders involved;

### **Cash Flow Forecast**

- (m) NAFA, in conjunction with the Monitor, has prepared a cash flow forecast for the current proposed stay extension period;
- (n) It demonstrates that NAFA expects to repay the Agent approximately \$4,300,000 during the cash flow period and that the Applicants will have sufficient funds to maintain operations through the proposed extension of the Stay Period;

### **Future Operations**

- (o) NAFA anticipates a possible business opportunity to increase revenue by acting as a broker in the fur industry during the stay extension period. NAFA is in a unique position to do this by leveraging its specialized skills, good reputation, and international contacts in the fur industry (the "**Brokerage Business**");
- (p) A previous order in this proceeding appears to limit inadvertently the ability for Nafa to pursue the Brokerage Business and therefore NAFA is asking that that order be amended as set out in the draft order attached hereto;
- (q) It is intended that the Monitor will approve in advance any material expenses related to this business;

**Proposed Additional Powers of the Monitor**

- (r) The Agent, NAFA, and the Monitor are expending significant professional fees arising from the frequent reporting and consultations and consent requirements;
- (s) As a result, the Agent, NAFA, and the Monitor have been negotiating, subject to the approval of this Court, to give the Monitor control over six areas where control was previously with the Company and the Agent. Those six areas that the Monitor would be authorized, in consultation with the Applicants and the Agent, to make decisions are as follows:
  - (i) Collection and Pursuit of Insurance claims owed to the Applicants;
  - (ii) Collection and Pursuit of the Rollover Loans debts;
  - (iii) Pursuit of ongoing Litigation;
  - (iv) To monitor and control material expense related to the Brokerage Business;
  - (v) Real Estate; and,
  - (vi) Employees.
- (t) It is proposed that the Monitor will not require the consent of the Agent or the Applicants in exercising the powers set out above, but if there is a disagreement by either the Agent or the Applicants on a decision made by the Monitor, the Applicants or the Agent or both may seek to bring the matter before the Court. All the activities of the Monitor will, in any event, be subject to Court approval in the ordinary course;

- (u) In addition, bi-weekly variance reporting will be replaced with monthly variance reports;
- (v) The parties continue to negotiate the precise terms of the order to empower the Monitor, but the Applicants expect it to be substantially in the form of the draft order attached;

### **Extension**

- (w) NAFA has been acting in good faith and with due diligence, and continues to act in this manner in its relationships with its stakeholders;
- (x) The Monitor is supportive of NAFA seeking an extension of the Stay Period to and including April 9, 2021;
- (y) Pursuant to paragraphs 35 and 36 of the Initial Order, the Monitor and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court;
- (z) The Fifth Report sets out the total fees and disbursements of the Monitor and its legal counsel, Miller Thomson LLP;

### **Sealing Order**

- (aa) There are certain exhibits that are required to be kept confidential and sealed as they contain sensitive confidential business information;
- (bb) The fees and disbursements of the Monitor and its counsel are fair and reasonable. Given all the settlement discussions etc. in this matter to date, the dockets contain

- 10 -

commercially sensitive information that if disclosed could impact future recoveries and should be sealed;

- (cc) In the event these exhibits are not sealed there will be a serious risk to the affiant's commercial interests;
- (dd) The salutary effects to seal the exhibits outweigh any deleterious effects;

### **Process in Light of COVID-19**

- (ee) As a result of the changes to the Commercial List operations in light of COVID-19, the following procedures will be applied with respect of the hearing for the Applicants' motion:
  - (i) parties on the Service List who intend to oppose the Applicants' requested stay extension or other relief being sought on this motion shall provide written notice to counsel for the Applicants ([dullmann@blaney.com](mailto:dullmann@blaney.com)), the Monitor ([jsleeth@deloitte.ca](mailto:jsleeth@deloitte.ca); [kmahar@millერთhompson.com](mailto:kmahar@millერთhompson.com)) and the Commercial List office ([Toronto.commerciallist@jus.gov.on.ca](mailto:Toronto.commerciallist@jus.gov.on.ca)) by no later than 5:00 p.m. EST on November 3, 2020 (an "**Objection Notice**");
  - (ii) if no party delivers an Objection Notice in accordance with the procedures and deadlines set out above, the Monitor shall advise the Court accordingly and request the motion be heard by telephone conference on the materials filed;

- (iii) if a party delivers an Objection Notice, the Monitor shall advise the Court, and the Court will direct the parties with respect to the conduct of a hearing; and
- (iv) in the event the court finds the objection to be material, and if the hearing cannot be heard on November 5, 2020 as a result of an Objection Notice, the Applicants will request that the Court issue a short stay extension to maintain the status quo pending a final determination of the Applicants' stay extension request;
- (ff) The Monitor and Applicants will take such other procedural steps as may be directed by the Court and as set out in the procedures suggested by the Commercial List Users Committee at <<https://commercialist.com/pdf/changes-to-commercial-listoperations-in-light-of-covid-19.pdf>>;

### **Other Grounds**

- (gg) The other grounds set out in the Affidavit of Douglas Lawson affirmed October 30, 2020;
- (hh) The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Honourable Court;
- (ii) Rules 2.03, 3.02, 16, and 37 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended;
- (jj) Section 106 of the *Courts of Justice Act*, R.S.O., c. C. 43, as amended; and



(kk) Such further and other grounds as counsel may advise and this Court may permit.

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

- (a) The Affidavit of Doug Lawson sworn October 30, 2020 and the exhibits attached thereto;
- (b) The Affidavit of Jeffrey Wood sworn October 28, 2020 and the exhibits attached thereto;
- (c) The Fifth Report of the Monitor, to be filed; and,
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Date:** October 30, 2020

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Counsel for the Applicants

**TAB 2**

Court File No. CV-19-00630241-00CL

**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 A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC.,  
3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS  
INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON  
LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC  
(WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE  
B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the “**Applicants**”)

**AFFIDAVIT OF DOUGLAS LAWSON**

I, **DOUGLAS LAWSON**, of the City of Toronto, in the Province of Ontario, **AFFIRM**

**AND SAY:**

1. I am the President and Chief Executive Officer of North American Fur Auctions Inc. and as such have knowledge as to the matters which I hereinafter depose. To the extent I am recounting information provided to me by others, I have stated the source of that information and verily believe it to be true.
2. I use the term “**NAFA**” to refer to the Applicants throughout this affidavit. Further, all currency stated herein is stated in U.S. dollars unless otherwise noted.
3. I swear this affidavit in support of a motion by NAFA for an Order seeking, *inter alia*:
  - a. an extension of the stay of proceedings (“**Stay Period**”) from November 9, 2020 to and including April 9, 2021;

- b. to seek the approval of a transaction to sell the Ground Lease of the principal premises of the business at 65 Skyway Ave, Toronto (the “**Skyway Property**”) to an arms-length third party, and to seek a vesting order related to same;
  - c. to assign the rights and obligations of NAFA Properties Inc. (“**NAFA Properties**”) under the Ground Leases (as defined below) at the Skyway Property to Niche Bakers Properties Inc. (“**Niche Bakers Properties**”);
  - d. to approve the fees and conduct of Deloitte Restructuring Inc. and its counsel, Miller Thomson LLP, as set out in its Fifth Report to Court to be filed (the “**Fifth Report**”);
  - e. to amend the Initial Order to enhance the power of the Monitor as further set out below;
  - f. to reduce the reporting requirements to the Agent to once per month, rather than the current cadence of bi-weekly;
  - g. to clarify that the Applicants are not prohibited from facilitating and/or brokering the purchase and sale of fur pelts and skins between third parties, provided that NAFA does not take delivery of physical inventory without the prior consent of the Monitor;
  - h. to seal certain confidential exhibits and appendices appended to the Fifth Report, the Affidavit of Jeffrey Wood, and the within Affidavit.
4. On October 31, 2019, NAFA commenced proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to the Order of Justice McEwen (as amended and restated, the “**Initial Order**”). Background information about NAFA’s business is set out in the

affidavit I affirmed in support of the initial CCAA application (“**Initial Affidavit**”), a copy of which is attached hereto (without exhibits) and marked as **Exhibit “A”**. Capitalized terms used herein and not defined are as defined in my Initial Affidavit.

## **Background**

5. On October 31, 2019, NAFA commenced proceedings under the CCAA pursuant to the Initial Order, which was amended and restated on November 8, 2019.

6. On November 28, 2019 (the “**November Motion**”), the Court granted NAFA various orders including an Order extending NAFA’s Stay Period until January 31, 2020 (“**Stay Extension Order**”).

7. On January 30, 2020, this Court granted a further extension of the CCAA stay to April 3, 2020. It also authorized NAFA to conduct a SISP, in a form approved by the Agent or further ordered by the Court and subject to review of the form of the SISP by counsel for certain employees.

8. Before the form of a SISP could be agreed upon between NAFA, the Monitor and the Agent or launched, the scope of the pandemic started to become known to NAFA when first, Kopenhagen Fur (“**KF**”) in February cancelled its auction, and then Saga Furs (“**Saga**”) converted its auction in March to an online auction.

9. Between April 3, 2020 and July 31, 2020, NAFA sought three further short-term extensions while NAFA and its stakeholders considered the consequences of the pandemic and avoided long term plans.

10. The last extension was granted on August 26, 2020 extending the Stay Period to November 9, 2020.

11. To date, no creditor has objected to any stay extension and there have been no contested hearings or notices of objection filed. The Agent, at various times, has raised specific concerns at various Court hearings, which were ultimately addressed consensually.

### **Operations since the August 26 Stay Extension Order**

12. In accordance with the plans set out in my last affidavit, NAFA has continued to operate its business with the goal of reducing expenses and maximizing collections. In this regard, NAFA has attended to the following matters.

#### ***Sale of Fur Inventory***

13. As anticipated in my last affidavit, NAFA engaged in an aggressive process to sell its remaining fur inventory on hand as part of the plan to exit the Skyway Property by October 31, 2020. NAFA held its "PT Open House" in August and September during which buyers, including those who were otherwise intending to attend the wild fur auction in North Bay, were able to attend and review goods.

14. NAFA was ultimately able to sell effectively all of its fur inventory at prices which were equal to, or competitive with, values being established at the mink auctions at Saga and KF, and with the wild fur prices being established at Fur Harvesters.

15. NAFA has collected \$1,654,001 in gross receipts (i.e. before payment of amounts due to consignors) from this process, which while less than projected in my August affidavit, was still

market, and in some cases above market, for those assets. The Agent and the Monitor were advised of or consulted in respect of these sales. Essentially, all sold good have now been shipped out of NAFA.

16. In accordance with the provisions of the Safe Harbour Order, NAFA and the Monitor are now engaged in the process of reconciling the sales against amounts owed to the consignors who may have had an interest in those goods. It is expected that cheques connected with this sale, and connected with other private treaty sales made over the past several months, will be issued in the coming weeks to consignors and farmers. This process is time consuming and it is estimated that in excess of 2,000 cheques will be issued, in some cases for amounts less than \$10, but in most cases more.

### ***Cash Flow Variance***

17. Throughout the period of the last extension, NAFA has generally performed in accordance with the cash flow projections provided to the court in August 2020. I understand the Monitor will report further on this in its Fifth Report.

18. While receipts remain difficult to predict, in general those receipts were as projected in the last cash flow period. In addition, higher than expected receipts were received from the Fall auctions. In contrast, we were not able to collect the projected settlement funds with Citadele Bank described in my last affidavit, which we were hoping to collect in October. I am advised as of October 29, 2020 by our Latvian counsel that a final agreement has been reached, the monetary terms of that settlement remain the same, the parties are in the process of signing the agreement, and once signed the funds will be delivered in short order. (There were technical drafting issues

with the settlement agreement that had been delaying the finalization of the settlement and the arrival of those funds).

19. I am not aware of any expenses in the last cash flow period, which were materially higher than projected (save and except for possibly the professional fees).

***Auction of Assets on Premises and Revised Date of Departure***

20. As anticipated in my last affidavit, NAFA entered into an auction agreement with Canam Appraiz, with the consent of the Agent, to sell the equipment and other non-inventory assets at the Skyway Property. The auction is completed.

21. The chattels to be sold at auction were reduced by two factors. First, a portion of chattels were ultimately included in the sale of Skyway Property. These assets were materially more valuable when sold with the Skyway Property. Second, a material amount of the fur specific machinery was sold *en bloc* to one fur industry buyer immediately prior to the auction commencing. Again, those assets had more value in the hands of an industry player than anticipated at auction.

22. It is my understanding that the auctioneer is currently tabulating the results of the auction. Based on reports to date, substantially all available chattels have been sold and the items are currently being picked up. The cash flow anticipates net proceeds in the range of \$50,000; however, based on a recent update from Canam Appraiz, we believe the proceeds will be higher than the cash flow projection.



23. The auctioneer is also available to assist the Company in removing and scrapping additional unsold assets, if the Company determines it is necessary for it to do so under the terms of the sale of the Skyway Property.

24. Given that the Skyway Property is to be sold on November 15, 2020, and given that it was not practical to hand over the operation of the building for a short period to BDC (i.e., from November 1<sup>st</sup> to November 15<sup>th</sup>), NAFA and BDC reached an understanding under which NAFA would continue to be responsible for and allowed to occupy the building beyond October 31, 2020.

### **Farms in Litigation Status Update**

25. My August 2020 affidavit provided a more fulsome description of the litigation NAFA has commenced against various debtor farmers. I will provide a brief overview of those claims in this section and an update on each.

26. Three different farms, one in Latvia and two in Lithuania, have taken steps to avoid their obligations to NAFA and to try to capitalize on NAFA's insolvency. These farms are known as: Kestutis, Grobina and the Ciskevicius Brothers.

27. The three farms, being separate and unrelated businesses, together owe NAFA millions of dollars.

28. Kestutis was financed by NAFA to provide in excess of 360,000 pelts, Grobina was financed by NAFA to provide in excess of 160,000 pelts to NAFA this year and the Ciskevicius Brothers were financed by NAFA (and Saga) to provide 150,000 pelts.

29. Had all three of these farms delivered their pelts in full to NAFA, and they had been sold for an average price of \$20 USD, NAFA would have recovered \$13,400,000, essentially all of the remaining Agent operating debt. However, at this point in time, the anticipated recovery from these farms is substantially less and the timing of recovery is uncertain.

### ***Grobina***

30. By way of brief review, Grobina is indebted to NAFA in the amount of EUR 4,333,646.08. In or around the date of the Initial Order, Grobina entered into an insolvency administration in Latvia. Grobina sold approximately 75,000 mink that were pledged to NAFA to a European investment house (known as “CR7”) for an amount which was manifestly below market and in contravention to NAFA’s loan and security agreement. It is NAFA’s understanding that the 75,000 CR7 mink have been sent to KF in Denmark for sale. A further 80,990 pelts remained unsold.

31. NAFA has had to engage in material litigation proceedings in Latvia to deal with this issue. The matter is still not resolved but, at this time, NAFA has succeeded in getting an injunction to prevent the distribution of the proceeds from the CR7 mink to CR7 pending the completion of the litigation in that matter.

32. NAFA, through Danish counsel, attempted to have the Latvian injunction recognized in Denmark where we believe the mink are being held. NAFA was unsuccessful in its attempts due to jurisdictional issues (i.e., the Danish court would not recognize the Latvian order). Danish counsel has put KF on notice that any proceeds from CR7 mink must be distributed to NAFA, and more generally, of NAFA’s security interest in the mink. To date, KF has not been cooperative. NAFA is considering litigation against KF in Denmark, but is still obtaining a litigation budget and cost/benefit analysis in this regard.

33. NAFA was also successful in negotiating with the insolvency administrator and the junior creditor of Grobina (being Citadele Bank), to ultimately release the remaining 80,000 mink to be sold, although it took several negotiations to reach that arrangement to the satisfaction of the administrator and the mink were ultimately delivered too late to be sold this year.

34. As set out above, NAFA has also reached an agreement with Citadele Bank, which is at the signing stage, for a material payment to NAFA. The Monitor and the Agent have approved the settlement. The settlement arose from a potential litigation claim by NAFA against Citadele Bank, which Citadele Bank had disputed. The details of that settlement are confidential and are not being submitted to this Court for approval as it is not a condition of the settlement.

35. In general, NAFA's Latvian litigation efforts have secured approximately 145,000 mink pelts (although the litigation in respect of same is not finished and the whereabouts of the 75,000 mink is uncertain) and a material settlement with Citadele Bank when it appeared earlier in the proceedings that the recovery from Grobina might have been zero.

### ***Kestutis***

36. By way of brief review, NAFA has commenced litigation in Lithuania against Kestutis. Kestutis owes NAFA approximately EUR 10,302,156 by way of various loan agreements. NAFA alleges, among other things, that Kestutis fraudulently used the loaned funds for purposes other than raising mink. In addition, it alleges that Kestutis has sold mink pelts in breach of NAFA's security agreements held over the mink.

37. NAFA's Lithuanian counsel, Leadell, has aggressively pursued the debt and enforcement of NAFA's security against Kestutis. NAFA is seeking both an order to seize EUR 2,000,000

worth of Kestutis mink (being the amount of NAFA's security) and damages in the amount of EUR 12,000,000 against Kestutis (the "**Kestutis Main Action**"). Kestutis has defended the actions against him, including appealing interim decisions, which have been decided in NAFA's favor. Kestutis has attempted to delay these proceedings as much as possible.

38. Recently, NAFA successfully obtained a Lithuanian Court of Appeal order for possession of 16,000 Kestutis mink. NAFA is holding the 16,000 Kestutis mink at its Polish facility pending final determination of the case. It is expected that these mink, which are not the highest quality mink, can still be sold for roughly EUR 160,000 – assuming the Lithuanian court permits the sale with the proceeds to be directed to NAFA.

39. On October 26, 2020, Leadell argued the Kestutis Main Action before the Lithuania courts. It is expected that a decision will be issued in mid-November. There is a 30-day appeal period to the Lithuania Court of Appeal.

40. In addition, Leadell has successfully seized Kestutis' farming equipment and a plot of land to be auctioned by a Lithuanian bailiff. The proceeds from that auction will be payable to NAFA. The expected proceeds are uncertain, but are not expected to be material.

41. The Lithuanian authorities are also investigating Kestutis for possible criminal activities with respect to NAFA.

42. NAFA's agent in Europe, Sebastian Jansen, is working closely with Leadell and the Lithuanian authorities to assist prosecuting the claims against Kestutis.

43. Lastly, Leadell is also exploring other avenues for enforcement, including a transfer under value of mink to a third party valued in excess of EUR 1,000,000. NAFA and the Monitor are

currently reviewing a cost/benefit analysis to pursue this claim. It will also consult with the Agent in this regard.

44. No amount is included in the cash flow Forecast at this time for any proceeds from the Kestutis litigation recovery effort.

***Ciskevicius Brothers***

45. By way of brief review, Andrius Ciškevičius and Mantvydas Ciškevičius (the “**Ciskevicius Brothers**”) are farmers located in Lithuania who collectively owe NAFA EUR 2,418,001.79. Between the Ciskevicius Brother, NAFA has security over 150,000 mink to a maximum amount EUR 3,000,000. Moreover, NAFA has a personal guarantee from each of the Ciskevicius Brothers. Although, it should be noted that NAFA has not obtained a Lithuanian security opinion with respect to the Ciskevicius Brothers, and therefore, I cannot comment on any potential issues with respect to enforcing the security in Lithuania at this time.

46. It is my understanding that Saga has commenced litigation against the Ciskevicius Brothers in Finland and Lithuania for amounts it had advanced to them.

47. NAFA’s Finnish counsel has been in contact with Saga’s Finnish counsel with respect to the status of the Finnish and Lithuanian case. Based on those discussions, it is my understanding that Saga’s case is ongoing against the Ciskevicius Brothers but is close to an end. To date, Saga has not received any Judgments against the Ciskevicius Brothers. Saga is willing to assist NAFA if it decides to commence its own litigation against them.

48. At this point, NAFA is still determining the proper venue to commence a claim, as well as, reviewing a possible litigation budget and cost/benefit analysis with respect to commencing the claim.

49. It is NAFA's view that ultimately the Ciskevicius Brothers should be pursued considering the size of their debt and that NAFA has security over their assets, including the personal guarantees.

### **Insurance Claims**

50. My August 2020 affidavit sets out a more fulsome background to the insurance claims.

51. By way of brief review, NAFA maintains a credit insurance policy with an entity known as "Red Rock Insurance" ("**Red Rock**") which insurance policy essentially provides coverage in the event that an entity to whom a kit loan was made in the previous year, fails to deliver its mink or to repay the full amount of the kit loan.

52. It is NAFA's view that the insurance claims provide a valuable potential avenue of further recoveries.

53. In or around July 2020, NAFA, in consultation with its insurance broker, submitted two "test case" proof of losses to Red Rock. One of the test cases is for Kestutis and is seeking coverage in the amount of over EUR 8,000,000 (although there is a coverage limit of \$2,040,000 for this farmer) and the other is for a farm known as Furlax and is seeking payment in the amount of EUR 48,098.82. The purpose of the "test cases" is to get a better understanding of the underlying supporting information Red Rock will require in order to evaluate the claims and provide a decision on coverage.

54. Since submitting the “test cases”, Red Rock’s insurance adjuster has requested further supporting documentation and clarification on the facts underlying each of the claims. NAFA has responded to these requests and it is expected that a decision should be forthcoming. Although, Red Rock has not yet provided a definitive date that it will provide a response.

55. Based on Red Rock’s feedback, NAFA believes it is now in a position to start filing the remainder of its claims.

56. In an effort to keep costs down, and at the Agent’s request, NAFA is preparing the remaining insurance claims internally with minimal oversight from professionals. Moreover, the NAFA staff are knowledgeable about the history of these loans and are, therefore, uniquely able to respond to the insurer’s inquiries.

57. It is expected that NAFA will submit proof of loss claims for virtually all of the farmers that owe it long term debt. The recovery amount at this time is unknown, but the potential upside is significant. For example, should Red Rock approve each of the filed claims, then NAFA could stand to gain millions dollars even after payment of the deductible.

58. It is expected that NAFA will have filed all of its insurance claims before December 31, 2020.

59. NAFA expects a multi-million dollar recovery from this insurance policy, given the issues described herein and the general difficulty in being paid its debts from its farms in this year, which claims, if successful, will contribute in a meaningful way to repaying the Agent and other creditors.

## **Wisconsin Properties**

### ***1600 Williams Property***

60. In or around August 31, 2020, NAFA entered into a lease agreement with Second Harvest Foodbank of Southern Wisconsin Inc., a Wisconsin non-stock corporation (“**Second Harvest**”) to lease its 1600 Williams, Stoughton, Wisconsin (“**1600 Williams**”) property for \$8,000 per month (plus some additional rent) on a one year term beginning on September 1, 2020 and ending on August 31, 2021. It is expected that the monthly lease payments will cover NAFA’s holding costs for the property. The lease contains a termination provision that allows a potential purchaser to evict Second Harvest on 60 days’ notice.

61. 1600 Williams is still currently for sale with a list price of \$1,645,000, which was reduced from \$1,695,000 in June 2020 due to lack of interest. NAFA is currently in negotiations with a potential buyer and is close to a binding sale. There is approximately \$1,500,000 mortgage balance on the property in favour of 464676 BC Ltd. Based on calculation performed by the Monitor, it is expected that any sale price (less closing and agent fees) will result in all proceeds being paid to the mortgagee with no surplus to NAFA. The mortgagee has agreed to discharge the mortgage to the property in the event there is a shortfall.

### ***221 Industrial Circle and 205 Industrial Circle Property***

62. On or around September 14, 2020, NAFA entered into a one year lease extension with Saga beginning on October 1, 2020 and ending on September 30, 2021 to lease its 221 and 205 Industrial Circle, Stoughton, Wisconsin (the “**Industrial Circle Properties**”) properties. The extension is on substantially the same terms as Saga’s previous lease with a 3% increase in monthly rent to



\$26,858.43 (plus additional rent). NAFA can terminate the lease on 90 days notice with such notice being given no earlier than March 31, 2021. The Industrial Circle Properties are still listed for sale with an asking price of \$3,350,000.

### **Skyway Property Sale**

63. NAFA Properties Inc. (“**NAFA Properties**”), one of the Applicants and a subsidiary of NAFA, is the registered owner of two long-term ground leases (the “**Ground Leases**”) in respect of the Skyway Property, which is NAFA’s head office and main auction facility. Attached hereto and marked as **Exhibits “B”** and “**C**” are copies of the Ground Leases for the Skyway Property.

64. The Skyway Property consists of two property parcels bearing PIN numbers: (1) 07424-0200 (LT); and, (2) 07424-0195 (LT). The registered owner of PIN#07424-0200 (LT) is the City of Toronto. Attached hereto and marked as **Exhibits “D”** and “**E**” are copies of the property parcels abstracts for the Skyway Property.

65. The registered owners of PIN 07424-0195 (LT) are:

- i. Rebecca’s Gift Holdings Limited
- ii. Anne Black
- iii. Lorne Gray Black
- iv. Stephen Howard Black
- v. Ian Neil Black
- vi. Joseph-Estate Black

## vii. 1350739 Ontario Limited

66. NAFA Properties private ground lease, with respect to PIN 07424-0195 (LT) , is entered into with the following entities and individuals as the landlords (collectively being the “**Private Landlord**”):

- a. Meadowvale Land Limited;
- b. Rebecca’s Gift Holdings Limited;
- c. 1350739 Ontario Limited; and
- d. The Estate of Joseph Black.

(the City of Toronto shall be referred to as the “**City Landlord**”, and collectively with the Private Landlord, they shall both be referred to as the “**Landlords**”)

67. In February 2017, BDC made a term loan available to NAFA Properties in the principal amount of \$7,240,000 to allow NAFA Properties to acquire its interest in the Skyway Property in connection with the Ground Leases.

68. NAFA Properties currently pays BDC a monthly mortgage payment of approximately \$44,500 (that amount fluctuate on account of interest) due at the end of each month. NAFA is current with its payments.

69. On or about November 28, 2019, Justice McEwen granted NAFA what is referred to as the Ground Leases Order. The Ground Leases Order, inter alia, ordered that all payments relating to the Grounds Leases will continue to be paid to BDC in the ordinary course and it authorized NAFA Properties to list the Ground Leases for sale, provided that the listing agreement is in

form and substance satisfactory to the Monitor and BDC, in consultation with the Agent. Attached hereto and marked as **Exhibit “F”** is a copy of the Ground Leases Order.

### ***The Sales Process***

70. I verily believe that NAFA Properties went through a vigorous sales process to sell the Ground Leases.

71. NAFA met with four real estate agents and after consultation with the Monitor, BDC and notice to the Agent, selected a commercial real estate agent, being the CBRE Group, Inc. (“**CBRE**”), who began its marketing efforts on January 21, 2020.

72. CBRE is recognized as a global and Canadian leader in commercial real estate services. Attached hereto and marked as **Exhibit “G”** is an overview of the CBRE team retained to market the Ground Leases.

73. I am advised by Lisa Maharaj, a now former Project Manager at CBRE, that CBRE undertook the following extensive steps to market and sell the Ground Leases:

- a. Listed the Ground Leases on the Multiple Listings Services;
- b. Cold called various potential investors;
- c. Sent email blasts attaching a marketing package with respect to the Ground Leases to the Vice Chairman at CBRE, John LaFontaine’s, personal and proprietary database of 25,000 contacts;
- d. Listed the Ground Leases on loopnet.com (a commercial real estate sales website);

- e. Advertised in CBRE's Etobicoke quarterly newsletter;
- f. Listed the Ground Leases on real estate agent third party websites thereby greatly increasing exposure; and,
- g. Put up for sale signs at the Skyway Property.

74. After discussion with CBRE, NAFA Properties initially listed the Ground Leases on the MLS for \$1.00 in order to encourage bids and gauge market interest given the complexity of the site considering the sale is pursuant to court proceedings and the sale is for Ground Leases, not the freehold interest. Ultimately, this strategy proved to be unsuccessful as NAFA did not receive any suitable bids.

75. On May 5, 2020, after consultation with NAFA Properties' stakeholders and based on CBRE's experience in the marketplace, NAFA Properties revised its strategy and increased the listing price to \$8,000,000. According to CBRE, the change in price resulted in more interest in the Ground Leases from potential buyers.

### ***The Bids***

76. BDC and the Agent were kept apprised of the negotiations for the purchase of the Ground Leases by way of bi-weekly updates and real-time discussions, when necessary. The Monitor was directly involved in most, if not all, of the following negotiations.

77. I understand from our team at CBRE that as a result of the COVID-19 pandemic beginning in or around early March, 2020, there was a decrease in demand for commercial real estate. Nonetheless, NAFA has been able to secure several bids to purchase the Ground Leases,

including a successful bid that did not close and a current winning bid that is scheduled to close on November 15, 2020, as set out in greater detail below. I understand from the Monitor that it will be annexing a confidential appendix to the Fifth Report which will provide the details of the interest and offers received in respect of the Skyway Property.

78. On June 23, 2020, NAFA Properties entered into an agreement of purchase and sale for the Ground Leases with a closing date of October 30, 2020. However, on or about August 8, 2020, that agreement of purchase and sale became null and void as the purchaser was unable to obtain the requisite zoning for their intended use of the Skyway Property.

79. Following the failed agreement of purchase and sale, NAFA and CBRE continued its efforts to sell the Ground Leases.

80. Shortly thereafter, NAFA entered into negotiations with two separate possible purchasers during the months of August and September.

81. After extensive negotiations, on or about October 7, 2020, NAFA Properties entered into an agreement of purchase and sale with Niche Bakers Properties Inc. (the “**Purchaser**”) for the purchase of the Ground Leases (the “**Niche APS**”). Attached to this Affidavit and marked as **Exhibit “H”** is a redacted copy of the Niche APS redacting the financial terms of the APS as they are commercially sensitive and may negatively impact the remarketing of the Skyway Property should the Niche transaction not close.

82. The Niche APS has a closing date of November 15, 2020.

83. I understand that there is a due diligence period pursuant to the Niche APS, which has not been waived as of the date of signing this affidavit. I further understand that the solicitor for the

Purchaser is communicating with the solicitor for the Private Landlord with respect to some of the due diligence conditions related to future rights of the Purchaser under the lease. It is unclear if this is properly a due diligence issue. The Purchaser must waive or enforce their due diligence condition by November 4, 2020.

84. As part of the closing conditions, NAFA Properties must, inter alia, obtain:
- a. all court and other approvals necessary to complete the transaction contemplated by the Niche APS as are required in connection with the proceedings NAFA Properties has commenced under the *Companies' Creditors Arrangement Act*; and,
  - b. The Landlords consent to the sale or, in the alternative, a Court Order dispensing with the Landlords consents; provided that such Court Order shall expressly confirm that any and all options to purchase and rights of first refusal contained in the Ground leases are transferred to the Purchaser.

85. Based on my personal discussions and my lawyer's advice, the Niche APS has the support of BDC, the Agent, NAFA, and the Monitor. It will result in BDC being repaid in full and an amount being repaid to the Agent as referred to below.

86. The Applicants believe that the sale transaction is in the best interests of the Applicants and their stakeholders.

87. As such, NAFA Properties is seeking an approval and vesting order in order to close the transaction.

### ***Landlord Consent***

88. NAFA Properties has also taken steps to obtain the consent of the Landlords. Namely, its counsel has been in frequent contact with both the City Landlord's solicitor and the Private Landlord's solicitor.

89. On or about October 8, 2020, NAFA Properties wrote to both the City Landlord and the Private Landlord to request the information required to obtain each of their consents and to impress upon the Landlords that time was of the essence for each to obtain the consents.

90. The City Landlord advised that the process could take between 6-8 weeks (in pre-COVID times). Attached hereto and marked as **Exhibit "I"** is a copy of an email from Jack Harvey at the city to my counsel dated October 13, 2020.

91. The Private Landlord did not provide a time range to obtain their consent, but did request a number of documents from the Purchaser to make its decision.

92. On or about October 20, 2020, the Purchaser delivered a package of corporate and financial documents to NAFA Properties, which it forwarded to the City Landlord in order to help facilitate the City Landlord's approval. The documents included:

- a. Articles of incorporation for Niche Bakers Properties Inc.;
- b. Financial statements for Niche Bakers Corp. (audited) and Niche Bakers Properties Inc. (unaudited);
- c. Business profile for Niche Bakers Properties Inc. and Niche Bakers Corp.;
- d. Commercial credit report for Niche Bakers Corp.; and

- e. Proposed sublease from Niche Bakers Properties Inc. to Niche Bakers Corp.

Attached hereto and marked as **Confidential Exhibit “A”** is a copy of the email with attachments. The Exhibit is confidential as it contains sensitive and confidential business information of the Purchaser, and thus, should be sealed.

93. On or about October 21, 2020, the Purchaser delivered a package of corporate and financial documents to NAFA Properties, which it forwarded to the Private Landlord’s counsel, Stephen Posen at Minden Gross LLP, in order to help facilitate the Private Landlord’s approval.

The documents included:

- a. Articles of incorporation for Niche Bakers Properties Inc.;
- b. Financial statements for Niche Bakers Corp. (audited) and Niche Bakers Properties Inc. (unaudited);
- c. Business profile for Niche Bakers Properties Inc. and Niche Bakers Corp.;
- d. Commercial credit report for Niche Bakers Corp.; and
- e. Proposed sublease from Niche Bakers Properties Inc. to Niche Bakers Corp.

Attached hereto and marked as **Confidential Exhibit “B”** is a copy of the email with attachments. The Exhibit is confidential as it contains sensitive and confidential business information of the Purchaser, and thus, should be sealed.

94. The Purchaser is a newly formed corporation that will sub-lease the Skyway Property to Niche Bakers Corp. (the operating corporation). This is substantially similar to how NAFA set



itself up when it purchased the Ground Leases. NAFA Properties purchased the Ground Leases and sub-leased them to NAFA (being the operating company).

95. On or about October 22, 2020, NAFA's counsel wrote to both the Private Landlord's lawyer and the City Landlord to advise, among other things, that in the event NAFA did not receive the Landlords' consent for the sale by the November 5, 2020, motion return date that it would seek a forced consent pursuant to the provisions of the CCAA. Attached and marked as **Exhibit "J"** is a copy of the letter to the City Landlord. Attached and marked as **Exhibit "K"** is a copy of the letter to the Private Landlord.

96. I understand that Jeffrey Wood, a director of the Purchaser, swore an affidavit on October 28, 2020 setting out the Purchaser's wherewithal, as well as, its plan for the Skyway Property. A few of the salient points from that affidavit are as follows:

- a. The Purchaser will use the Skyway Property as a commercial bakery supplying baked goods throughout North America.
- b. The Private Landlord will be indemnified by the Purchaser's operating companies for the first 9 years of the lease, being the amount of time that the lease amount is known under the Ground Leases.
- c. The Purchaser's operating companies are established businesses with strong balance sheets.
- d. The Purchaser intends to spend between \$3 to \$4 million in capital expenditures at the Skyway Property.

- e. The Purchaser will be paying the Private Landlord roughly \$1 million in yearly rent (including additional rent).
- f. The Purchaser intends to hire between 75-100 additional employees to operate the new venture.

97. In anticipation of the concern that the proposed purchaser is a new corporation, as noted above, the Purchaser's operating companies have agreed to provide guarantees to the Private Landlord for a period of 9 years.

98. It is my understanding that the period of 9 years was chosen because the lease requires the parties to review the rental terms at the end of that period (being March 1, 2029). If the parties cannot agree on the rate of rent the matter is referred to arbitration. See **Exhibit "B"** being the Ground Lease and attached hereto and marked as **Exhibit "L"** an amendment to the Ground Lease being the Rental Rate Agreement dated March 1, 2014.

99. It is my understanding that the Purchaser wishes to occupy the building for the entire term of the lease (being until 2073). However, it is not prepared to provide a guarantee for an as yet unknown rental amount, which will be determined at some point almost a decade from now when the parties will have to negotiate the new rental rate (being the "**New Rental Rate**"). The New Rental Rate will be locked in for a period of 25 years.

100. It is my understanding that the Private Landlord is withholding its consent on the basis that it believes the operating company should provide a guarantee of the entire 50-year term remaining on the lease. Attached to this Affidavit and marked as **Exhibit "M"** is an email from the Private Landlord dated October 28, 2020, setting out these concerns.

101. To highlight the Purchaser's concerns, it is worth noting that the Ground Leases are complex in general.

102. Moreover, the mechanics to determine the New Rental Rate illustrate the near impossibility to have an idea, today, what the New Rental Rate will be on March 1, 2029. The Ground Lease contemplates that the New Rental Rate will be determined using the following formula:

The annual rental which would be paid as between persons dealing in good faith and at arm's length for the lands at the date as of which such rental is to be determined, on the assumption that at such date, the lands are vacant, unimproved, free from encumbrances, including this lease and immediately available for new development; and, in determining such annual rental all other relevant factors shall be taken into account including the then fair market value of the lands, all of the uses and purposes to which the lands may be adapted and for which they are capable of being used and the return which would then be received by an owner on a land investment under a similar lease entered into at such date for the term for which the annual rent is to be set.

103. I am advised by my counsel, that this provision essentially provides that the New Rental Rate will be determined by the value of the Skyway Property as of March 1, 2029 on the assumption that the lands could be used for any kind of development whatsoever – for example, conceivably, the development of a state of the art commercial facility. I do not believe that, today, anyone could have a reasonable estimate of how much the Purchaser could be required to pay in rent as of the New Rental Rate, and therefore, in my view, it would be unreasonable to demand that the operating corporations be required to indemnify the Purchaser. The unreasonable request is further exacerbated, as it is my understanding, that the Ground Leases do not contain any express provisions to provide an indemnity.

104. Based on conversations with my lawyer, I understand that as of yet, the City Landlord has not raised any concerns with respect to the assignment sale. I further understand that the

Purchaser has provided all documents requested by the City Landlord and the City Landlord is evaluating same.

105. It is also my understanding that NAFA is current with its covenants pursuant to both Ground Leases.

106. As of the date of writing this affidavit, I understand that the City Landlord has not provided any determination either way whether it will consent to the assignment of the lease. However, considering the proposed length to provide its consent, it is likely that the City Landlord will not be in a position to provide its consent prior to the November 15, 2020 closing date.

107. I am of the view that the Niche transaction is reasonable and that it is appropriate to use the provisions of the CCAA to assign the Ground Leases to allow the transaction to go forward.

### **Cash Flow Forecast**

108. The Applicants have prepared a cash flow in conjunction with the Monitor for the proposed stay extension period. The cash flow will be described in greater detail in the Fifth Report so I will only comment on certain elements of it here.

109. A draft of the cash flow was submitted to the Agent for review on October 29, 2020 (an earlier version had been sent to the Agent on October 22, 2020). It is anticipated that the cash flow filed as a confidential appendix to the Monitor's Fifth Report will be materially similar.

110. The draft cash flow forecast I reviewed before swearing this affidavit demonstrates that the Applicants will have sufficient funds to maintain operations through the proposed extension period, albeit scaled down as anticipated in my affidavit of August 20, 2020.

111. The draft cash flow forecast I reviewed prior to swearing this affidavit, demonstrates that NAFA expects to repay the Agent approximately \$4,300,000 during the cash flow period, with the largest repayment being in March, 2021 from the anticipated auction proceeds from the scheduled auctions in February and March, 2021 at KF and Saga, respectively.

## **Future Operations**

### ***Status of the International Fur Business***

112. In September 2020, each of Saga and KF were finally able to conduct auctions in person for the first time this year, albeit still scaled back from normal. However, the auctions in the Fall have traditionally been an auction mainly of damaged and small pieces of mink skins, reflecting what is usually required in the garment industry at this point in the calendar year. This year, I understand that this was also mainly the case. As such, the price per skins from the Fall auction was deceptively low, but the number of sales completed was much higher than earlier in the year. In any event, attendance at these auctions was limited due to COVID-19 travel restrictions and concerns.

113. It is my belief that the majority of the quality mink skins delivered by NAFA's consignors and others remain in storage at Saga and KF. We are seeking further information from Saga and KF in that regard.

114. The poor auction season has been devastating to the mink industry. As I reported in my initial affidavit in this proceeding, most mink farms, especially in Europe, rely on “kit loans” and “pelt advances” from the auction houses in order to survive during the long period between the growth of the mink to harvest size and the receipt of funds from their sale.

115. This year, the need for funding was acute, given that the sale of mink was delayed and only partial amounts were sold. However, not only did farmers not recover enough from their sales this year to pay back their lenders, as is demonstrated by the lack of repayment from those farmers whose furs were pledged to NAFA, but also that the auction houses were less willing and able to lend money to farmers for kit loans.

116. NAFA obviously made no kit loans and pelt advances this year and each of Saga and KF made very few kit loans and pelt advances, if any, and then only to the best customers.

117. As a result, a material amount of mink farms around the world either had smaller production, or no production and had to kill their breeder stocks and sell them. This has likely permanently reduced the number of mink farms worldwide by a material amount.

118. In addition to this, COVID-19 has had material impact on the mink themselves. There have been outbreaks of COVID-19 on mink farms among the mink populations in the United States, the Netherlands and Denmark. In the Netherlands, all of the remaining mink were culled due to COVID-19 concerns (the Netherlands was already exiting the mink business) and in Denmark, one of the world’s largest and best producer of mink, it is reported that in excess of 5 million mink were culled with some projecting that as many as 7 to 8 million in total will be culled. Culled mink are destroyed and not delivered into the market.

119. Further, the mink industry in Poland, one of the largest producers, is now subject to a very hostile legislative environment. In particular, the Polish government has tabled a bill which would make mink farming illegal in Poland in 2023. Whether or not this legislation will be enacted into law, and what compensation will be available to those put out of business, is being hotly debated. The immediate impact is anticipated to be a permanent reduction in mink farms in Poland as many farmers may choose to shut down operations at the end of 2020 rather than risk the uncertainty.

120. The net effect of the above factors is likely to result in a material reduction of the total number of mink harvested and offered for sale in 2021. It is foreseeable that the total number of mink pelts could be one half of what was harvested in 2019 and significantly less than the amount of mink harvested in any recent year.

121. While disastrous for the mink farmers generally, the net impact of the reduction in production should, in my opinion, result in an improvement in the price of mink in 2021, including the substantial 2019 mink, based simply on the impact of reduced supply, not considering any change in demand.

122. Following discussions with others in the mink industry, and based on my experience as the head of a major fur auction house, it is my opinion that prices could easily increase by 10% or more in 2021, and even more in 2022. The current prices are still 80 to 90% less than the historic highs hit in the mink industry in 2013, so an increase of only 10% would not be unusual.

### *NAFA Continuing Business*

123. As reported in my last affidavit, the COVID-19 pandemic prevented NAFA from entering into a meaningful sale process as there was simply not enough stability in the market to make any progress with such an initiative.

124. Nonetheless, it remains my view that there continues to be a need for an entity in Canada to facilitate the collecting, marketing and sale of furs, which was NAFA's core business (in addition to its lending business). If NAFA can continue to perform this service and have a place in the market, it may be able to attract future buyers or partners or reconsider a SISP at a later point after the repayment of the Agent.

125. Over the past few months, partially in connection with NAFA's private treaty sales, but also independent of that, NAFA has fielded calls from various international entities looking to NAFA to broker the sale of mink and other fur from North America to buyers internationally.

126. There has also been considerable dissatisfaction reported to me and my staff among some North American farmers with the manner in which their furs were marketed and sold in Europe in this auction season. The farmers have expressed to me that in their view the prices realized for those goods has been disappointing, even in the context of the pandemic.

127. I believe that there is a business opportunity for NAFA to provide consulting and brokerage services to the North American market going forward. In particular, NAFA has the contacts with worldwide dealers, buyers and dressers who require product, and they have the trust of the North American fur community to be able to properly market and sell product. NAFA also has the advantage of being able to review in person North American product and



properly grade and offer it for sale, which is a skill that has recently become valuable in the world of COVID-19 travel restrictions where foreign buyers cannot view product in person (collectively referred to as the “**Brokerage Business**”).

128. Although NAFA will, as of the end of November, no longer have storage space or a space to conduct grading, such space can be acquired for short periods if an opportunity presents itself during the extension period. Similarly, NAFA could hire graders or other short-term seasonal assistance if an opportunity presents itself that would be a net benefit to NAFA.

129. As recently as last week, NAFA was asked to broker a deal to sell in excess of 10,000 Canadian pelts to China. Indeed, we believe there are over 100,000 unsold mink pelts in Ontario alone looking for a market, such as China, Greece, Italy, and Korea. NAFA would expect to charge a combined consignor and sell fee in the range of 10% or more for the realized auction price for such services. NAFA could broker such sales in some cases without ever taking possession of the goods. Obviously, in its scaled down version with minimal staff, NAFA is a much smaller version of its former self, but the basic know how, systems, permits, and reputation remain in place to perform this function.

130. There is nothing in the cash flow to pay for additional costs such as renting space or hiring additional staff as this is a fluid situation at this time and more work needs to be done to model this opportunity and review it with the Monitor before NAFA would make such a request. NAFA will only incur any material additional costs in this direction on prior notice to the Monitor and with their consent. The Monitor has advised that its consent would be contingent on NAFA being able to demonstrate that there would be a net benefit to the Applicants to pursue this business during the stay period.

131. NAFA intends to review the possibility of restructuring its remaining business to allow it to take advantage of its place in the marketplace, which is a marketplace that is very much in flux due to the COVID-19 pandemic. NAFA is prepared to have the expanded powers of the Monitor, discussed below, include oversight over spending related to this initiative.

132. The Safe Harbour Order contains a provision which limits NAFA's ability to take delivery of more than 10,000 skins or to engage in any transaction without court approval involving more than 10,000 skins not already in its inventory. In order to provide NAFA with the flexibility to pursue opportunities as it reconsiders its business during the extension period without requiring a return to court, the Order should be amended to allow for NAFA to engage in this activity with the prior consent of the Monitor.

### *Location Change*

133. NAFA intends to exit the Skyway Property by November 15, 2020. It has secured new office space at the Carlingview building it formerly owned. The space has been rented to NAFA rent free for a period of 8 months (until June 2021) in exchange for NAFA releasing its right to occupy a larger space at Carlingview for two months (which was a hold-over from the transaction whereby NAFA sold the Carlingview property).

134. In this manner, NAFA will maintain a physical office presence, in close proximity to the airport and warehouse and event space, at which it can continue to conduct business during the extension period and beyond.

### **Highlight of Assets available to Repay Agent Debt**

135. As set out in my last affidavit in these proceedings, it remains the Applicants' view that there is likely going to be assets remaining which could result in material proceeds becoming available for creditors who rank behind the Agent, after the Agent is repaid. As discussed below, the Agent does not share this view.

136. It is anticipated that the debt owing to the Agent in respect of the NAFA operating facility as at November 6, 2020 will be approximately \$14.6 million.

137. In addition, the Agent continues to be owed \$4.8 million with respect to its mortgage on a building owned by NAFA in Poland, which debt is also secured against all assets of NAFA. The building is listed for sale at approximately \$8.0 million, which is obviously materially more than the Agent is owed. The Applicants anticipate a material net surplus from that building, net of the Agent's mortgage debt. The building is well located, is not limited to be used in the fur industry, and initially had some strong interest at the current listing price in February of this year. Our Polish real estate agent remains of the view that there is no need to reduce the list price at this time. However, we must wait for more stability from the world economy before the best value can be realized from the Polish property and the timing of this is uncertain. NAFA hopes for a sale as soon as possible and it remains my view that the \$4.8 million owing to the Agent is fully secured by the Polish property.

138. It is my belief that NAFA currently has security over 813,274 mink to be sold in 2021 by Saga or KF. (I will caveat that some of this number may be adjusted as we are waiting on final numbers from with respect to certain farmer accounts). Since my August affidavit approximately 639,178 mink were sold at the September 2020 auctions at KF or Saga (although final tabulations

are still coming). The Agent debt was correspondingly reduced by the receipt of those proceeds, net of certain operating costs, in accordance with our established procedure of paying the Agent any weekly surplus funds above \$1,000,000, which we review and attend to on a weekly basis with the Monitor.

139. Although the amount of mink pelts remaining to be sold has been reduced, I have reason to believe the worldwide price of mink is likely to increase in 2021 (as further described above), which could result in as much as \$1,000,000 to \$2,000,000 in additional proceeds, which NAFA previously had not considered.

140. NAFA is currently negotiating a possible deal to further licence the Blackglama trademark with Saga for a 2 year period, which is intended to bring in annual licencing fees and preserve the value of the mark for sale in the future.

141. In addition, as further described above, NAFA is seeking approval of the sale of the Skyway Property, which is expected to result in a repayment to the Agent in a material amount as disclosed in the cash flow forecast after repayment to BDC.

142. Given that the international 2020 auction season is now substantially complete, NAFA has issued renewed demand letters to all of its borrowers with Rollover loan debt owing to NAFA (the “**Rollover Loans**”), as discussed further below. These loans, net of the anticipated proceeds from the remaining mink on hand at Saga and KF, total in excess of \$20,000,000 at book value.

143. In light of all of the foregoing, it is my view that there is likely recovery behind the Agent (and BDC, which is expected to be repaid in full from the sale of the Skyway Property). In addition to the assets described above, NAFA also has certain contingent assets like the outstanding foreign

litigation and the insurance claims described above, which NAFA expects will prove to be substantial assets in the fullness of time.

144. I am advised by our counsel that the Agent has expressed their view to our counsel, and at our last attendance at court, that they do not support these conclusions as they take a more conservative view of these assets and the likelihood of recovery in the amounts projected by the Applicants.

### **Rollover Loans**

145. As noted in my previous affidavits, NAFA's single largest asset, other than the mink pelts awaiting sale at the Auction houses, is its remaining debt portfolio.

146. NAFA has recently received a directive from its Board to aggressively pursue the Rollover Loans (i.e., its long-term debts owing to NAFA). These debts are a combination of farming and other loans made to mink farmers, plus debts remaining from unsold pelts from previous years' crops or other accommodations.

147. NAFA sent demand letters at the beginning of the year. Over the past several months NAFA waited to take further steps, due in part to COVID-19, the fact that NAFA had cut back on staff (both here and internationally) and resources which would assist it in pursuing these debts, and the fact that it was waiting to see what amounts would be realized from the auction season.

148. The Agent had also asked NAFA during the height of the first wave of the pandemic in the Spring to limit professional fee spend on this and other issues if possible, to minimize cash flow burn at a time when receipts were uncertain, which NAFA agreed was reasonable at the time.

149. NAFA has, since the last court appearance, at the end of last week, sent 26 demand letters demanding in the aggregate approximately \$28,500,000. This amount is larger than the total amount NAFA expects will actually be owing from these parties as long-term debts, as it reflects the amount owing by these entities when, in some cases, certain of these entities have material amounts of mink skins currently on hold at Saga and KF, which will be paid to NAFA when sold which will reduce the debts. However, it is correct that the entire amounts demanded are owing and are past due. Certain debtors have responded and sought accommodations, which NAFA is considering and would present to the Monitor and the Agent on a case by case basis, as it has done throughout these proceedings.

150. The Board is concerned that there is disagreement between NAFA and the Agent and potentially the Monitor on what these loans are worth or how they should be pursued.

151. The Agent, NAFA and the Monitor continue to negotiate the approach to how the Monitor can control the pursuit of NAFA's Rollover Loan assets and I anticipate an update to the court on November 5, 2020, if not sooner.

152. NAFA believes that there are certain factors that should be considered in pursuing these Rollover Loans including that the fact that many of these debtors will shortly be delivering furs from the new crop, taking out further loans (if they can get them) and/or ceasing business due to the industry factors discussed above.

### **Other Stakeholders Interested in these CCAA Proceeding**

153. After the Agent and BDC are repaid, there are a number of other stakeholders that are owed substantial amount of money from the Applicants that would benefit from a recovery in this CCAA proceeding. These stakeholders include the following:

- a. Farm Credit Canada (“FCC”) which is owed approximately \$1.8 million. FCC holds mortgage security over the farm owned by the Applicant, 3306319 Nova Scotia Ltd., colloquially referred to as “NAFA Farms”. FCC has been prevented from taking any steps to realize on this farm as a result of the CCAA stay. FCC also holds general security agreements granted from NAFA and NAFA Properties;
- b. Canada Mink Breeders Association, Canada Fox Breeders Association, American Mink Council Inc. and North American Wild Fur Shippers Council, which are all shareholders of NAFA, which I understand have security relating to their long term shareholder loans. The total amount owing to the shareholders is approximately \$3 million. As is evident from their names, these shareholders are all organizations in the North American Fur industry. Collectively, they represent a membership of in excess of 15,000 members. I believe most, if not all, of these organizations are not for profit organizations or non-governmental organizations that provide services to the fur industry. The pending loss of NAFA as an organization to sell their members’ products domestically is a major loss to the North American fur industry. The loss of the amounts loaned by them will severely hamper their ability to help their members and the industry as a whole; and
- c. a significant number unsecured creditors including in relation to the following:

- i. \$7,000,000 owing to NAFA's buyers for "Buyer Credits", which are credits that NAFA has agreed to hold for certain buyers for the buyers to use to purchase furs at future auctions;
- ii. \$4,500,000 owing to its consignors who have not received funds derived from the sale of their goods in the August 2019 auction. Approximately 8,000 individuals are owed funds;
- iii. Approximately \$12,500,000 (the "**Deferred Proceeds**") to various parties who were owed funds from goods sold at previous auctions, but who for one reason or another, have not collected them and/or had asked that they continue to be held at NAFA pending direction from those parties. The total number of parties with Deferred Proceeds from NAFA are approximately 50;
- iv. \$8,000,000 to \$9,000,000 (approximately) owed to ordinary unsecured/trade creditors; and,
- v. approximately 100 terminated employees and contractors in Canada and the US (not including certain seasonal staff), which are owed termination pay.

154. While the focus of the restructuring must remain to ensure the timely and efficient repayment of the Agent, I am of the view that the Court should continue to consider the interest of these other stakeholders who have an interest in any surplus that I believe can be generated by maximizing recovery from all of the assets of the Applicants. If such a surplus can be realized, NAFA hopes to be able to put forward a plan of arrangement to its creditors which may be able to



accommodate the differences among these creditor groups. I do not believe the goals of repaying the Bank and generating a surplus for the creditor are or should be seen as mutually exclusive.

### **Proposed Additional Powers of the Monitor**

155. NAFA and the Agent remain in communication by way of: (1) weekly updates of the distributable funds available to the Agent; (2) bi-weekly reports of any cash flow variances; and, (3) updates and consultation on key issues, such as litigation, collections, and stakeholder issues, if any, as and when they arise.

156. In accordance with the terms of the Initial Order and subsequent orders of this Court, as well as in recognition of the position of the Agent as the first secured creditor and an unaffected creditor in this CCAA proceeding, NAFA seeks the input from and/or consent of the Agent to all material decisions.

157. Material professional time is spent dealing directly with the Agent and dealing with the Monitor to address issues prior to and during discussions with the Agent about various issues. NAFA understands the Agent may also be spending time communicating its concerns to the Monitor. All of this increases the professional costs of this CCAA proceeding.

158. In order to attempt to streamline some of the costs, I had instructed our counsel to explore whether or not there could be a solution which saw more power transferred to the Monitor in exchange for less Agent consent requirements on various matters.

159. I am advised by my counsel that the Agent expressed a similar desire to have more power transferred to the Monitor, as a disinterested third party and officer of the court. Given the Agent's

differing view of the expected recoveries from NAFA's assets, the Agent identified six areas where it wanted to transfer the oversight and final decision making to the Monitor.

160. The parties, along with the Monitor, are considering an arrangement, which will be subject to the approval of this Court, to give the Monitor control over six areas where control was previously with the Company and the Agent. It is anticipated that the terms of this arrangement will be finalized prior to the hearing scheduled on November 5, 2020. Those six areas that the Monitor would be authorized, in consultation with the Applicants and the Agent, to make decisions are as follows:

- a. Insurance: any claims by the Applicants under or in respect of any insurance policies. It is understood that the Applicants intend to complete the filing of its credit insurance claims (as discussed above) by the end of December.
- b. Rollover Loans: any claims by the Applicants in respect of any Rollover Loans. The Monitor will decide how to best realize on the Rollover Loan debt including whether to engage in litigation or settlements with parties who owe debts to NAFA for amounts other than amounts expected to be paid from the eventual sale of the 2019 mink crop currently in the hands of KF or Saga. As set out in above, there remains some concern from NAFA that it is not required for this to be transferred to the Monitor.
- c. Litigation: any existing or future litigation or proceeding involving the Applicants as a plaintiff or claimant (other than these proceedings), whether in Canada or otherwise.

- d. Real Estate: all decisions relating to the right, title or interest of the Applicants in respect of any real property assets.
- e. NAFA Brokerage Expenses: NAFA will not incur any material expenses related to the operation of the proposed Brokerage Business without the Monitor's consent, which consent will be governed by determining that there is likely to be a direct net benefit to such expenses.
- f. Employees: the retention or termination of the Applicants' employees, on such terms and conditions as the Monitor may deem appropriate. The Monitor has advised that it will not take any actions relating to the termination of employees other than as set out in the cash flow forecast prior to January 1, 2021.

161. While it is proposed that the Monitor will not require the consent of the Agent or the Applicants in exercising the powers set out above, it is expected that it will consult with the Applicants and Agent on these issues. If there is a disagreement by either the Agent or the Applicants on a decision made by the Monitor, the Applicants or the Agent or both may seek to bring the matter before the Court.

162. The Agent and the Monitor have also agreed that the bi-weekly variance reporting will be replaced with monthly variance reports. Maintaining this reporting schedule has been very time consuming and expensive for all involved. The reduction is also appropriate as the anticipated receipts over the period of the extension are likely to be limited. The Applicants will continue to make weekly reports with respect to any distributable funds. In the event this change to the

reporting proves insufficient, either Agent or NAFA can ask the Monitor to resume more frequent reporting.

163. It is hoped that this process will streamline these issues while allowing the Applicants to continue to address stakeholder issues and work on their restructuring.

164. The Applicants, the Agent or the Monitor will be able to seek direction from the Court in the event this arrangement is not working in the manner such party anticipated. In addition, once the Agent is repaid, NAFA may seek to revise these arrangements in accordance with a further Order of this Court.

### **Extension**

165. Since the Stay Extension Order, NAFA has been acting in good faith and with due diligence, and continues to act in this manner in its relationships with its creditors, employees, lenders, trappers and farmers.

166. The current Stay Period under the Stay Extension Order will expire on November 9, 2020. NAFA requests an extension of the Stay Period to and including April 9, 2021 to continue its restructuring efforts.

167. I am satisfied that NAFA will be in material compliance with the Cash Flow Forecast going forward and will have sufficient funds to operate during the extension of the Stay Period.

168. The Monitor has advised me that it is supportive of NAFA seeking an extension of the Stay Period to and including April 9, 2021.

169. I affirm this affidavit in support of NAFA’s motion for an Order, *inter alia*, to: (a) extend the Stay Period to and including April 9, 2021; (b) approve the fees and conduct of the Monitor and its counsel; (c) approve the Skyway Property transaction; (d) to compel the Landlords to assign the Ground Leases to the Purchaser; (e) to Amend the Initial Order to enhance the powers of the Monitor; (f) to reduce the reporting requirements to the Agent; (g) to clarify and amend the Safe Harbour Order; and, (h) to seal certain confidential exhibits and appendices.

**AFFIRMED** remotely by Douglas )  
 Lawson, before me at the City of Toronto )  
 in the Province of Ontario, on the 30<sup>th</sup> )  
 day of October, 2020, in accordance with )  
 O. Reg. 431/20, Administering or )  
 Declaration Remotely. )

*Steph Sandhu*

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A commissioner, etc.




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**DOUGLAS LAWSON**

This is Exhibit "A" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.



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*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

Court File No.

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the "**Applicants**")

**AFFIDAVIT OF DOUG LAWSON**

I, **DOUG LAWSON**, of the City of Toronto, in the Province of Ontario, **AFFIRM AND SAY**:

1. I am the President and Chief Executive Officer of North American Fur Auctions Inc. (the "**Company**" or "**NAFA**") and as such have knowledge as to the matters which I hereinafter depose. To the extent I am recounting information provided to me by others, I have stated the source of that information and verily believe it to be true.
2. I swear this affidavit in support of an Application by the Applicants seeking protection from their creditors pursuant to the provisions of the *Companies' Creditors Arrangement Act* (the "**CCA**").

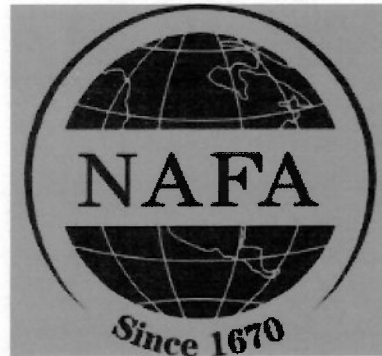
3. All currency references in this affidavit are in USD, the primary operating currency for the Applicants, unless otherwise noted.
4. The Applicants' key lending syndicate (the "**Syndicate**") has advised that it will no longer provide further funding to the Applicants. As such, the Applicants unable to meet certain of their key liabilities as they fall due, in particular their obligation to provide funding to more than 50 farmers around the world who rely on those funds to grow and harvest animals (mainly mink) for sale by NAFA. As a result, the Applicants seek the following urgent relief to:
  - a. ensure continuity of management control (albeit in a public process supervised by a court officer);
  - b. receive priority debtor in possession ("**DIP**") financing ("**DIP Financing**") to allow the Applicants to maintain operations and address the funding needs of their farming clients;
  - c. pursue a transaction for the refinancing of their obligations; and
  - d. have "breathing space" within which to formulate a restructuring plan satisfactory to the stakeholders.
5. In the last week, the Company has entered into an arrangement with one of its competitors that provides it with immediate liquidity which, in combination with some short term DIP Financing described herein, should provide the Applicants with the necessary breathing space to consider their options and obligations to stakeholders.

### **Company Background and Recent Events**

6. NAFA has a corporate lineage, in one corporate incarnation or another, which is approximately 350 years long. It is the direct corporate descendant of the original Hudson



Bay Fur Trading Company and later the Hudson's Bay Company ("**HBC**"). Its logo recounts that it has been in business since the year 1670:



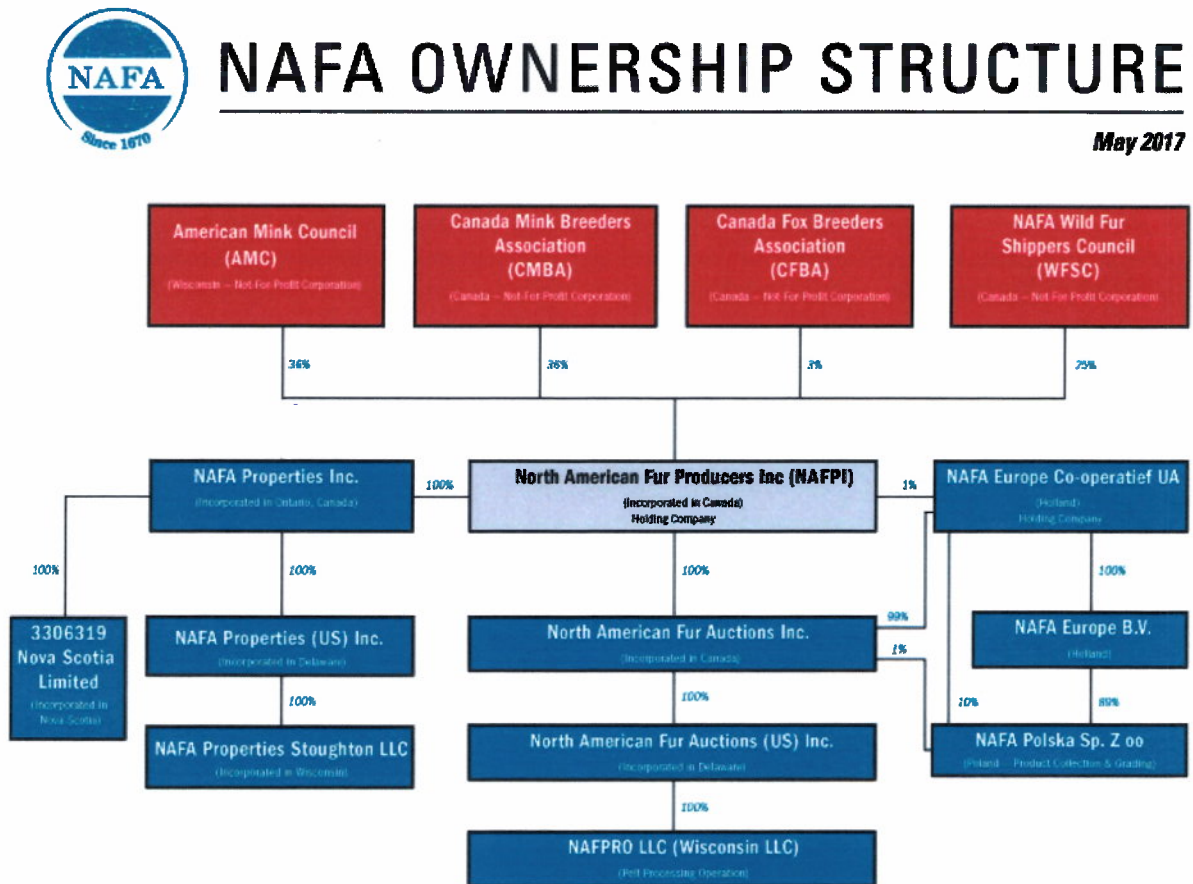
7. NAFA is in the business of farming, financing, preparing, grading and auctioning fur products, such as raw fur Pelts ("**Pelts**"), for use in the garment industry. It is one of essentially three such companies in the world that operate in this industry with similar size and scale. The other two are based in Finland and Denmark. There is no material North American competitor that provides these services.
8. NAFA sells in excess of \$200,000,000 worth of fur products annually at the auctions it conducts, as described in greater detail below. It employs in excess of 100 people worldwide through the Canadian and foreign subsidiaries, as well as approximately 300 seasonal workers worldwide from December to June annually.
9. NAFA had lending facilities with the Syndicate in the amount of approximately \$50,000,000 to \$80,000,000, depending on the time of year (as explained below). It is currently indebted to the Syndicate in the amount of approximately \$32,000,000 as at October 28, 2019.

## Corporate Structure and Business of the Applicants

10. NAFA has two principal sources of revenue. It collects interest and fees on loans it makes into the fur farming industry, and it collects consignor and buyer commissions and related auction charges, and amounts due from those loans, when it conducts its auctions to sell those fur products.
11. In addition, NAFA makes loans to farmers to support those businesses in excess of and separate from the Kit Loans (as defined below). NAFA also includes 3306319 Nova Scotia Limited (“3306319”), which owns one mink farm in Nova Scotia. 3306319 generates 48,000 Pelts annually worth approximately \$1,500,000 CAD.
12. The Company also provides storage facilities for furs from around the world for entities which have purchased and not collected furs from previous auctions or for parties who wish to store fur pending future auctions. The Company also stores furs provided to it for an auction but which have failed to sell, with instructions to sell those furs at a future auction.
13. Between the NAFA owned furs and the furs in storage, NAFA currently has approximately 1,000,000 Pelts worth approximately \$25,000,000 on hand. Less than \$250,000 worth of these Pelts are NAFA’s inventory, while the remainder are furs that NAFA is storing on behalf of their owners as described above.
14. The Applicants, although located in different countries, are principally controlled by and do business through the Canadian operations of NAFA. The Canadian operations conduct the auctions, oversee the lending operations, and have central command and control over the material decisions made at the subsidiaries. All business of the Applicants is focused on the delivery of Pelts to the Canadian operations centralized around NAFA to be auctioned at NAFA’s Head Office (as defined below) in Toronto. All funding of loans, collection of loans,

and receipt of proceeds are also conducted at the Head Office location and by the staff in Canada, as further set out below.

15. The corporate structure of the Applicants is set out in the chart below:



16. In addition to the entities in the above corporate chart, there is an additional entity in Poland named Daikoku Sp.Z oo (“**Daikoku**”), which is a direct subsidiary of NAFA.
17. Operational control for the entities in this corporate structure is conducted from the head office located at 65 Skyway Avenue, Toronto, which is also the Company’s principal auction location and grading facility (the “**Head Office**”). The Company’s principal distribution facility is located at 500 Carlingview Drive, Toronto. All buyer services, marketing services, buyer

logistics, storage of sold goods and related activities are carried out within these two buildings.

18. The Head Office staff control and administer all consignor loans finance, oversee all consignor accounts, and administer related consignor marketing activities for all the entities in the corporate structure. The Head Office deals with soliciting ranch mink, ranch fox and wild fur within Canada. It is a major receiving depot (receiving individual Pelts into accounts, ticketing for identification, and CITES<sup>1</sup> registration and administration) for both wild fur and ranched fur.
19. The Head Office (through Buyer Services and Logistics) is the shipping point for all buyer purchases acquired at auction and staff at the Head Office pack, stage and co-ordinate shipments. NAFA is the major staging location and co-ordination facility for intercompany shipments between NAFA Europe B.V. ("**NAFA Europe**") and North American Fur Auctions (US) Inc. ("**NAFA USA**").
20. North American Fur Producers Inc. ("**NAFPI**") is the holding company for the producer associations. The producer association shareholders appoint the NAFPI Board of Directors, who in turn, nominate the directors for NAFA.
21. NAFA Properties Inc. ("**NAFA Properties**") is wholly owned by NAFPI. It owns and maintains various properties located within Canada, including the Carlingview property.
22. 3306319 is a fur farm operation located in Nova Scotia and owned by NAFA Properties.
23. NAFA USA is wholly owned by the Company. NAFA USA performs all soliciting functions within the United States, administers the American consignor accounts, serves as a receiving deposit for the American goods, and serves as a major grading depot for ranch mink and wild fur. The two facilities in the United States commonly receive and grade mink

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<sup>1</sup> Convention on International Trade of Endangered Species of Wild Flora and Fauna.

and varying types of wild fur. NAFA USA is also currently storing Pelts. It also owns one of the two properties located in Stoughton, Wisconsin. This building is used primarily as the USA head office and grading facility (also containing the former NAFPRO LLC (Wisconsin LLC) ("**NAFPRO**") facility).

24. NAFA Properties (US) Inc. ("**NAFA Properties US**") is wholly owned by NAFA Properties. It owns a warehouse in Stoughton, Wisconsin, through NAFA Properties Stoughton LLC, that was under a graduated development as an eventual replacement building for all Stoughton operations, but is currently used primarily for cold storage, packing, and wild fur receiving.
25. NAFPRO is wholly owned by NAFA US. Its function was to receive "green" mink Pelts and process them into dry, raw and stable Pelts suitable for grading. This operation has been, or is in the process of being, closed and will not operate in the 2019/2020 season.
26. The Pelts that are being processed through NAFPRO and are currently graded and stored through NAFA USA and NAFA Properties US will ultimately be shipped to Canada to be sold at NAFA's auctions held at the Head Office.
27. NAFA Europe ran the Western European office, which has since been closed. It administered and paid for all non-Polish solicitors working outside of Poland and in countries including the Netherlands and Denmark. It also administered account proceeds for all European Consignor Auction revenue. As set out above, the accounts for consignor auctions handled through NAFA Europe were ultimately coordinated and controlled by the staff at the Head Office. These operations have now been closed and transitioned to NAFA Polska (as defined below).
28. NAFA Polska Sp. Z oo ("**NAFA Polska**") is the company tasked with the collection and grading of European origin ranch mink for delivery to the Canadian auction. NAFA Polska

serves a cold storage function for 805,000 Pelts and provides the facility for much of the NAFA team located in Europe to operate from. NAFA Polska's grading capacity is about 8,000,000 Pelts per year. These furs are also ultimately shipped to and auctioned in Canada.

29. Diakoku is a fur farm operation located in Poland.
30. NAFA Europe Co-operatief UA ("**NAFA Co-op**") is a holding company for all NAFA entities in Europe.
31. NAFA also operates the largest wild fur auction house in North America. Annually, NAFA facilitates the sale of approximately \$25,000,000 worth of wild fur.<sup>2</sup>
32. This part of NAFA's business is extremely important to the North American wild fur industry, particularly to the aboriginal community that uses NAFA's wild fur auction house as an important way of selling their furs.
33. NAFA's wild fur business administration also assists the Canadian Ministry of Natural Resources and Forestry to monitor the catching and trapping of animals across Canada, including with respect to the limits related to endangered species.
34. The Applicants own or lease the following real estate:
  - a. NAFPI – 65 Skyway Avenue, Toronto, Ontario (lease);
  - b. NAFA Properties – 500 Carlingview Avenue, Toronto (owned);
  - c. NAFA USA - 205 Industrial Circle, Stoughton, Wisconsin, U.S.A. (owned);
  - d. NAFA Properties Stoughton LLC - 1600 Williams Drive, Stoughton, Wisconsin (owned);

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<sup>2</sup> "Wild fur" are furs trapped in the traditional sense as opposed to farm raised furs which make up the majority of the fur industry.

- e. NAFA Polska - ul. Granitowa 10 in Goleniow, Poland (composed of 0.8916 hectares of land and development erected thereon) (owned);
  - f. NAFA Polska – ul Produkcyjna in Goleniow, Poland (composed of 0.8003 hectares of land and development erected thereon) (owned);
  - g. 3306319 – 569 Middle Cross Road, Roxville, N.S.;
  - h. 3306319 – 241 Riverdale Road, Riverdale, N.S.; and
  - i. Daikoku - 72-100 Lozienica, Poland (a farm that is leased).
35. NAFA conducts three auctions a year, which are held at its Head Office location. The last of these auctions was just concluded successfully on August 27, 2019. The next auction is currently scheduled to be held in March, 2020.
36. During the period between July and March, the Applicants have traditionally had access to bank financing to fund the growing cycle for their product, which I understand to be similar to other agricultural businesses.
37. In particular, from the period of July until November in most years, including this one, NAFA borrows in excess of \$45,000,000, a portion of which is lent to farmers/ranchers who use those funds to fund the development of mink. Those farmers are then contractually bound to deliver those mink to NAFA for auction. These loans are referred to herein as “**Kit Loans**”.<sup>3</sup>
38. The farmers who contract with NAFA for the Kit Loans are, once the loans are in place, completely dependent on NAFA for these funds to purchase necessities such as feed in order to grow the mink.

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<sup>3</sup> Infant mink are called “Kits”.

39. NAFA's lending cycle ends around the end of November each year. Thereafter, the mink are harvested and turned into Pelts for auction.
40. NAFA's lenders, and in particular the Syndicate, have made loans to NAFA to fund this farming cycle for decades (since the late 1980's).
41. This year, in both May and July, the Syndicate confirmed its willingness to do so again (subject to certain terms) and entered into a new loan agreement with NAFA in July, as further described below.

### **Dealings with the Syndicate**

42. In 2018, NAFA decided to delay its third auction in 2019 (which would usually have been in July) to the end of August. This decision was made in April of 2018 and was made known to the Canadian Imperial Bank of Commerce ("**CIBC**" or the "**Agent**"), the Agent for the Syndicate, at that time.
43. The other two 2019 auctions were scheduled to take place in March and June 2019.
44. Although the results from the auctions held in March and June 2019 were acceptable competitively and relative to the current market, the results of the auctions were materially below projections.
45. The auction results in June were depressed, in part, by changes in the worldwide price for mink and other furs, which trade as commodities and are subject to the volatility as other internationally traded commodities.
46. At the end of June, I voluntarily approached CIBC and advised my principal bank contact that due to the poor outcome of the auction in June, and the fact that the auction normally held in July was taking place in August, NAFA would not have sufficient cash to fund the Kit Loans in July and August without assistance from the Syndicate.



47. In particular, NAFA calculated that it would require a bulge facility from the Syndicate in the amount of up to \$20,000,000. The Company had previously requested and received bulge facilities from the Syndicate in prior years.
48. At that time, the total amount owing to the Syndicate was approximately \$45,000,000.
49. The Agent was advised that NAFA intended to hold its auction in August (as scheduled) and that when it did so, it was expected that it would return to a more usual level of debt with the Syndicate.
50. On July 8, 2019, a meeting was held between the Agent's Special Loans group, its financial advisors, the Company's financial advisors, and representatives from the other lenders from the Syndicate and counsel to canvass options and concerns.
51. Following that meeting, the Company and the Syndicate entered into a new credit agreement whereby the Syndicate agreed to provide funding to the Company for the period from July 17, 2019 up to and including the current date and beyond. A copy of that Credit Agreement (the "**Credit Agreement**") is attached hereto and marked as **Exhibit "A"**.
52. The Credit Agreement is extremely dense and complex, reflecting the size and complexity of the loan products used in the NAFA business. I will not describe it in detail here. I will note that, as was confirmed in July of this year, all of the Applicants (with the exception of Daikoku, NAFA Europe and NAFA Co-op) were either borrowers or guarantors under the Credit Agreement, with the guarantors guaranteeing the entire amount of the debt, jointly and severally.
53. In the Credit Agreement, CIBC affirmed that it would continue to provide funding to ensure that the Kit Loan payments were made. In reliance on this fact, NAFA made it known to their farmers that they could reasonably expect to continue to receive the Kit Loans for this growing season.

54. Attached as Schedule "1.1.23" of the Credit Agreement was a cash flow forecast which strictly limited the Company's disbursements and the Company covenanted to follow it.
55. The new Credit Agreement was focused on three new business points:
- a. First, the Company would diligently follow the cash flow, which would be closely monitored by the parties and their financial advisors;
  - b. Second, the Company would engage in an aggressive program to sell the business, or part of it, and would immediately hire KPMG Corporate Finance ("**KPMG Corporate**") to spearhead that initiative; and
  - c. Third, the Company would conduct the August auction in the usual course and ensure maximum recovery from those assets.
56. The cash flow forecast was prepared after careful and detailed review by KPMG Inc. ("**KPMG**") (our auditor and financial advisors), the Agent, its counsel and their financial advisor, Alvarez & Marsal Canada ULC ("**Alvarez**").
57. Pursuant to the cash flow forecast, the Syndicate did allow for funding to be made to pay the Kit Loans and the Company did so. Thereafter, the Kit Loans were generally kept current to the farmers until October 17, 2019, as further described below.
58. The Company held its auction in August, 2019 as agreed.
59. The Company was obliged, pursuant to its credit and other arrangements with the Syndicate, to certify by August 30<sup>th</sup> that the receipts from that auction were at least \$53,000,000. In fact the auction proceeds were in excess of \$55,600,000, as certified in the certificate provided to the Syndicate, which is attached hereto and marked as **Exhibit "B"**.
60. As required by the Credit Agreement, the Company hired KPMG Corporate in July 2019, who began the process of seeking sale or refinance opportunities for the Company.

Immediately after being retained, KPMG Corporate advised the Company and CIBC that while a strategic sale of some or all of the Company was possible, the deadlines set out in the Credit Agreement were unrealistic in its view.

61. The Syndicate made demand on the Company on August 2, 2019 and issued notices of intent to enforce under the *Bankruptcy and Insolvency Act* (“**BIA**”), largely because the Company had failed to meet the sales guidelines. Attached hereto and marked as **Exhibit “C”** are copies of the demand letters and BIA notice.
62. By August 14, 2019, the Syndicate had agreed to a forbearance with the Company and the Syndicate agreed to new timelines for the sale process which were supported by KPMG Corporate (“**Forbearance Agreement**”). A copy of the Forbearance Agreement is attached hereto and marked as **Exhibit “D”**.
63. The Company continued to follow its cash flow forecast (as amended from time to time with the agreement of the Syndicate) and delivered the first SAGA LOI (described below) within the timeline provided in the Forbearance Agreement.
64. The Company has substantially lived up to its obligations under the Credit Agreement and the Forbearance Agreement (as amended) except in regards to certain covenants to sell certain assets and/or enter into merger transactions within the timeframes that proved to be unrealistic.
65. On September 19, 2019, the Syndicate issued a default letter purportedly terminating the Forbearance Agreement and the Credit Agreement. While I did not agree that there had been a default which entitled the Syndicate to issue the default letter, the Forbearance Agreement expired in any event on September 19, 2019 and so NAFA did not contest it as it seemed a moot point. Attached hereto and marked as **Exhibit “E”** is the default letter, dated September 19, 2019 from counsel to CIBC.

66. Since September 19, 2019, the Syndicate has not made any further cash advances to NAFA.

### **The Waygar Refinancing Transaction and First Interim Funding**

67. In accordance with the sale process sanctioned by the Credit Agreement and subsequent forbearances, the Company solicited and received a letter of intent from Waygar Capital Inc. ("**Waygar**") on or about August 27, 2019, under which Waygar expressed its intent to finance the Company.
68. Waygar advised of its intent to advance \$60,000,000 in loan repayment and working capital by mid-October, 2019.
69. At a conference call attended by Waygar, the Agent, and all of the advisors on September 19, 2019, Waygar advised that it had delayed moving forward with its loan until the Company made the majority of the payments owing by it to parties who had supplied furs to NAFA on consignment for the August auction from the proceeds of that auction. As a result, Waygar advised that it would now not be able to meet its planned advance date to retire the Syndicate's indebtedness, upon which the Company had relied. Those payments were made, as scheduled, on September 17, 2019.
70. On or about September 18, 2019, the Company was advised by the tax authorities in the Netherlands that they had sequestered funds (ultimately totalling approximately 1.2 million Euros – subsequently reduced to 830,000 Euros, which has been transferred to the Dutch Tax authorities as security and approximately 100,000 Euros held in a Rabobank account) due to suspicion that, in the past, funds which were payable to certain consignors of furs to the three major fur auction companies in Europe (including NAFA), were part of a tax fraud scheme being perpetrated by the intended recipients. The investigation is going to go back in time approximately fourteen years.

71. No allegation was made specifically against NAFA in this regard, but the suspension of the funds further depleted the availability of funds for NAFA and further complicated NAFA's ability to make payments of any kind into Europe. Two letters from the Dutch tax authority dated September 11, 2019 are attached hereto and marked as **Exhibit "F"** along with a translation.
72. Following this, the Agent advised the Company on Saturday, September 21, 2019 that it intended to place the Company into receivership.
73. In response, on Sunday, September 22, 2019, the Company arranged for interim funding from Waygar.
74. In particular, Waygar agreed to advance, and the Syndicate agreed to allow, up to \$8,000,000 to fund operations until the closing of the \$60,000,000 financing with Waygar, which was to take place on October 17, 2019.
75. Waygar provided the interim financing through Waygar joining the Syndicate, as set out in the agreement attached hereto and marked as **Exhibit "G"**.
76. The key terms of the advance between Waygar and the Syndicate were that Waygar would advance the funds and would have first priority to repayment of those funds. The funding was principally to be used to fund Kit Loan obligations. That funding closed on September 27, 2019.
77. It was my understanding, based on multiple conversations which I attended with the Agent and/or its advisors (along with NAFA's advisors) that the Syndicate recognized the utility in making this funding to the farmers in order to ensure the further development of the kits into harvestable product.
78. I believe that it is understood among the Company, the Syndicate and our respective advisors, that under-funded and under fed kits are essentially valueless.

79. By comparison, it is estimated by our advisors that the conservative market value of the kits, which are subject to Kit Loans, and anticipated to be converted into Pelts would be in excess of \$90,000,000 once harvested. Based on the terms of the current 2019 Kit Loans, approximately \$65,000,000 would be payable to the Company to repay those loans upon those animals being pelted, auctioned and sold (assuming NAFA completed its loans to all of these farmers).

### **Termination of the \$60,000,000 refinance Waygar Transaction**

80. On October 14, 2019, Waygar advised the balance of the Syndicate (the “**Original Syndicate**”) and the Company that it was no longer prepared to enter into long term funding with the Company or provide the \$60,000,000.
81. Confronted with the fact that the Company was going to be unable to fund its Kit Loans or other obligations beyond day-to-day operations after October 17, 2019, the Company approached each of Waygar and the Original Syndicate members to seek interim funding to allow it to finish the Kit Loans and operate.
82. The Agent advised the Company, at an all parties meeting on October 15, 2019, that the Syndicate was unwilling to provide any further funding to the Company. On the other hand, the Agent advised that the Syndicate might be willing to consider allowing for the Company to consume certain easy to liquidate assets, if that might provide it some runway before it ran out of funds.
83. CIBC also advised that it would not allow for further DIP funding from Waygar to come in ahead of the Original Syndicate.
84. Further, CIBC advised that in its opinion, there may not be sufficient value in the current business to even repay the \$8,000,000 due to Waygar in priority to the Original Syndicate. I disagree with this statement.

85. The Agent strongly encouraged the Company to seek a transaction with its competitors to see if that might either solve the liquidity issues or provide a basis for a merger, transaction or wind-down.
86. Waygar, confirmed on October 18 and October 20, 2019, that it was prepared to provide DIP Financing to allow the Company to meet its Kit Loan obligations. As set out below, Waygar has provided a term sheet outlining a DIP funding transaction which, if approved by the Court, will provide the Company with the funding to move forward.
87. In the interim, while continuing to operate in the normal course (subject to its extreme cash constraints), the Company has pursued a transaction with its competitor, SAGA Furs ("**SAGA**"), to address these liquidity issues.

#### **The SAGA Furs Transaction**

88. Since July of this year, NAFA has been engaged in negotiations with SAGA about a possible transaction. The transaction was sourced and organized by KPMG Corporate in accordance with the mandate provided to it pursuant to the Credit Agreement. Various iterations of the transaction were vetted and considered from time to time by KPMG Corporate and reported to the Syndicate and Alvarez.
89. SAGA provided the Company with an LOI to allow it to acquire certain of the Kit Loans in August (the "**August LOI**"), but that transaction was not pursued at that time because of the opportunity provided by the anticipated transaction with Waygar which NAFA thought would retire the Original Syndicate loan or provide the business with a path forward.
90. On October 20, 2019, the Company and KPMG Corporate solicited and received a new LOI from SAGA (the "**SAGA LOI**"). A copy of the SAGA LOI is attached hereto as **Confidential Exhibit "A"** to this affidavit.

91. Fundamentally, the SAGA LOI proposes a transaction which allows for NAFA to receive some or all of the present value of the outstanding Kit Loans, without having to wait to recover those amounts from auction proceeds which would not otherwise be available until March, 2020 or later. In exchange for this, NAFA is surrendering the right to auction these kits at its March auction, and foregoing the profit it would make from conducting such an auction.
92. The SAGA LOI sets out the following deal terms:
- a. SAGA would provide immediate funding to NAFA with respect to certain farmers in Europe who had outstanding Kit Loans, up to the amount of those loans (which certain advances made by it would be repaid to NAFA). In accordance with the terms of SAGA LOI, these farmers are referred to as the “**Schedule 1 Farmers.**”
  - b. SAGA would fund the balance of the requirements owing under the Kit Loans for the balance of the season for the Schedule 1 Farmers, thereby relieving NAFA of the obligation to do so.
  - c. SAGA would take over funding the pelting, grading and auctioning of the kits subject to Kit Loans.
  - d. SAGA would also make offers to acquire the balance of the European Kit Loans from the other European farmers, which are referred to as the “**Schedule 2 Farmers**”. In respect of these farmers, SAGA would provide NAFA with an amount equal to 85% of the past market price averages. The balance due for these Kit Loans would be paid when the kit Pelts were auctioned by SAGA.
  - e. To the extent NAFA was owed anything from the farmers beyond the payment contemplated in sub-paragraphs a) or b) above to be financed by SAGA, it would have a second secured position over the Pelts which were the subject of the Kit



Loans and would be paid the balance owing to them from the proceeds realized at auction.

- f. SAGA also offered a similar structure for NAFA's North American Kit Loans, but on a less immediate basis.
- g. A commission fee would be payable to NAFA in connection with the Pelts to be sold at auction provided through this structure (the "**SAGA Furs Transaction**").

### **Immediate Cash Flow Impact of the SAGA Furs Transaction**

- 93. On October 21, 2019, the Company, in consultation with KPMG provided to the Syndicate and Alvarez two cash flow forecasts for the period of October 11 to December 13, 2019, which assumed the SAGA Furs Transaction would be performed and the Company could utilize some or all of that cash to meet its remaining Kit Loan obligations and operational obligations. Those cash flows are attached hereto as **Confidential Exhibit "B1"** and **"B2"** to this affidavit.
- 94. These illustrative cash flow forecasts are no longer current as the Company has continued to work with KPMG to prepare a cash flow forecast for these CCAA proceedings. Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as proposed monitor for the Applicants (the "**Proposed Monitor**") is currently working with the Company and KPMG to review and finalize the cash flow forecasts, as discussed below.
- 95. The Company, with the assistance of KPMG, also reviewed and provided an analysis of the benefit of the SAGA Furs Transaction to the Syndicate and Alvarez. A copy of this analysis is attached hereto and marked as **Confidential Exhibit "C"**. The analysis was positive.
- 96. Having reviewed the SAGA Furs Transaction with KPMG Corporate, KPMG, the Syndicate and its advisors, and with particular regard to the fact that the Syndicate was unwilling to

provide any further bridge funding or any funding at all, the Company determined that the SAGA Furs Transaction was the best available option to support the Company and its obligations to its stakeholders. The Board also supported and authorized that the Company proceed with this transaction.

97. The SAGA Furs Transaction will, if completed on schedule, provide sufficient liquidity to allow NAFA to harvest the current mink crop and thereafter to reconsider its business operations.
98. Under the SAGA Furs Transaction, it is likely the case that NAFA will not hold an auction in March 2020 as it is expected that the remaining Pelts consigned to NAFA could be directed to be auctioned by SAGA. It is unclear what role, if any, the existing NAFA staff would play in conjunction with those products.
99. It is my hope that once the Company gets through the immediate cash crunch related to the completion of the 2019 Kit Loans, it will then be able to review with its advisors what future business, if any, might be performed by NAFA or its personnel both in Canada and or in its satellite offices to further support the fur industry. For example, SAGA and the Company have also discussed the possibility of a transaction in the future whereby SAGA will assist NAFA to fund the Kit Loans and assist with operations in North America.
100. Attached hereto and marked as **Confidential Exhibit "D"** to this affidavit is the NAFA/SAGA Furs Rancher Visitation Schedule and Estimate Valuation, which shows a summary of the Kit Loans and the corresponding next farm visit and payment, as at October 28, 2019. As set out therein, certain loans have already been assigned to SAGA, and more than \$3 million is expected to arrive by the end of the week.

101. It is anticipated by the Company in its Cash Flow Forecast (as defined below) that the Syndicate will allow the Company to use these proceeds to fund operations, but the Syndicate has not committed to this position.
102. I have advised SAGA of the Company's intention to seek protection under the CCAA and have been advised by Juha Huttunen, the CFO of SAGA, that the CCAA filing will not impact SAGA's desire to complete the SAGA Furs Transaction.

### **Financial Impact of the SAGA Furs Transaction**

103. The cash flow at B1 assumed the SAGA Furs Transaction will be performed entirely on an expedited basis and with the best outcome for all assumptions. On this cash flow, the Company would have sufficient liquidity to meet its obligations, including the ability to complete the remaining Kit Loan funding, without the need for further DIP Financing over that period.
104. On October 21, 2019, counsel for Waygar, CIBC and the Company, KPMG/KPMG Corporate, and Alvarez had a call in which the Company expressed its belief that while it was possible, based on the best case scenario cash flow, that the Company would be able to operate without any further funding from the Syndicate, it was of the view that it was prudent to have a DIP Financing facility of \$5,000,000 given the potential risk surrounding the timing of the assumption of the loans by SAGA (as the cash flow at Confidential Exhibit B1 outlined a doable but optimistic time frame).
105. By comparison, the cash flow at Confidential Exhibit B2 assumes there will be some greater difficulty in completing the anticipated SAGA Furs Transaction with the various farmers which causes a greater period of time to pass before the first or significant funds are provided by SAGA. Under this forecast, the Company requires \$5,000,000 from Waygar immediately (i.e. on or before November 1, 2019) to allow it to maintain funding to the Kit

Loans while the SAGA Furs Transaction matures and generates material funds a week later.

106. Both cash flow forecasts also include material repayments to the Syndicate and the continuation of current payments in accordance with the existing security and lending arrangements. A delay or “holiday” in those payments could improve the Company’s cash position going forward, but it would not provide the additional liquidity the Company immediately needs in order to keep the Kit Loans current. The Company is reviewing the appropriateness of these pay downs during the period of the cash flow.
107. As the cash flow demonstrates, after nearly 4 months of carefully managed and occasional acrimonious negotiations and funding, the Company is, according to projections, literally within only a few weeks of being able to complete the funding of the Kit Loans (with the proceeds from the SAGA Furs Transaction) and see the benefit of those loans turning into collectable assets.
108. The Company has now commenced the process of contacting farmers and implementing the SAGA Furs Transaction (even prior to receiving final documentation from SAGA) and it is optimistic it will provide the much needed liquidity to the Applicants. I personally flew to Finland on October 23<sup>rd</sup> and remained there until October 27<sup>th</sup> to help coordinate this process. My initial report is that the contact with the first group of farmers by SAGA proceeded well and I am optimistic the balance of the transaction will proceed equally well.
109. The negotiations with our single largest customer and debtor, the Van Ansem Group (“**VAG**”), are ongoing and to date have proven somewhat difficult. The Company’s business dealings with VAG are complex and relatively large (with VAG owing in excess of \$16,000,000 to NAFA and NAFA owing \$7,000,000 to VAG from the most recent auction) which may not be resolved as quickly as the above cash flow forecasts had projected. I am confident that a resolution will be found shortly.

110. In the interim, the Company, in conjunction with KPMG have determined that it is prudent to have a DIP Financing facility in place to ensure there is no further interruption of funding to the kit farmers or to NAFA operations. The Company is prepared to only draw on that funding as needed and if needed. The Company is working on a cash flow with the Proposed Monitor which anticipates the availability of this DIP.
111. CIBC rejected providing the required \$5,000,000 standby facility at an all counsel call on October 21, 2019. Waygar confirmed it would provide that funding on that call, but only on a priority basis.
112. At an all hands meeting on October 28, 2019, CIBC and Waygar confirmed this remained their respective positions. CIBC also confirmed its position that the Company should vigorously pursue the SAGA Furs Transaction to resolve its liquidity issues, which the Company confirmed it was doing (and is doing) in any event.

#### **Current Circumstances of the Company**

113. On October 23, 2019, the Company met with its employees in Toronto to discuss the challenges being faced by the Company. In the circumstances, the Company advised that it may not have the funds necessary to pay any statutory termination pay or other notice amounts owing to these individuals. The employees were also advised that all wages were current until October 31, 2019. The Company is also not engaging the seasonal workers it would usually engage at this time of year.
114. The Company is being pursued by its creditors. My staff is in daily communication, of increasing frequency, with consignors looking for their outstanding payments, customers looking for their deferred proceeds, parties looking to repossess inventory that remains under NAFA's control following the last auction, and parties seeking Kit Loans or related loan funding.

115. We have not been able to provide satisfactory answers to most of these inquiries and I suspect that some or all of these parties are going to seek legal recourse against the Company with respect to their perceived breaches of NAFA's obligations to them.
116. The Company is still current with its salary and other current expenses. Its payroll is paid until the end of October, but the Company is struggling to meet other employee liabilities, including accrued vacation pay. As at October 29, 2019, the outstanding vacation pay liability was approximately \$100,000.

### **Assets**

117. According to the most recent analysis of KPMG, based on up-to-date information and audited financial statements, the Company has assets with a book value in excess of \$129,000,000. This is materially more than the Syndicate is owed.
118. Attached as **Confidential Exhibit "E"** is a Net Realization Analysis ("**NRA**") from the Company and reviewed and revised by KPMG as at October 18, 2019. Similar ones with similar asset classes was prepared during the negotiations of the Credit Agreement in July and in relation to the Forbearance Agreement in August. As set out therein, the principal assets of the Company are:
- a. Accounts receivable owing from parties who purchased goods at auction;
  - b. Kit Loans which remain outstanding;
  - c. Other loans to consignors (i.e. capital loans to support Farm operations not directly tied to Kits);
  - d. Inventory; and
  - e. Real estate assets.

119. As set out therein, the Company has in excess of \$53,000,000 worth of Kit Loans. The collectability of these assets increases dramatically if the final payments are made to the farmers so that the kits reach full size and can be converted into Pelts.
120. If that occurs, even on a liquidation basis, it is estimated that NAFA will recover approximately \$39,000,000 from the Kit Loans, which alone is substantially more than the Syndicate is owed. I understand that the Proposed Monitor is reviewing the NRA with KPMG.
121. On a going concern basis, I believe that these loans will be nearly 100% collected. In my experience, we have had a less than 1% loan loss rate on these loans. On a going concern basis, the Kit Loans would be worth approximately \$52,000,000.
122. Also, on a going concern basis, NAFA has in excess of \$12,000,000 worth of loans owing by farmers separate and apart from the Kit Loans and loans from previous years of approximately \$11,000,000 which are still outstanding, which in the ordinary course would have some value. On a liquidation basis, it is estimated that these will not be collected for any material value.
123. In addition, I note that the NRA does not provide a value for the Company's intellectual property (in particular, trademarks), which I believe could have some material value.
124. In terms of its fixed assets, the Company is in the process of completing a sale of its Carlingview property, which will provide a further pay down of the Syndicate's indebtedness of approximately \$5,000,000 possibly within the next two weeks. That transaction is quite advanced, and the Syndicate is fully informed of and approves that transaction. It is estimated that the balance of the Company's real estate holdings could, on a liquidation, generate a further \$5,000,000 to \$6,000,000 in realizations.

125. On or about October 28, 2019, the Company was provided with a revised purchase agreement for the Carlingview property for a reduced price. If accepted, the transaction is due to close within two weeks. The agreement does not currently include a provision from the purchaser requiring a vesting order or court approval.
126. As at October 18, 2019, the total indebtedness of the Company to the Syndicate, inclusive of the \$8,000,000 DIP already advanced by Waygar, was approximately \$32,000,000
127. As set out in the Confidential Exhibit, assuming the Kit Loans are funded to maturity, it is reasonable to expect the Company to have a liquidation value which is more than \$20,000,000 in excess of its current indebtedness to the Syndicate and Waygar (before repayment of the additional \$5,000,000 DIP described below).
128. The financial statements for each of the Applicants from 2018 will be provided at the hearing. The financial statements were audited by KPMG.
129. But for the indebtedness to the Syndicate which NAFA directly owes and the other Applicants (with the exception of Daikoku, NAFA Europe and NAFA Co-op) jointly and severally guaranteed, the businesses are otherwise solvent.

### **Creditors**

130. Attached hereto and marked as **Exhibit "H"** are PPSA searches for each of the Canadian Applicants. As set out therein, the entities with registrations against the Company are:
- a. CIBC – NAFA Properties, NAFA, and 3306319;
  - b. Business Development Bank of Canada ("**BDC**") – NAFA Properties and NAFA;
  - c. Farm Credit Canada ("**FCC**") – NAFA Properties, NAFA, and 3306319;
  - d. National Leasing Group Inc. – NAFA;



- e. Xerox Canada Ltd. – NAFA; and
- f. CNH Industrial Capital Canada Ltd. – 3306319.

131. There are also inter-company secured loans subordinated to the Syndicate, the details of which we are assembling for review by the Proposed Monitor during the CCAA proceedings.
132. Each of BDC and FCC have specific loans on real property. BDC holds a mortgage on the Skyway property lease interest. FCC holds a first mortgage on the Carlingview property and the Nova Scotia Farm.
133. Neither real property lender has taken any material steps to enforce their security although both are aware of the default notice provided by CIBC. Attached hereto and marked as **Exhibit “I”** are the property searches for the two properties in Toronto. The Company is in the process of completing searches of the Nova Scotia properties.
134. BDC did contact Company counsel by letter and by phone to express its concern with the apparent issues with the Company. They have taken no further steps.
135. There has been no communication from FCC.
136. Outside of secured creditors with security over its real estate, the only material secured creditor for NAFA is the Syndicate. As at October 28, 2019, the Syndicate was owed approximately \$32,000,000. Of that amount approximately \$8,000,000 is a result of the interim financing provided by Waygar.
137. Since July 2019, the amount owing to the Syndicate has been reduced from approximately \$60,000,000 to under \$25,000,000 (not including the \$8,000,000 loaned by Waygar).

### **Government Remittances and Unsecured Creditors**

138. All government remittances are up to date to the best of my knowledge and no amounts are owed for source deductions. The Company routinely files HST and from time to time is in a deficit or refund position. Currently, it is expected that there is a small refund for HST owing to the Company.
139. The Company owes approximately \$7,000,000 to its buyers for "Buyer Credits", which are credits that the Company has agreed to provide to buyers who have provided funds for future purchases, provided back up collateral against future amounts, or are entitled to commissions/rebates that they earned on prior sales that they have not applied to purchases.
140. The Company owes in excess of \$11,500,000 (out of which \$7,000,000 is owing to VAG) to its consignors who have not yet received funds derived from the sale of their goods in the August auction. Those payments were interrupted by CIBC when it issued its default letter on September 19, 2019. Approximately 7,500 consignors are owed funds.
141. Beyond the consignors, the Company has the ordinary unsecured creditors expected of an enterprise of this size. I estimate the debts to those creditors to amount to approximately \$8,000,000 to \$9,000,000, but I have not had the opportunity to properly itemize the Company's obligations to its ordinary unsecured creditors at this time.
142. Beyond this, NAFA is obliged to provide in excess of \$13,000,000 (the "**Deferred Proceeds**") to various parties who were owed funds from previous auctions, but who for one reason or another, have not collected them and or had asked that they continue to be held at NAFA pending direction from those parties. The total number of parties with Deferred Proceeds from NAFA are approximately 50.

## Employees

143. NAFA also employs in excess of 70 full-time employees in Canada, and 35 full-time employees around the world at its satellite offices. There is no union for these employees. It is my understanding at this time that the employment, severance and termination of these employees are governed by the laws of Canada, the United States, the Netherlands and Poland.
144. NAFA's Canadian employees are all a part of a defined contribution pension plan with Sun Life Financial (the "Plan"). The Company pays into the Plan on a monthly basis. The Company does not have any obligations with the Plan which are in arrears at this time.
145. Approximately 7 Canadian employees are also part of a HBC Legacy Fund. These were former employees of HBC who joined NAFA in 1987 when NAFA acquired the fur business from HBC. At HBC, these employees were part of a pension plan.
146. It is my understanding that as a result of a promise under which these employees joined NAFA, the Company provides these employees an additional pension payment ranging from approximately \$400 per month to \$2000 per month after their retirement until their death. Five of the seven employees have already retired and have been paid monthly as required. Two have yet to retire and are still employees.
147. Currently, it is my understanding that the Company's projected obligations in respect of this HBC Legacy Fund are in the amount of approximately \$1,000,000 (CDN), but NAFA does not have a recent actuarial report to certify that liability.
148. We are in the process of accumulating information about the Applicant's obligations and options in various foreign jurisdictions.

## DIP Loan Agreement Key Terms

149. Having regard to the cash flows at Confidential Exhibits B1 and B2, the Company has asked and Waygar has offered to provide a DIP Financing facility available to the Company, which is conditional on Court approval (the “**DIP Facility**”).
150. Attached hereto and marked as **Exhibit “J”** is a draft term sheet for the DIP Facility dated October 29, 2019 (“**Term Sheet**”). I expect to have an executed Term Sheet by the time of the CCAA hearing date which will be provided to the Court.
151. The key provisions of the proposed DIP Facility are as follows:
- a) The DIP Facility will be in the amount of no more than \$5,000,000;
  - b) The DIP Facility may be drawn as needed but will not revolve;
  - c) The Interest rate will be 12% per annum, payable monthly in arrears;
  - d) There is a set-up fee charged in the amount of 2%;
  - e) The DIP Facility matures within 60 days from execution of the DIP loan agreement or upon completing milestones related to the Kit Loan refinancing;
  - f) Waygar, in its capacity as lender under the DIP Facility (in such capacity, the “**DIP Lender**”), must be granted a Court ordered first priority charge over all of the property, assets and undertakings of the Applicants; and
  - g) The terms of the Initial Order must be satisfactory to the DIP Lender.
152. I have reviewed the terms of the DIP Facility with Company counsel as well as KPMG. I understand that the Proposed Monitor is reviewing the DIP Facility and will provide its views in their Pre-Filing Report.

### **Need for DIP Funding to Fund Kit Loans**

153. It is estimated that the total number of mink kits which were sired, acquired and raised in reliance on promises from NAFA to fund the carrying costs of those animals is approximately 3,400,000 animals worldwide. Kit Loans are required to ensure these mink reach maturity and the farmers have the resources to process them properly and humanely.
154. The historic loss rate on these Kit Loans is less than 1%. Over my tenure at NAFA the total amount lent in this fashion has exceeded \$1 billion.
155. If the Kit Loans are terminated suddenly, most of the farmers have no ability to seek alternate funding quickly, and the minks would starve to death or they would have to be euthanized by their ranchers. The immature Pelts have no value.
156. The farmers will have, as of Wednesday, October 29, 2019, been without funding since October 17, 2019 when the \$8,000,000 financing from Waygar was exhausted by NAFA. It is therefore critical that funding be re-established immediately to ensure the health of the kits.
157. It is not an exaggeration to say that a significant portion of the worldwide mink ranching business is wholly dependent on the flow of funds from NAFA. If these funds are not provided on a timely basis, these minks will starve, cannibalize their siblings, or will not mature or grow in a normal manner, causing the farmers to suffer a material loss from which they may not recover.
158. As noted above, it is a condition of the Kit Loans that the ranchers who take on these loans deliver their minks to NAFA for auction. In this fashion, by making these loans, NAFA ensures that it has inventory to sell at its auction.

159. Although NAFA takes security for its loans from the ranchers, the principal way that NAFA collects on these loans is by offsetting the amounts owing to NAFA against the obligations owing to these farmers from their product which is sold at auction.
160. Although some of the Kit Loans are to be assumed by SAGA under the SAGA Furs Transaction, not all of them are and the ones that are may not be done immediately.
161. If NAFA fails to pay its Kit Loans when due and the mink in question are killed or not made available for sale it makes collection of the loans much more difficult or even unlikely.
162. It is also reasonable to expect that any mink rancher who does not receive the funding agreed to be provided to it by NAFA will assert a cause of action against NAFA which might nullify any amount owing by that farmer to NAFA. In any event, collection would be materially more difficult, if not impossible.
163. It is also the case that many of these farmers (approximately 70%) are located in Europe, which further complicates enforcement.

#### **Current Cash Flow Forecast**

164. The Applicants, with the assistance of KPMG, are preparing a cash flow forecast from the current week to the week ending December 13, 2019 (the “**Cash Flow Forecast**”). The Cash Flow Forecast is in the process of being finalized and I understand that it will be attached to the Proposed Monitor’s Pre-Filing Report and that the Proposed Monitor will review the Cash Flow Forecast and comment on it in its report.

#### **Relief Sought under the Initial Order**

165. The Applicants likely do not have adequate means to maintain going concern operations (including funding the Kit Loans) without commencing a CCAA proceeding, along with

authorization to enter into the DIP Facility. The Applicants are unable to meet their obligations as they come due and are therefore insolvent. I believe that the Applicants will benefit from the granting of an Initial Order under the CCAA. Below, I have outlined the key components of the proposed Initial Order.

### **Stay of Proceedings for Canadian and Foreign Entities**

166. In order to provide breathing space to the Applicants while they restructure and to continue to allow them to operate as a going concern, the Applicants require a stay of proceedings. The Applicants are concerned about the potential termination of contracts and the potential claims that may be made against them by farmers and other creditors arising out of the Applicants' insolvency and the application for protection under the CCAA.
167. The Applicants include foreign entities in the United States and Europe, as well as the Canadian corporations. The operations of the Applicants are intertwined in terms of their auction and consignee accounts, as further described above. The inclusion of the entire NAFA structure, including the American and European subsidiaries, is, in my view, appropriate and necessary to ensure the enterprise can continue to operate as a cohesive unit to maintain stability and value in the CCAA process.
168. The stay will allow management to develop and oversee an orderly restructuring of the business with minimal disruption which will protect the interests of the Applicants' employees, landlords, customers, farmers and lenders. I believe that the granting of a stay of proceeding is in the best interests of the Applicants and their stakeholders.

### **DIP Financing**

169. As a result of the Applicants' immediate need to fund the Kit Loans, as described above, and as set out in the cash flow, the Applicants require interim financing pursuant to the DIP

Facility to provide stability and ensure that the value of the Applicants' business is not eroded.

170. As part of the Applicants' consideration of strategic alternatives for funding, Waygar was canvassed on its willingness to provide DIP Financing. In the view of the Applicants and KPMG, Waygar would be in the best position to provide DIP Financing in a timely manner as it was already familiar with the Applicants' unique business and lending structure. Given the immediate need for funding, any non-current lender would likely be unable to conduct due diligence and provide committed DIP Financing in the timeline required.
171. The funds available under the DIP Facility will be used to meet the Applicants' funding requirements in respect of the Kit Loans in the short-term in accordance with the Cash Flow Forecast to be filed.
172. It is proposed that the DIP Facility will be secured by a Court-ordered charge on all of the present and future assets, property and undertaking of the Applicants in favour of the DIP Lender (the "**DIP Lender's Charge**"). This is a condition precedent to the funding under the DIP Facility being made available by the DIP Lender to the Applicants. The DIP Lender's Charge will be subordinate to the Administration Charge and the KERP Charge (as defined below), but in advance of the Directors' Charge (as defined below).
173. The DIP Facility and the DIP Lender's Charge are critical to the successful restructuring as they will provide the Applicants with the necessary liquidity to maintain the going concern value of the Kit Loans, which is a substantial asset for the Applicants. Absent an injection of cash in accordance with the DIP Facility, the Kit Loans will significantly deteriorate and may not be collectable, which will be detrimental to the Applicants' stakeholders, including the Syndicate.



**Monitor**

174. It is proposed that Deloitte will act as Monitor in these CCAA proceedings if the proposed Initial Order is issued. Deloitte has consented to act as the Monitor of the Applicants.

**KERP**

175. The proposed Initial Order includes approval of a key employee retention plan (the “**KERP**”) and the granting of a charge up to a maximum aggregate amount of \$150,000 as security for payments made to key employees under the KERP (“**KERP Charge**”). The KERP Charge will be subordinate to the Administration Charge (as defined below), but in priority to the DIP Lender’s Charge and the Directors’ Charge (as defined below).

176. I am of the view that our labour force, especially our executive team, is quite mobile and will, given the uncertainty, potentially flee to other opportunities (albeit perhaps out of the fur industry) or safer options once we make this public declaration of insolvency.

177. The staff and key executives, including myself, have indicated their intention to resign if a receiver is appointed or the business pursues a path that is not for the benefit of the Applicants’ stakeholders as a whole. I continue to be of the belief that the retention of key staff is essential to maximizing recovery for those stakeholders.

178. I have consulted with our counsel and KPMG and have been advised that in restructurings staff can be provided with incentives to encourage staff retention in the form of the KERP.

179. In consultation with KPMG, I have created the attached schedule of such KERP payments which I believe will materially enhance the restructuring process, which is attached hereto and marked as **Confidential Exhibit “F.”** The KERP will provide the key employees with a bonus equal to 50% of their ordinary salary over three months, which will be paid provided they remain engaged with the Company until at least January 15, 2020.

180. The KERP also includes payment to me in the amount of my full RRSP contribution for 2019. This is part of my ordinary compensation and will be fully earned as of October 31, 2019 in the ordinary course. I have deferred paying any of this amount to myself due to cash constraints. This amount will only be payable to me if I remain engaged with the Company until at least January 15, 2020.
181. By December 15, 2019, the Applicants should have managed much of the transition necessary to ensure that the 2019 harvest of mink has been converted into Pelts and a decision will have been made how, either under the SAGA Fur Transaction or otherwise, those Pelts will be converted into cash.
182. The KERP was developed to facilitate and encourage the continued participation of senior management and other key employees who are required to guide the business through the restructuring process and preserve the value of the business for the stakeholders. These employees have significant experience and specialized knowledge of the business that cannot be easily replicated or replaced. Furthermore, these employees will be faced with a significantly increased workload during the restructuring and will likely have other, more stable employment opportunities they could pursue.
183. Assuming that the Applicants are able to retain all of the key employees, the total amount payable to these employees under the KERP would be a maximum of \$150,000, which is reasonable given the value that these employees will provide to the enterprise.

#### **Administration Charge**

184. In accordance with the Credit Agreement, the Applicants retained KPMG Corporate to assist with a potential sale of the business in July 2019. KPMG also acts as NAFA's auditor and financial advisor. It is contemplated that, given KPMG's role to date and KPMG Corporate's involvement in the SAGA Furs Transaction, KPMG and KPMG Corporate would continue to

act as the Applicants' financial advisor during the CCAA process (in such capacity, the "**Financial Advisor**"). The Applicants are seeking Court approval of the continued engagement of the Financial Advisor.

185. I believe that the Financial Advisor's significant investment banking expertise, its extensive experience running sales processes both outside the context of and within insolvency proceedings and its capabilities of debt restructurings have benefited the Applicants in their sale efforts to date. I believe the Applicants will continue to benefit from the Financial Advisor's advice as they continue to work towards closing the SAGA Furs Transaction and during the CCAA process.
186. If the Applicants were required to retain a new financial advisor, it would likely take a significant amount of time for a new firm to acquire a working knowledge of the Applicants' unique business and would slow down the Applicants' restructuring efforts.
187. In connection with its appointment, it is proposed that the Monitor, along with its counsel, counsel for the Applicants, the Financial Advisor, and counsel for the Applicants' board of directors will be granted a charge on all of the present and future assets, property and undertaking of the Applicants as security for their respective fees and disbursements relating to the services rendered in connection with this CCAA proceeding up to a maximum of \$500,000 (the "**Administration Charge**"). The Administration Charge is proposed to have priority over all other charges and security interests.
188. These professionals are required to provide assistance and guidance to the Applicants as they navigate the CCAA process and liaise with the various stakeholders during their restructuring efforts. I am of the view that the Administration Charge is fair and reasonable given the complexity of the business and the value that the professionals will contribute to the restructuring.

## **Directors' and Officers' Protection**

189. In my view, the board of directors and management, including myself, are necessary to the successful restructuring. The continued participation of the Applicants' directors and management are essential to the viability of the Applicants' continuing business and the preservation of its value.
190. I have a significant amount of institutional knowledge in respect of the Applicants' business, as I have already demonstrated in dealing with the SAGA Furs Transaction. The directors are generally members of the fur industry who are uniquely situated to provide advice on how to restructure the business.
191. I held a meeting with the Board of Directors on October 28, 2019 to discuss the insolvency process. The directors have authorized the Applicants to proceed with the CCAA filing.
192. The directors advised at that meeting that they are particularly concerned that the assets be realized for the highest and best possible value to ensure the greatest possible recovery to the stakeholders. They believe that a creditor driven receivership will not create the highest or best value and are worried there would be wholesale discounting of assets to drive in cash quickly rather than prudently.
193. On the other hand, the directors and I are keenly aware that liabilities can accrue to us, either in respect of our past actions, or the actions which follow. I understand that directors can be held liable for certain obligations of a company owing to employees and government agencies, such as unpaid wages and unremitted taxes.
194. I also understand, and I have discussed with the Board of Directors, that the liabilities being faced by Board members in different countries may be materially different than in Canada. In particular, I am advised by Company counsel that criminal penalties can be sought against Board members related to these liabilities in Poland, but that these liabilities and

remedies might be mitigated by a CCAA filing in Canada and an eventual plan of arrangement.

195. Many of the directors have considered resigning, as I myself have.
196. I am advised by our counsel that the Applicants' present and former directors and officers may be the beneficiaries under a liability insurance policy held by the Applicants (the "**D&O Policy**"). A copy of the insurance policy will be made available to this Court at the hearing, if requested. Pursuant to the summary of the D&O Policy, I understand the policy is a "claims made" policy with limits of \$10,000,000 CAD for liability, \$1 million CAD for punitive damages, and \$1 million CAD for defence costs.
197. However, I have not been provided with an opinion that insurance coverage under the D&O Policy either universally applies or is sufficient to pay all possible liabilities, and I understand there are various exceptions, exclusions and carve-outs where coverage may not be available. I am also very concerned about possible liabilities in other jurisdictions outside of Canada.
198. Moreover, the D&O Policy upon which the directors rely will expire on November 1, 2019. The financial situation of the Company makes renewal complicated and uncertain. It is also not yet clear that the renewal of the D&O Policy will be funded.
199. I am advised by our counsel and the Proposed Monitor that it is usual that there be a stay of claims against directors and a charge in favour of the directors from which the Company can honour its obligation to indemnify the directors for post-filing obligations.
200. In light of the potential liabilities and the uncertainty surrounding available indemnities and insurance, I and the other directors and officers have indicated to counsel for the Applicants that our continued service and involvement in this CCAA proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and

officers in the amount of \$1,000,000 (**Directors' Charge**) and provides a stay of all claims pending a plan or the end of the CCAA process. It is contemplated that the Directors' Charge will rank behind the other court ordered charges being sought.

201. It is my hope that once the immediate pressure of managing the realization of the 2019 harvest is completed, the Applicants will be in a position to turn their attention to considering and formulating a plan of arrangement which will be acceptable to the Applicants' stakeholders.

202. I make this affidavit in support of an application by the Applicants for protection under the CCAA and for no other or improper purpose.

**SWORN** before me at the City of )  
Toronto, in the Province of Ontario )  
on the 30<sup>th</sup> day of October 2019 )  
)  
)

  
\_\_\_\_\_  
A commissioner, etc.

  
\_\_\_\_\_  
**DOUG LAWSON**

This is Exhibit "B" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

ETOBICOKE 529856

ETOBICOKE 529856

DATED: October , A.D. 1980

REGISTRY DIVISION OF  
TORONTO BOROUGH (No. 64)

I CERTIFY THAT THIS INSTRUMENT  
IS REGISTERED

3:36 PM OCT 30 1980

15  
SAMUEL BLACK, JOSEPH BLACK  
NORMAN BLACK and BEATRICE  
WINTROB

- and -

ROCKFORD DEVELOPMENTS LIMITED  
and IMBROOK PROPERTIES  
LIMITED

NOTICE OF LEASE

21 Con 3 FH Etob

ROBINS AND PARTNERS  
Barristers and Solicitors  
130 Adelaide St. W.  
Suite 2500  
Toronto, Ontario  
M5H 2M2

GT:cmb  
File No.1034/80

PROPERTY OF THE  
REGISTRY OFFICE

57490

21 Con 3

80 OCT 30 P 3:36

LAND REGISTRY



6

NOTICE OF LEASE

THE REGISTRY ACT

NOTICE is hereby given pursuant to Subsection 7

of Section 22 of The Registry Act of an unregistered Lease dated the 1st day of October, 1980 made between SAMUEL BLACK, JOSEPH BLACK, NORMAN BLACK, and BEATRICE WINTROB, all of the City of Toronto, in the Municipality of Metropolitan Toronto, as Lessors and ROCKFORD DEVELOPMENTS LIMITED, and IMBROOK PROPERTIES LIMITED, both Corporations incorporated under the laws of the Province of Ontario, as Lessees, and LOUIS FRIEBERG and GERDA FRIEBERG, both of the City of Toronto, in the Municipality of Metropolitan Toronto, as Guarantors, affecting the land described in Schedule "A" appended hereto (hereinafter referred to as the "demised premises"), containing the following terms and conditions:

Term: Ninety-Two (92) years, five (5) months;

Commencement Date: October 1, 1980;

Expiry Date: February 28, 2073;

Address of Tenants: Rockford Developments Limited
215 Carlingview Drive
Unit #211
Rexdale, Ontario
M9W 5E8

Imbrook Properties Limited
330 Bay Street
Suite 500
Toronto, Ontario
M5H 2S8

Address of Landlords: Beatrice Wintrob
625 Avenue Road
Apt. 1003
Toronto, Ontario

Samuel Black, Joseph Black & Norman Black
360 Bloor Street West
Suite 510
Toronto, Ontario

Address of Guarantors: Mr. Louis Frieberg and Gerda Frieberg,
c/o Rockford Developments Limited
215 Carlingview Drive
Unit #211
Rexdale, Ontario
M9W 5E8

Pursuant to subsection 20 of section 42 of The Registry Act, I certify that the contents of this Certificate of Registration are true and correct as shown in the original documents filed with me for registration.
Metropolitan Toronto was given on AUGUST 13 1980 by the Registrar of the Province of Ontario.
This certificate is subject to the provisions of the Act and the Regulations thereunder.
Signed this 20th day of October, 1980.
Secy. Treas. Committee of Adjustment

THE LAND TRANSFER TAX ACT
NO LAND TRANSFER TAX
OF THE PROVINCE OF ONTARIO
J. H. Howells
REGISTRAR

TRANSFER TAX
R. S. BARR

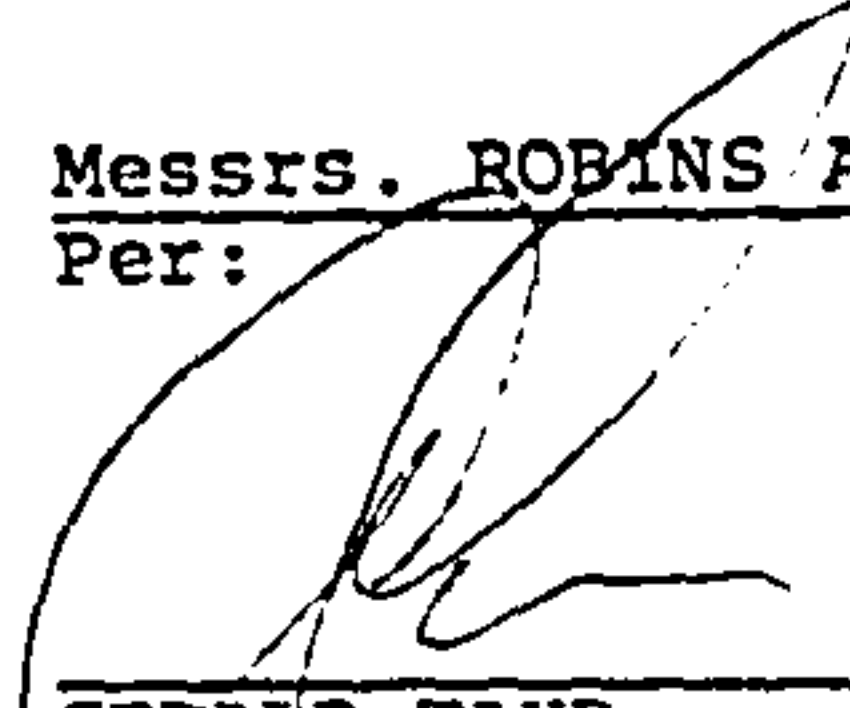
Option to Purchase: Nil  
Right of First Refusal: Yes


DATED at the City of Toronto, in the Municipality of Metropolitan Toronto, this 22<sup>nd</sup> day of October, 1980.

WITNESS:

*Ron Lancer*

ROCKFORD DEVELOPMENTS LIMITED  
and  
IMBROOK PROPERTIES LIMITED  
by their solicitors

Messrs. ROBINS AND PARTNERS  
Per:   
GERALD TAUB

TRANSFER TAX  
  
R. C. BARGER

SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land situate, lying and being in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, Province of Ontario, and being composed of that part of Lot 21, Concession 3 fronting the Humber River shown designated as Part 3 on a Plan of Survey of Record deposited in the Land Registry Office for the Registry Division of Toronto Boroughs and York South (No.64) as Plan 64 R-8647 and containing therein 7.720 Acres.

TRANSFER TAX



R. C. BARBER

A F F I D A V I T

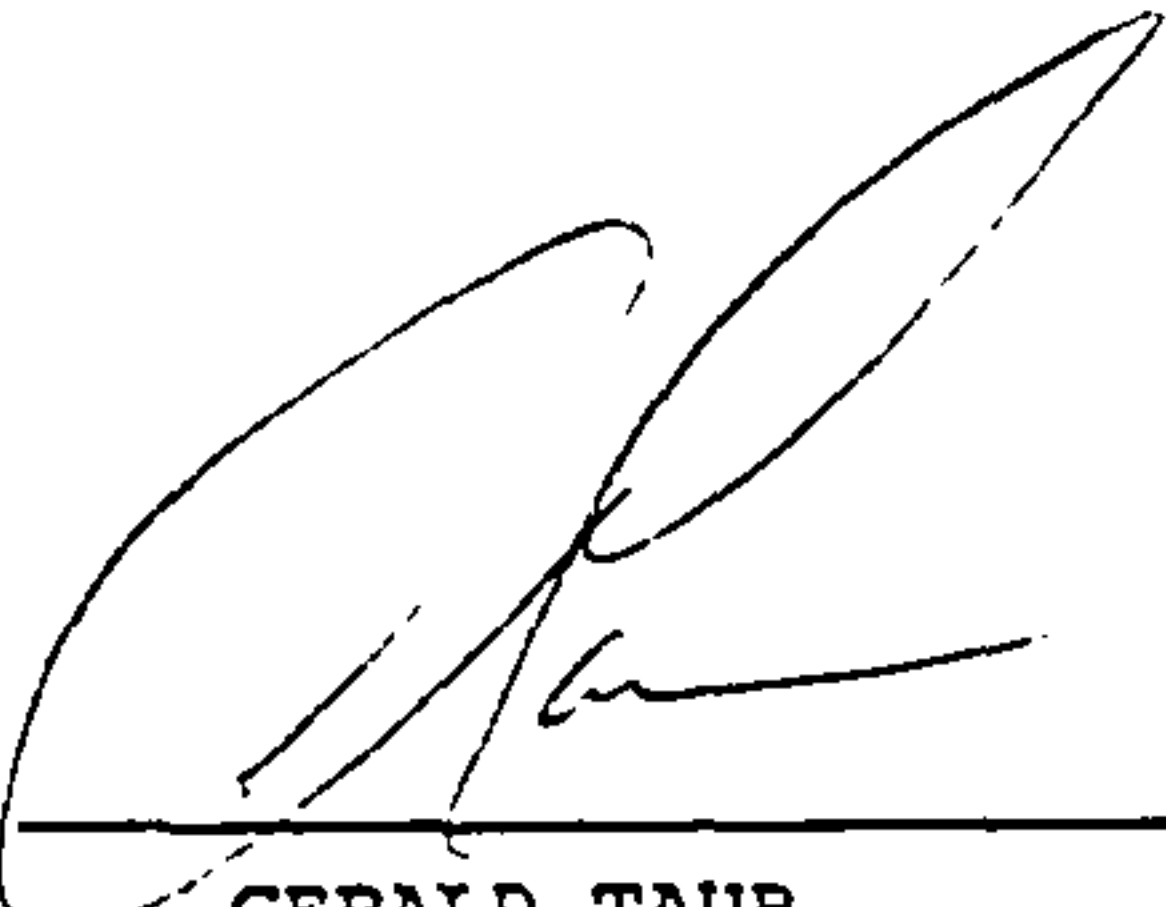
I, GERALD TAUB, of the City of Toronto, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am the solicitor for the Tenants, ROCKFORD DEVELOPMENTS LIMITED and IMBROOK PROPERTIES LIMITED, mentioned in the attached Notice of Lease and as such have knowledge of the matters therein deposed.

2. The Notice of Lease is not being registered for any fraudulent or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Municipality of Metropolitan Toronto, this 22<sup>nd</sup> day of October, 1980.

*Ron Pancer*  
A Commissioner etc.

  
GERALD TAUB

RONALD CHARLES PANCER, a Commissioner for taking Affidavits, Province of Ontario, for Robins and Partners, Barristers & Solicitors, Student-At-Law. Expires July 30th, 1983.


A F F I D A V I T

I, RONALD C. PANCER, of the City of North York, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am a subscribing witness to the attached instrument and I was present and saw it executed at the City of Toronto, by Gerald Taub.

SWORN BEFORE ME at the City of Toronto, in the Municipality of Metropolitan Toronto, this 22<sup>nd</sup> day of October, 1980.

  
A Commissioner etc.

  
\_\_\_\_\_  
RONALD C. PANCER

SHIRLEY MARIE DICKS, a Commissioner for taking Affidavits, Judicial District of York, for Robins and Partners, Barristers & Solicitors. Expires September 30th, 1983.

Peel-off Lease.

07/10/80

THIS INDENTURE OF LEASE made as of the 1st day of  
October, 1980

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

SAMUEL BLACK, Executive,  
JOSEPH BLACK, Executive,  
NORMAN BLACK, Executive, and  
BEATRICE WINTROB, (formerly known as  
Beatrice Minden), all of the City of  
Toronto, in the Municipality of  
Metropolitan Toronto,

(hereinafter collectively referred to as  
the "Landlord")

THE PARTIES OF THE FIRST PART

- and -

ROCKFORD DEVELOPMENTS LIMITED, and  
IMBROOK PROPERTIES LIMITED, both  
corporations incorporated under the  
laws of the Province of Ontario,

(hereinafter referred to as the "Tenant")

THE PARTIES OF THE SECOND PART

- and -

LOUIS FRIEBERG and GERDA FRIEBERG,  
both of the City of Toronto, in the  
Municipality of Metropolitan Toronto,

(hereinafter referred to as the "Guarantor")

THE PARTY OF THE THIRD PART

WITNESSETH THAT:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

1.01 The following expressions, where used in this lease,  
shall have the following meaning:

- (a) "Lands" means all and singular the lands situate, lying  
and being in the Borough of Etobicoke, in the Municipality of  
Metropolitan Toronto and being more particularly described in  
Schedule "A" attached hereto and as hatched on the plan of  
survey attached hereto as Schedule "B", excluding any  
structures.

Pursuant to subsection 29 of section 47 of the Planning Act, 1967, the Board of Control of the City of Toronto, in its resolution of August 14, 1980, approved the Lease of the City of Toronto to the Metropolitan Toronto Housing Corporation, a corporation incorporated under the laws of the Province of Ontario, for the purpose of providing housing for the City of Toronto. The Board of Control of the City of Toronto, in its resolution of August 14, 1980, approved the Lease of the City of Toronto to the Metropolitan Toronto Housing Corporation, a corporation incorporated under the laws of the Province of Ontario, for the purpose of providing housing for the City of Toronto.

- 2 -

(b) "Initial Rental Period" means the remainder of the first twenty-five (25) years of the term originally demised in the Master Lease beginning on October 1, 1980 and ending on the 28th day of February, 1999.

(c) "Second Rental Period" means the period of fifteen (15) years immediately following the expiry of the Initial Rental Period, namely the period beginning on the 1st day of March, 1999 and ending on the 28th day of February, 2014.

(d) "Third Rental Period" means the period of fifteen (15) years immediately following the expiry of the Second Rental Period, namely, the period beginning on the 1st day of March, 2014 and ending on the 28th day of February, 2029.

(e) "Fourth Rental Period" means the period of fifteen (15) years immediately following the expiry of the Third Rental Period, namely, the period beginning on the 1st day of March, 2029 and ending on the 28th day of February, 2044.

(f) "Fifth Rental Period" means the period of fifteen (15) years immediately following the expiry of the Fourth Rental Period, namely, the period beginning on the 1st day of March, 2044 and ending on the 28th day of February, 2059.

(g) "Sixth Rental Period" means the period of fourteen (14) years immediately following the expiry of the Fifth Rental Period, namely, the period beginning on the 1st day of March, 2059 and ending on the 28th day of February, 2073, the last mentioned date being the expiry date of the Lease herein.

(h) "Fair Market Rental"

(i) "Definition 1"

MEANS the annual rental which would be paid as between persons dealing in good faith and at arm's length for the Lands at the date as of which such rental is to be determined, on the assumption that at such date the



Lands are vacant, unimproved, free from encumbrances including this Lease and can only be used for the purposes for which they are being used at the date of each determination assuming that there is then an existing bona fide use; and, in determining such annual rental all other relevant factors shall be taken into account including the then fair market value of the Lands and the return which would then be received by an owner on a land investment under a similar lease entered into at such date for the term for which the annual rental is to be set.

(ii) "Definition 2"

MEANS the annual rental which would be paid as between persons dealing in good faith and at arm's length for the Lands at the date as of which such rental is to be determined, on the assumption that at such date, the Lands are vacant, unimproved, free from encumbrances, including this Lease and immediately available for new development; and in determining such annual rental all relevant factors shall be taken into account, including the then fair market value of the Lands, all of the uses and purposes to which the Lands may be adapted and for which they are capable of being used and the return which would then be received by an owner on a land investment under a similar lease entered into at such date for the term for which the annual rental is to be set.

(i) "Master Lease" means that lease notice of which was registered against title to the Lands (and other lands demised) by instrument number 434528 Etobicoke, in the Land Registry Office for the Registry Division of Toronto Boroughs and York South on the 5th day of June, 1974, and an undivided one-half interest of which was assigned to Imbrook Properties Limited by assignment of lease registered in the said Land Registry Office on the 28th day of March, 1980, as Etobicoke 521973.

ARTICLE II

DEMISE

2.01 In consideration of the rents, covenants and



- 4 -

agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hereby demises and leases the Lands to the Tenant for the term hereof.

### ARTICLE III

#### TERM

3.01 To have and to hold the Lands for a term to commence on the 1st day of October, 1980 and to end on the 28th day of February, in the year 2073.

3.02 It is acknowledged by the parties that the tenant under the Master Lease has properly exercised its right of renewal set out in Article 3.01 of the Master Lease.

### ARTICLE IV

#### RENT

4.01 Yielding and paying therefor yearly and every year during the Initial Rental Period, without any right of set off, deduction or abatement whatsoever, the sum of Seventy Thousand, Nine Hundred and Fifty-six (\$70,956.00) DOLLARS payable in equal consecutive monthly instalments of Five Thousand, Nine Hundred and Thirteen (\$5,913.00) DOLLARS in advance on the first day of each and every month during the balance of the Initial Rental Period, commencing on the first day of October, 1980, and monthly thereafter to and including the first day of February, 1999.

4.02 And yielding and paying therefor yearly and every year during the Second Rental Period, the Third Rental Period, the Fourth Rental Period, the Fifth Rental Period and the Sixth Rental Period, respectively, without any right of set off, deduction or abatement whatsoever, the greater of:

- (a) The fair market rental, as hereinbefore defined, respecting the rental period concerned; or,
- (b) The annual rental payable during the rental period next preceding the rental period concerned.

- 5 -

The said annual rental shall be payable in twelve (12) equal consecutive monthly instalments, payable in advance on the first day of each and every month during the relevant rental period; provided that, in no event, shall the annual rent for any rental period hereinbefore referred to be less than Seventy Thousand, Nine Hundred and Fifty-six (\$70,956.00) DOLLARS.

## ARTICLE V

### ESTABLISHING RENT

5.01 For the purposes of reaching an agreement respecting the rental to be payable in the next ensuing rental period, the Landlord and the Tenant and/or their respective agents or representatives shall meet not less than twelve (12) months prior to the expiration of the Initial Rental Period and likewise not less than twelve (12) months prior to the expiration of the Second Rental Period, the Third Rental Period, the Fourth Rental Period and the Fifth Rental Period, respectively. In the event that the parties fail to agree upon the Fair Market Rental for the next ensuing period on or before a date nine (9) months prior to the commencement of such next ensuing period, the determination of Fair Market Rental for such rental period shall be submitted to arbitration in accordance with the provisions of Article XIV hereof. In the event that the decision of the arbitrator(s) is not given at or before the commencement date of the next ensuing rental period, then the monthly instalments previously payable by the Tenant shall continue to be paid on account of rental, until the decision of the arbitrator(s) is made known, at which time an appropriate adjustment shall be made forthwith between the parties.

5.02 The parties agree that for the purposes of establishing the rental, the definitions of Fair Market Rental as more particularly set out in Article 1.01(h) hereof, subject to the provisions of Article 5.03, shall be applied as follows:

Second Rental Period	-	Definition "1"
Third Rental Period	-	Definition "2"
Fourth Rental Period	-	Definition "1"
Fifth Rental Period	-	Definition "1"
Sixth Rental Period	-	Definition "1"

5.03 If Definition 2 of Fair Market Rental is applied to establish rental for the Third Rental Period, notwithstanding the definitions of "Rental Periods" as set forth in Article 1.01(d) to (g) both inclusive, the definition of "Rental Periods" shall be determined by reference to Schedule "C" annexed hereto.

If the establishment of rental for the Third Rental Period determines that the lands are not yet appropriate for re-development, the parties agree that the application of Definition 2 to the Third Rental Period may be postponed and subsequently applied to the establishment of Fair Market Rental for the Fourth Rental Period. If Definition 2 of Fair Market Rental is applied to establish rental for the said Fourth Rental Period, notwithstanding the definitions of "Rental Periods" as set forth in Article 1.01(d) to (g) both inclusive, the definition of "Rental Periods" shall be determined by reference to Schedule "D" annexed hereto.

The parties have intended to create a situation so as to provide that where the circumstances dictate a re-development of the Lands after the twenty-fifth year but on or before the fortieth year or on or before the fifty-fifth year of the lease, then the rental shall be adjusted upward on one occasion only on the basis of Definition 2 of Fair Market Rental at the commencement of the next rental period whether or not the Tenant in fact re-develops the Lands. It is intended that this clause shall not preclude earlier re-adjustment of the rental when establishing annual rental for the next ensuing rental period in the normal course by taking into account the voluntary re-development of the Lands as evidenced by substantial and actual alterations of buildings and improvements which may be undertaken by the Tenant in any event.

## ARTICLE VI

### TENANT'S COVENANTS

- 6.01(a) The Tenant covenants to pay rent;
- (b) The Tenant covenants to pay, when due, all real estate taxes, including all charges for local improvements, assessments and other charges, rates, duties, licence

- 7 -

fees or levies of any kind or nature whatsoever which may be made, levied or imposed on the said Lands, and on the improvements thereon, or upon the Landlord or the Tenant on account thereof, whether such taxes, assessments, charges, rates, duties, licence fees or levies are charged by any municipal, school, or other body and whether or not of a kind now existing or within the contemplation of the parties hereto (hereinafter called "Property Taxes"); provided, however, that Property Taxes shall not include any charges or taxes personal to the Landlord or any of them, such as, succession duties, estate taxes, corporation taxes, income taxes or any other taxes upon the income derived by the Landlord from the said Lands. The obligation of the Tenant to pay Property Taxes shall commence as of the commencement date of the term hereof, and shall be apportioned for the current taxation year between the Landlord and Tenant as at such date, and the Tenant shall pay its appropriate share thereof. Upon the expiry or termination of this lease, Property Taxes during the taxation year of termination shall be similarly apportioned between the parties as at the termination date.

- (c) The Tenant further covenants that upon the written request of the Landlord, it will promptly deliver to the Landlord for inspection, receipts or other reasonable evidence for the payment of any and all of the Property Taxes which were due and payable up to thirty (30) days prior to the said request. The Tenant shall have the right and privilege in its own name, or if required and upon agreeing to indemnify the Landlord in respect of such action and all costs relating thereto, in the name of the Landlord (and the Landlord hereby agrees to consent to such proceedings), of appealing assessments or of applying for a reduction of any of the Property Taxes provided that it shall first either pay the Property Taxes under protest, or furnish security for payment thereof by bond or otherwise, reasonably satisfactory to the Landlord in the event of failure of such appeal or application.

If and so often as the Tenant shall neglect or omit to pay the Property Taxes, the Landlord may, but shall not be obliged to, pay the same and may thereupon charge the



same to the Tenant together with interest on the amount thereof at twelve (12%) percent per annum. The Tenant hereby covenants and agrees to pay the same to the Landlord forthwith upon receipt from the Landlord of a notice stating the amount thereof paid by it and the date of payment and the Tenant agrees that any and all of such amounts so paid by the Landlord shall be recoverable by the Landlord as if the same were, and in the same manner as, rent reserved and in arrears under the terms of this lease.

- 6.02 The Tenant shall, at its own cost and expense, during the entire term, put and keep in good order and condition the Lands and any buildings to be erected thereon and the improvements standing thereon at any time, and the appurtenances and equipment thereof, both inside and outside, including but not limited to, fixtures, walls, foundations, roofs, vaults, elevators and similar devices, heating and air-conditioning equipment, sidewalks on the property, yards and area ways, water and sewer mains and connections, water, gas and electric pipes and conduits, and all other fixtures in and appurtenances to the said Lands and buildings erected thereon, and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall make any and all necessary repairs, replacements, substitutions, improvements and additions, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise. Such repairs shall be completed in a good and workmanlike manner and in all respects consistent in quality and workmanship with the location and use of the said buildings, and shall meet the requirements of municipal or governmental regulations and the fire insurance underwriters. The Tenant shall commit or suffer no waste or injury to the said Lands and buildings erected thereon or any part thereof save and except any demolition and alteration respecting buildings and improvements on the Lands as hereinafter specifically provided for and shall not use or occupy or permit to be used or occupied the Lands and buildings erected thereon or any part thereof so as to constitute a nuisance or for any illegal or unlawful purpose, nor in any manner which may be extra-hazardous, nor in any manner which may contravene any lawful

- 9 -

restrictions of the use thereof by any municipal or governmental authorities, and the Tenant shall at all times, at its own expense, keep the sidewalks, curbs, area ways and right-of-way adjacent to the Lands and buildings erected thereon, clean from rubbish, ice and snow and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner; and shall not injure or disfigure the Lands and buildings erected thereon or permit the same to be injured or disfigured in any way save and except as hereinafter provided, and, at the expiration or the termination of this lease, the Tenant shall surrender and deliver up the said Lands subject to the right to maintain and use the buildings and improvements and the aforesaid appurtenances and equipment thereof until the buildings are destroyed or demolished. The Tenant agrees not to call upon the Landlord at any time during the demised term to make any repairs or replacements of any part of the Lands and buildings erected thereon or any improvements thereon erected or which may be erected, whether structural or otherwise, this being a net lease. The intention of this lease is that the rent received by the Landlord shall be free and clear of any expenses in connection with the construction, alteration, care, maintenance, operation or repair of the lands or any improvements or equipment at any time thereon.

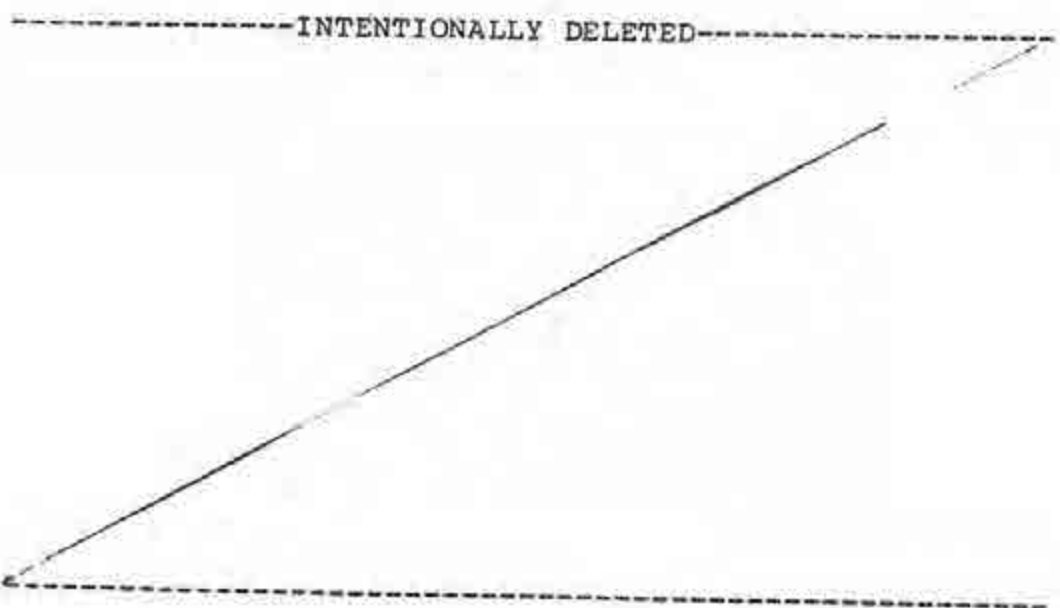
- 6.03 The Landlord acknowledges and declares that if the Tenant or a subtenant erects part of a building or structure on the Lands and part of the same building or structure on adjoining lands, neither the erection of the part of the building or structure on the Lands nor their being left on the Lands after termination of this lease will be considered to be an act of waste.
- 6.04(a) The Tenant covenants that it will install or cause to be installed all municipal services required to be constructed and installed in connection with any plan of subdivision or development plan for the Lands and shall pay all levies, imposts, deposits and charges required by the municipality or any public utility or other authority having jurisdiction, which services may be installed as local improvements and the Tenant shall

- 10 -

indemnify and save harmless the Landlord of and from all claims and demands relating thereto, it being the intention of the parties that the Landlord shall not be required at any time to pay any levies, imposts, deposits or other charges whatever in connection with the servicing or preparation of the Lands from time to time for building, use or occupancy. Without limiting the generality of the foregoing, the Tenant shall, at its own expense, install or cause to be installed paved roadways, sanitary sewers, storm sewers, sidewalks, curbs, street lighting, water pipes, underground hydro facilities as may be required by the municipality or other relevant authorities. The Tenant further covenants that it shall construct, renew and repair all services with respect to the Lands and buildings thereon as the municipality, utilities or other relevant authorities shall require from time to time without expense to or contribution from the Landlord.

(b)

-----INTENTIONALLY DELETED-----



6.05(a) The Tenant covenants that it will comply with all provisions of law relating to the Lands, the equipment and the maintenance and use of every building and every improvement on the Lands and in connection with the erection, alteration, improvement, demolition and replacement of same and will indemnify and save harmless the Landlord from each and every demand, action, cause of action and expense, including counsel and solicitors' fees on a solicitor and his client basis, by reason of failure so to do, or arising out of any act of omission or commission of the Tenant or any of its agents, employees or contractors in or about the Lands, the operation, construction, improvement, maintenance,

- 11 -

alteration, repair, demolition or replacement of any of the buildings, structures or improvements on the Lands or arising out of the breach of any of the covenants, terms and provisions of this lease binding upon or to be observed or performed by the Tenant. The Tenant covenants that at all times the use made of the buildings will be in conformity with all of the requirements of the zoning and building by-laws or as amended by the Committee of Adjustment or a successor body and any other municipal or governmental regulations which may affect the Lands. The Tenant shall comply with all police, fire and sanitary regulations imposed by any municipal or provincial or federal authorities or recommendations or requirements made by fire insurance underwriters, and observe and obey all municipal and governmental regulations governing the conduct of any businesses carried on on the Lands and buildings erected thereon or with respect to the use of the said Lands and buildings erected thereon, and save the Landlord harmless from any damages, charges, actions or costs arising out of non-compliance with or violation of any of the said laws and regulations or from any liability for costs for damage or injury to any person or property resulting therefrom on and after the commencement of this lease;

- (b) Throughout the term, the Tenant covenants and agrees to indemnify the Landlord and to save the Landlord and each of them harmless from all claims, costs, losses, damages and expenses arising from injury to property or injury to any person, firm, partnership or corporation, caused by the use, occupancy or presence of the Tenant or any other person, firm, partnership or corporation at, in, on or upon the Lands or the buildings erected thereon.

6.06(a) The Tenant covenants, at its expense,

- (i) to insure and keep insured the improvements, excluding foundations, in a stated amount as determined by the Landlord's insurance advisers, but not exceeding the full insurable value thereof, against all risk of loss or damage caused by or resulting from fire, lightning, explosion, collapse of any boilers, pipes or accessories in or about the improvements or any peril defined in a standard fire



- 12 -

insurance additional perils supplementary contract normally in use from time to time during the term of this lease or any extension thereof for buildings and structures in the Municipality of Metropolitan Toronto similar in nature to the improvements;

- (ii) to maintain public liability and property damage insurance protection indemnifying the Tenant and the Landlord against any and all claims for damage or injury to persons or property or for the loss of life occurring in or upon the said Lands, and all buildings, structures and improvements from time to time thereon, the limit whereof shall initially be not less than Five Hundred Thousand (\$500,000) Dollars in respect of bodily injury or death of any one person and not less than Five Million (\$5,000,000) Dollars in respect of any one occurrence and to the limit of not less than Five Hundred Thousand (\$500,000) Dollars for property damage; and,
  - (iii) if obtainable, to maintain boiler and pressure apparatus insurance, the limit whereof shall initially be not less than Five Hundred Thousand (\$500,000) Dollars in respect of any one accident, as may be required by the Landlord's insurance advisers at such time as buildings have been erected on the Lands, and if applicable.
- (b) All contracts of insurance required to be maintained under the provisions of this Lease shall be with a company or companies licensed to do business within the Province of Ontario and approved by the Landlord (such approval not to be unreasonably withheld) and ordinarily engaged, inter alia, in the business of insuring against the risks herein described.
- (c) All such contracts of insurance placed by the Tenant hereunder, insofar as they relate to the said Lands and the building, structures and improvements thereon, (other than those referred to in sub-article (a)(ii) above, which contracts shall be written in the names of the Landlord and Tenant as joint insured), shall show the Landlord, Tenant and any mortgagee of the leasehold

- 13 -

interest of the Tenant, as joint insured, as their interests may from time to time appear;

- (d) If the Tenant fails to obtain the policies of insurance required hereunder, the Landlord may itself obtain such policies and shall give the Tenant a notice setting out the amount and dates of payment of all costs and expenses incurred by the Landlord in connection therewith to the date of such notice; the Tenant will, with the next instalment of rent which becomes due, pay the same to the Landlord with interest at twelve (12%) percent per annum, calculated on the various amounts from the respective dates of payment thereof by the Landlord. Any sum so expended by the Landlord, together with such interest as aforesaid, shall constitute rent hereunder and be collectable as such rent.
  - (e) The Tenant shall furnish the Landlord with certificates or other acceptable evidence of all such insurance promptly upon request.
- 6.07(a) The complete or partial destruction or damage, by fire or other casualty, of the building or buildings or improvements erected on the Lands shall not terminate this lease or entitle the Tenant to surrender possession of the Lands or to have or to demand any abatement or reduction of the rent or other charges payable under this Lease, any law or statute to the contrary notwithstanding. The Tenant covenants and agrees that, within two (2) months from the damage or destruction of any of the improvements it will cause to be begun the repair, reconstruction or replacement of such damaged or destroyed buildings and improvements and, within twelve (12) months after such damage or destruction or such further time as may be reasonably necessary, due diligence having been shown, it shall have repaired or re-constructed or replaced the said buildings and improvements with other buildings and improvements of the same type and character and of equal value as those so damaged or destroyed.
- (b) Where a partial or complete destruction occurs which is wholly or partly covered by insurance, the Landlord may exercise the rights and may require the adoption of the procedure hereinafter set forth:
    - (i) Where insurance proceeds under any fire insurance

- 14 -

- policy become payable in an amount not exceeding Twenty Thousand (\$20,000) Dollars they shall be paid to the Landlord and any Tenant's encumbrancer jointly, the cost of work in progress shall be borne by the Tenant, and payment for the work (up to an amount not exceeding the insurance proceeds) shall be made to the Tenant or as the Tenant directs in a lump sum on completion of the repairs;
- (ii) Should the Tenant fail to effect repairs in accordance with sub-clause (i) within a reasonable time, the Landlord shall be entitled to effect the repairs itself, retain any insurance monies against the cost, and recover any balance from the Tenant;
- (iii) When at the time of the occurrence of the damage or the completion of its repair the Tenant is in default to the Landlord under the terms of this Lease, the Landlord shall be entitled, out of any insurance monies in its hands, or in the hands of the Landlord and any Tenant's encumbrancer jointly, to retain any monies not paid over for the cost of repair against the rectification of the Tenant's default;
- (iv) Where the insurance proceeds payable exceed Twenty Thousand (\$20,000) Dollars they shall be paid to a trustee on behalf of the Landlord, the Tenant and any encumbrancer according to its interest. Work in progress shall be paid for any instalments as progress payments out of the insurance proceeds, and provision shall be made to ensure that no increase in the cost over the amount of the original estimate shall fall on the Landlord or the trustee, so that the trustee at all times shall retain in its hands sufficient of the insurance proceeds to pay for the estimated cost of repair outstanding at the date it makes any progress payment;
- (v) Before any contract is entered into by the Tenant or a Tenant's encumbrancer for the carrying out of any repair work pursuant to sub-clause (iv) above, copies of the estimates for any work and the contracts for the completion of the work shall be submitted to the trustee, and it shall distribute

- 15 -

such copies to such of the Landlord, the Landlord's encumbrancers, the Tenant and the Tenant's encumbrancers as shall not be parties to such contracts;

- (vi) Any progress payments to be made under this paragraph 6.07 by the trustee to either the Tenant or a Tenant's encumbrancer, shall not be made without the submission of a statement, certified by the architect or engineer of the party to whom the payments are to be made, stating the estimated amount required to complete the work of repair at the date of the certificate, the amount claimed by individual contractors at that date, the amount owing on work already done, and the amount of any payments made at that date for work already done, and verifying the standard and quality of the work already done, and the trustee shall be required to retain in its hands at the date of any payment an amount sufficient to pay the estimated outstanding cost of completion, even though that has the effect that the payment made becomes less than the amount certified to be due;
- (vii) In making any payment under this paragraph 6.07, the trustee shall have regard to mechanics' lien legislation applicable in the province and shall retain within its control for the period specified in such legislation the amount of any hold-back required;
- (viii) In case of dispute over the outstanding cost or the filing of liens against the Lands arising out of the work of repair, the trustee, or the Landlord where the insurance proceeds do not exceed Twenty Thousand (\$20,000) Dollars, shall not be under any obligation to make or authorize any progress or lump sum payment until the dispute is settled or the lien discharged, since the primary duty of repair falls on the Tenant;
- (ix) Where at the time of the occurrence of the damage or the completion of its repair the Tenant is in default under the terms of any encumbrance of its interest, the encumbrancer shall be subrogated to



- 16 -

the rights and obligations of the Tenant;

- (x) Subject to the rights granted the encumbrancer under the preceding sub-clause, should this lease be forfeited, for whatever cause, pursuant to the terms hereof all monies remaining in the trustee's hands shall be payable to the Landlord as liquidated damages except that if there is in effect a sublease of the Lands made by the Tenant and consented to by the Landlord the monies shall be payable to the sub-tenant if the sub-tenant cures the cause of the forfeiture;
- (xi) The fees and expenses of the trustee shall be borne by the Tenant and shall be paid out of the monies held by the trustee;
- (xii) In case of any dispute as to the terms of any contract or the amount of any estimate, or any matter relating to the actual work of repair, such dispute shall be decided by a qualified professional person appointed by the trustee whose decision shall be final;
- (xiii) In case of any dispute as to the terms of this paragraph 6.07 apart from those in sub-clause (xii) above, such dispute shall be the subject of arbitration, such arbitrator or board of arbitration to be appointed in accordance with the procedure set forth in Article XIV hereof;
- (xiv) Should the insurance monies, if any, be insufficient to pay the entire cost of the work of restoring and repairing the buildings, the Tenant agrees to pay the deficiency or the entire cost as the case may be. On the completion of such work and payment in full therefor by the Tenant, the Landlord shall, upon receipt of proof that such work has been paid for in full and that there is no outstanding lien claim and subject to the provisions of sub-paragraph (iii) hereof, release to the Tenant any insurance monies then remaining and in possession or control of the Landlord.

6.08 The Tenant covenants and agrees to waive and renounce (so far as it may be permitted to do so by applicable legislation) the benefit of any present or future act in force in the Province

of Ontario which takes away or limits the Landlord's right of distress, and that the Landlord may seize and sell the Tenant's goods and chattels for payment of rent and additional rent and costs as fully as the Landlord might have done if such act had not been enacted or passed.

6.09 The Tenant covenants and agrees not to permit any mechanic's, labourer's, materialman's or similar lien to stand against the Lands for any labour or materials furnished to, or with the consent of, the Tenant, its agents, or contractors, in connection with work of any character performed or claimed to have been performed on the Lands or buildings and structures so erected by or at the direction or sufferance of the Tenant; provided, however, that the Tenant shall have the right to contest the validity of or the amount claimed under or in respect of, any such lien, if such contestation shall involve no forfeiture, foreclosure, or sale of the premises or any part thereof, but pending a final determination of such contest the Tenant shall immediately cause such lien to be discharged and released.

6.10 The Tenant covenants and agrees that in the maintenance, use and occupation of the Lands and buildings and structures to be erected thereon, it will at its own cost and expense comply with every applicable regulation or order of the Canadian Fire Underwriters Association, or any body having similar functions, and of any liability or fire insurance company by which the Landlord or the Tenant may be insured, and with all applicable laws, ordinances, and regulations of duly constituted public authorities having jurisdiction now or hereafter in any matter affecting the Lands, buildings and/or structures as the case may be or the use or occupation thereof, whether or not such regulations, orders, laws or ordinances which may hereafter be promulgated, issued or enacted involve a change of policy or require structural or other changes or alterations in or about the said Lands, buildings and structures.

6.11 At the expiration of the term hereby granted, whether by forfeiture or lapse of time, the Tenant covenants and agrees to surrender and deliver to the Landlord the Lands together with the building or buildings erected on the Lands and any alterations, additions, changes and improvements thereto save and except fixtures of the Tenant and its sub-tenants, as the case may be, in good order and condition, reasonable wear and tear, acts of God, acts of The Queen's enemies, riot, civil insurrection, civil commotion, lightning and tempest only excepted, subject to the

- 18 -

Tenant being able to maintain thereon any buildings until their eventual destruction. In the event that the term is forfeited by the Landlord the surrender and delivery herein contemplated shall not relieve the Tenant from liability for any loss or damage suffered by the Landlord by reason of any default by the Tenant. Upon such surrender the Tenant shall assign to the Landlord the benefit of the Tenant's interest in all leases, licence agreements and other agreements and rights benefitting the Lands or building or buildings as the case may be, if the Landlord shall require such benefits to be so assigned except that if there is in effect a sublease of the Lands made by the Tenant to Hudson's Bay Company Developments Limited, the Tenant shall assign the benefit of those interests to Hudson's Bay Company Developments Limited if Hudson's Bay Company Developments Limited so requires same but only if Hudson's Bay Company Developments Limited cures the cause of the forfeiture within the time limits provided for in Articles 9.03, 9.04 and 9.05 as hereinafter set forth. Provided further, that the Tenant may at the expiration of this lease, if it shall not then be in default hereunder, remove from the Lands and any building or buildings and improvements located thereon all the Tenant's fixtures, but shall in such removal do no damage to the premises or shall promptly make good any damage which may be occasioned thereto and restore the said Lands and buildings to their condition prior to such removal.

6.12 The Tenant covenants not to construct any building on the Lands or to make any major structural alterations, additions or changes to any existing building or buildings without obtaining the prior written approval of the Landlord thereto, which approval shall be given within thirty (30) days of written request therefor and the Landlord agrees to provide its reasonable requirements within the said thirty (30) days, in the event that it chooses not to grant approval, failing which an approval shall be deemed to be given at the end of the said thirty (30) day period. When requesting the approval of the Landlord, the Tenant shall submit to the Landlord plans and specifications in duplicate. Provided further that such building or buildings or alterations, additions or changes as the case may be shall meet with the requirements of the municipal, provincial and federal governments or other relevant authorities, the relevant insurance underwriters and any leasehold mortgagee or leasehold mortgagees. Without limiting the generality of the foregoing the Tenant, at its sole cost and expense shall have the right to remove or demolish any or all of the buildings and improvements hereafter erected on the Lands for the purpose of rebuilding or redeveloping the same, provided that:

- 19 -

- (a) No such demolition, removal or rebuilding shall be undertaken until plans and specifications therefor have first been submitted to and approved in writing by the Landlord, such approval not to be unreasonably withheld, and if and when approved the said demolition or removal and said rebuilding is to be carried on diligently to completion;
- (b) All rebuilding shall be conducted under the supervision of a professional architect or professional engineer.

## ARTICLE VII

### LANDLORD'S COVENANTS

7.01 The Landlord covenants with the Tenant as follows:

- (a) For quiet enjoyment;
- (b) To execute:
  - (i) any and all plans and documents required to facilitate the registration of a Plan or Plans of Subdivision of the Lands;
  - (ii) any and all plans and documents required to re-zone the Lands to a superior standard and in that connection, to assist in facilitating same including executing agreements with the Municipality or any Municipal Authority;
  - (iii) any documents required to transfer the Lands into the Land Titles system;
  - (iv) any development agreement affecting the Lands as requested by any governmental authority;

but despite the provisions of this paragraph neither the Landlord nor the Tenant will make an application to re-zone all or part of the Lands during the currency of a sublease of the Lands made by the Tenant without first obtaining the written consent of Hudson's Bay Company Developments Limited, which consent shall not be unreasonably withheld, save and except for the application presently pending before the Municipality as the same may be amended and so long as this Lease has not been terminated.

- (c) To convey without cost to the Municipality or to any Municipal or other Governmental Authority any of the



- 20 -

lands reasonably required for easements, walkways, utilities, roadways or other municipal or governmental purposes free and clear of any encumbrances. It is understood and agreed that any costs (including legal costs) incurred by the Landlord in connection with sub-paragraphs 7.01(b) and (c), shall be borne by the Tenant. It is further understood and agreed that it is intended that the Landlord execute all documentation as required by paragraphs (b) and (c) of this Article hereof as a consenting party only. However, when required, the Landlord will execute documentation other than as consenting party subject to the Tenant's agreement to indemnify and save harmless the Landlord from any claims and costs arising therefrom. It is further understood and agreed that any conveyances made pursuant to paragraph (c) or as otherwise required in order to develop the Lands, will not affect the total area of the Lands referred to in Schedule "A" attached hereto for the purposes of establishing rent; and,

- (d) To permit the Tenant to demolish the present structures, without impeachment for waste.

#### ARTICLE VIII

##### ASSIGNING, MORTGAGING AND SUB-LETTING

- 8.01(a) Save and except as hereinafter set out in this Article the Tenant agrees not to assign, sub-let, mortgage, pledge or encumber this lease or the Lands or any part or parts of the Lands without first obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld;
- (b) The Landlord agrees that the Tenant may sublet all of the Lands to Hudson's Bay Company Developments Limited and then subsequently assign this lease to Hudson's Bay Company Developments Limited without any consent from the Landlord provided:
- (i) Notwithstanding the within referenced consent by the Landlord to the Tenant's subletting and assigning to Hudson's Bay Company Developments Limited, the Tenant and the Guarantors hereby covenant and agree with the Landlord that they will remain liable to the Landlord in respect of all of the covenants, conditions and agreements contained in the Lease throughout the remainder of the term of this said Lease,

- 21 -

- (ii) Provided that the consent as aforesaid will not extend to any further or other assignment or sublease save as herein permitted,
- (iii) Provided that Hudson's Bay Company Developments Limited will covenant and agree with the Landlord to observe and perform the covenants, conditions and agreements on the part of the Tenant contained in the Lease and will further agree that the Landlord shall be entitled to all remedies in respect of non-payment of rent and breaches of covenants, conditions and agreements as if Hudson's Bay Company Developments Limited were the Tenant named in the said lease.

(c) The Tenant or a sub-tenant from time to time during the lease term may make one or more mortgages provided that each mortgage shall be by way of assignment or sub-lease to an institutional mortgagee (that is an institution commonly known to hold mortgages upon a security of leases or real property and without limiting the generality of the foregoing, a loan company, a trust company, a bank, a pension fund, a savings and loan association, an insurance company, an employees profit sharing trust, and similar institutions) which is advancing mortgage monies respecting improvements erected or to be erected on the within Lands provided always that any such mortgage shall at all times be subject to the prior right, title and interest of the Landlord in and to the Lands and improvements.

8.02 If the Tenant or sub-tenant shall make a mortgage (the holder of such mortgage being herein referred to as the "institutional mortgagee" and such mortgage being herein sometimes referred to as the "institutional mortgage") and if an institutional mortgagee shall have given to the Landlord a notice ("institutional mortgagee's notice") specifying the name and address of the institutional mortgagee, the Landlord shall give to the institutional mortgagee a copy of each notice of default by the Tenant at the same time as and whenever any such notice of default shall thereafter be given by the Landlord to the Tenant, addressed to the institutional mortgagee at the address last furnished to the Landlord. No such notice of default by the Landlord shall be deemed to have been given to the Tenant unless and until a copy thereof shall have been so given to the institutional mortgagee. Save and except as to default in payment of monies reserved hereunder, such institutional mortgagee shall

- 22 -

thereupon have a period of ten (10) days more, after service of such notice upon it, for remedying the default or causing the same to be remedied, than is given to the Tenant after service of such notice upon it. Such institutional mortgagee, in case the Tenant shall be in default shall, within the period and otherwise as herein provided have the right to remedy such default or cause the same to be remedied. The Landlord will accept performance by the institutional mortgagee of any covenant, condition or agreement on the Tenant's part to be performed hereunder with the same force and effect as though performed by the Tenant. Save and except as to default in payment of monies reserved hereunder for which default the Tenant and institutional mortgagee shall be given fifteen (15) days after written notice to remedy, and save and except as to defaults which require no more than thirty (30) days' notice to cure, the institutional mortgagee shall be given the opportunity in good faith to commence properly to rectify the claimed default within thirty (30) days' written notice of same and to prosecute the same to completion with diligence and continuity. The time of the institutional mortgagee to cure any default by the Tenant which reasonably requires that the said institutional mortgagee be in possession of the demised premises to do so shall be deemed extended to include the period of time required by the said institutional mortgagee to obtain such possession with due diligence provided, however, that during such period all of the other obligations of the Tenant under this lease including without limiting the generality of the foregoing the payment of monies reserved hereunder, are being duly performed. From and after receiving the institutional mortgagee's notice, the Landlord and Tenant will not cancel, surrender, modify or amend this lease in any respect without the prior written consent of the institutional mortgagee save and except as to any rights reserved hereunder which may remain at the sole discretion of the Landlord. No institutional mortgagee shall become liable under the provisions of this lease, unless and until such time as it becomes and then only for as long as it remains, the owner of the leasehold estate; provided no mortgage or encumbrance of this lease or the Tenant's interest hereunder or in the Lands or the improvements (by way of assignment, sublease or otherwise) shall be made by the Tenant unless the mortgagee or encumbrancer shall covenant with the Landlord to be bound by all the covenants and obligations of the Tenant hereunder as soon as such mortgagee or encumbrancer enters into possession of the Tenant's interest, or otherwise takes steps to enforce its security which have the effect of depriving the Tenant of the ability fully to perform

- 23 -

those covenants and obligations; and such covenant shall continue to bind such mortgagee or encumbrancer so long as the mortgagee continues in possession or continues to enforce its security with the effect as aforesaid; and upon any exercise of any power of sale, the assignee of the mortgaged rights shall covenant with the Landlord to perform all the Tenant's obligations under this lease but so soon as the assignee becomes bound by the Tenant's obligations, the mortgagee or encumbrancer shall be relieved from its covenant.

The Tenant shall observe and perform all its obligations incurred in respect of assignments, subleases, agreements for tenancy, mortgages and encumbrances of its leasehold interest and its interest in the improvements, and shall not suffer or allow any such obligations to be in default, and if any such default shall occur the Landlord may, but shall not be obliged to, rectify such default for the account of the Tenant, and any amount paid by the Landlord in so doing, together with all reasonable costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand together with interest thereon at twelve (12%) percent per annum from the date of expenditure by the Landlord to the date of reimbursement by the Tenant.

8.03(a) The Landlord agrees with the Tenant that at the request of the Tenant, the Landlord will execute within a reasonable time, at the Tenant's expense, under seal and deliver to the Tenant an agreement to be made between the Landlord, the Tenant, Hudson's Bay Company Developments Limited and any mortgagee of the leasehold estate created by a sublease made by the Tenant (as landlord), which will provide that if during the term of the sublease of the Lands made by the Tenant (as landlord) and Hudson's Bay Company Developments Limited this lease is terminated for any reason other than the breach of a covenant to be observed or performed by the Tenant, the observance or performance of which, as between the Tenant and the subtenant, has become by the terms of the sublease the responsibility of the subtenant, the Landlord, subject to the condition in the following sentence, will accept the subtenant as the tenant of the Landlord upon the terms of this Lease subject to,

- (i) the conditions of this Lease;
- (ii) the subtenant curing the default of the Tenant.



- 24 -

within the time periods provided for in Articles 9.03, 9.04 and 9.05 as hereinafter set forth;

and thereafter, the sublease, amended where necessary so that its terms are the same as the terms of this Lease, will have the same effect as though it had been between the Landlord as the Landlord and the subtenant as Tenant save and except that the liability of the Tenant and the Guarantors shall survive.

- (b) Any agreement entered into in pursuance of subsection (a) must provide for a notice thereof to be executed in a form acceptable for registration in the Land Registry Office for the Registry Division of Toronto Boroughs and York South (No. 64). The Landlord agrees to execute all documents and to perform all acts necessary or reasonably required by the Tenant in order validly to give effect to such agreement as at the Tenant's expense as effectively as if it had been executed at the date of this Lease.

8.04 Notwithstanding the provisions of paragraph 8.01(a) hereof, the Landlord agrees to permit the Tenant to sublet the whole or part or parts of any fully erected building or structure or to make any agreement to sublet a building or structure intended to be erected, without the consent of the Landlord being required.

8.05 The parties agree that this Lease shall be a Peel-off lease for the purposes of the Master Lease notwithstanding the provisions of Article 9 thereof. The Master Lease shall upon execution of this lease be deemed to be amended by the reduction of rent payable thereunder by an amount equal to the rent payable hereunder and by the deletion from the lands demised thereunder of the Lands.

## ARTICLE IX

### REMEDIES

9.01 Proviso for re-entry by the Landlord on non-payment of rent or non-performance of covenants.

9.02 It is mutually agreed that if the Landlord shall re-enter the Lands and enter the improvements erected thereon as provided herein or if the lease shall be terminated, all payments for which the Tenant is liable under this lease shall immediately become due and payable, together with the reasonable expenses of the Landlord including but not restricted to legal costs, solicitors fees on a solicitor and his client basis, brokerage charges and the expense of keeping the Lands and improvements thereon in good order or preparing the Lands and improvements thereon for reletting. Despite the provisions of this Article, if Hudson's Bay Company Developments Limited wishes to cure the default of the Tenant pursuant to clause (ii) of Article 8.03(a) Hudson's Bay Company Developments Limited need make only the payments for which the Tenant was liable up to the time of such re-entry, entry or termination, in accordance with the provisions of Article 9.05 as hereinafter set out, and in order to cure that part of the default of the Tenant consisting of non-payment of money; and upon such payment by Hudson's Bay Company Developments Limited the balance of the payments for which the Tenant is liable under this lease will be considered not to have become due and payable; but in no event shall the Tenant or the Guarantors be released from their liability under this Lease.

9.03 It is mutually agreed that, if the Tenant shall be in default in performing any of the terms, covenants or provisions of this lease other than the provisions requiring the payment of rent, and if the Landlord shall give to the Tenant notice in writing of such default, and if the Tenant shall fail to fully cure such default within thirty (30) days after the date of receipt as defined herein of such notice, subject to the provisions of Article 9.04 hereof, then and in such event, the Landlord may enter the Lands and improvements thereon and may cure the default for the account of and at the cost and expense of the Tenant and such cost and expense shall be paid by the Tenant to the Landlord forthwith upon demand.

9.04 Notwithstanding anything else herein contained except section 8.03(a), to which this section is subject, it is mutually agreed that, if the Tenant shall be in default in performing any of the terms, covenants or provisions of this lease other than the provisions requiring the payment of rent and if the Landlord shall give to the Tenant and sub-tenant or sub-tenants of which the Landlord has notice, notice in writing of such default, and if the Tenant shall fail to remedy such default within thirty (30) days

- 26 -

after receipt of such notice, then, at its option, the Landlord may treat this lease as cancelled and terminated, and the term and estate vested in the Tenant, as well as all other rights of the Tenant hereunder, shall immediately cease and expire as fully and with like effect as if the entire term herein provided for had expired, and the Landlord may enter upon the demised Lands, with or without process of law, and take possession thereof together with any and all buildings and improvements which may have been erected thereon, the Tenant waiving any demand for possession thereof; and all improvements made upon the Lands shall be forfeited to and become the property of the Landlord as liquidated damages without compensation therefor to the Tenant. Provided, however, if the default complained of reasonably requires more time to cure than the thirty (30) day period aforesaid, the Tenant or any leasehold Mortgagee shall be deemed to have complied with the remedying thereof if the Tenant or sub-tenant or any leasehold Mortgagee shall have commenced remedying or curing the same within the said thirty (30) day period and diligently thereafter completes the same.

9.05 If the Tenant shall be in default in the payment of any moneys reserved hereunder and such default shall continue for fifteen (15) days after written notice thereof to the Tenant and sub-tenant of which the Landlord has notice, the Landlord, in addition to all other rights which it may have under this lease or otherwise, shall have the right to enter the Lands and buildings thereon as the agent of the Tenant without being liable for any prosecution therefor and to relet the same as the agent of the Tenant for whatever term and under whatever conditions the Landlord may deem advisable and to receive the rent therefor and as agent of the Tenant to take possession of any buildings, chattels, furniture or other property on the Lands and to lease the same or sell the same at public or private sale with or without notice and to apply the proceeds of such lease or sale and any rent derived from reletting the premises, on account of the rent or other charges under this lease.

9.06 In the event of a breach or threatened breach by the Tenant of any of the covenants, provisions or terms hereof, the Landlord shall have the right to invoke any remedy allowed at law or in equity (including injunction) as if re-entry and other remedies were not provided for herein.

9.07 Mention in this lease of any particular remedy shall not preclude the Landlord from any other remedy in law or in equity,

- 27 -

subject always to the express provisions of this lease.

9.08 Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso, condition or obligation contained in this lease shall not operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, nor so as to defeat or affect in any way the rights of the Landlord hereunder in respect of any such continuing or subsequent default, breach or non-observance and all rights and remedies herein contained of the Landlord shall be deemed to be cumulative and alternative.

9.09 Whenever the Landlord shall have paid or expended any monies, which under the terms of this lease it is the obligation of the Tenant to pay, but which the Tenant has refused or neglected so to pay, then upon the Landlord giving written notice to the Tenant of such payment, the monies so paid or expended together with interest thereon at the rate of twelve (12%) percent per annum from the date of their payment or expenditure until reimbursement by the Tenant, shall be collectible as rent.

## ARTICLE X

### OWNERSHIP OF BUILDINGS AND IMPROVEMENTS

10.01 The parties hereto agree that the Tenant shall be the owner and shall have the right, title and interest in and right to possession of all buildings, improvements, installations, fixtures, alterations, changes or additions on the said Lands (hereinafter in this paragraph called "buildings"), notwithstanding any rule of law as to immediate vesting of the title to and ownership of, the buildings in the Landlord as owner of the Lands; provided that the Landlord shall be the owner and shall have the right, title and interest in the buildings, free of all encumbrance, without compensation to the Tenant, its successors or assigns, upon but not before the earlier of:

- (a) the expiry of twenty-one years after the date of the death of the last survivor of the following presently living descendants of His Late Majesty King George VI, King of the United Kingdom:



- 28 -

Her Majesty Queen Elizabeth II  
The Prince of Wales  
Prince Andrew  
Prince Edward  
Princess Anne  
Princess Margaret, Countess of Snowdon  
Viscount Linley  
Lady Sarah Armstrong-Jones

or

- (b) the termination of this Lease, either by effluxion of time or otherwise; and the Tenant hereby grants to the Landlord all right, title and interest in the buildings free of all encumbrance on the date of the first to expire of the periods defined in (a) and (b) above and covenants with the Landlord to execute on or after the said date such further and other documents as may be necessary or as the Landlord may require to perfect the conveyance to the Landlord of any right, title and interest and ownership which the Tenant may have in the buildings or to provide proof and evidence of the Landlord's absolute right, title and interest in and ownership of the said buildings, and the Tenant hereby irrevocably appoints the Landlord as its agent and attorney to execute the said documents; provided that should the period of time defined in (a) above expire first, it is agreed and understood by the parties hereto that the Tenant shall have the right to rent the buildings at an annual rental of two (\$2.00) dollars of lawful money of Canada until the termination of this Lease by effluxion of time or otherwise, such right of rental to be subject to all the terms and conditions of this Lease. And the agreements and covenants contained in this Section shall be binding upon and enure to the benefit of the successors and assigns of the Landlord and the Tenant.

ARTICLE XIBANKRUPTCY

11.01 If the term hereby granted shall at any time be seized or taken in execution by any creditor of the Tenant, or if the Tenant shall make a general assignment for the benefit of creditors or be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against itself or shall file an application or petition or answer or consent, seeking reorganization or re-adjustment of its indebtedness under the Bankruptcy Act or any law of Canada or any Province thereof relating to bankruptcy or insolvency or shall consent to the filing of any such application or petition or shall consent to the appointment of a receiver, or if a receiver, interim receiver, trustee or liquidator of property shall be appointed or applied for by it or if a judgment, decree or order shall be entered by a court of competent jurisdiction adjudging it bankrupt or insolvent or subject to the provisions of the Bankruptcy Act or determining that proceedings for reorganization, arrangements, adjustment, composition, liquidation, dissolution or winding up or any similar relief under the Bankruptcy Act or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Tenant, rent for the then current month together with rent for the three (3) months next ensuing after the then current month shall immediately become due and payable and this lease shall at the option of the Landlord immediately become terminated. Provided, however, that such termination shall be entirely without prejudice to the rights of the Landlord to recover arrears of rent or damages for any antecedent breach of covenant on the part of the Tenant and provided further that notwithstanding any such termination, the Landlord may subsequently recover from the Tenant all costs and damages suffered by reason of the lease having been prematurely determined.

ARTICLE XIIMONTHLY TENANCY

12.01 If, upon the termination of this lease or any extension thereof, by the passage of time, the Landlord permits the Tenant to remain in possession of the said Lands and accepts

rent in respect thereof, a tenancy from year to year or otherwise shall not be created by implication of law, and the Tenant shall be deemed to be a monthly tenant only, at the then current rent on the terms and conditions herein contained.

### ARTICLE XIII

#### EXPROPRIATION

13.01 It is agreed that, if the whole of the Lands and buildings thereon shall at any time be expropriated by any competent authority, the entire compensation or damages which may be awarded for such taking shall be apportioned between the Landlord and the Tenant, and, if they cannot agree upon such apportionment, by arbitration as hereinafter provided in Article 14 hereof. It is further agreed that, if a part only of the Lands and/or buildings thereon shall be expropriated, the rights, duties and obligations of the Landlord and Tenant shall be determined, if they cannot agree by arbitration as hereinafter provided, taking into consideration the quantity and value of the Land and/or buildings taken, the extent of the injury thereby caused to the buildings, the cost of restoring the buildings and the value of the buildings if restored, the period of the unexpired term of the lease and all other facts and circumstances which the arbitrators shall deem material, including full power and authority to determine, along with other things as they deem just and equitable, any one or more of the following matters: that the whole or any part of the compensation or damages which may be awarded for such partial taking shall be applied to the restoration of the buildings which may be upon the Lands at the time of the taking; that such compensation or damages shall be apportioned between the Landlord and the Tenant or be paid to either one of them; that the whole or any part of the rent shall be abated from the time of the taking henceforth or for any less time; that the lease shall be otherwise modified; or that the lease shall determine - and to award and direct specific performance of any one or more of the said or any other matters which they shall determine, to the end that the rights, duties and obligations of the parties shall be fully, justly, equitably and finally determined upon all the facts and circumstances as they shall then exist. For the purposes of this paragraph and any arbitration arising therefrom as hereinbefore provided, the whole of the Lands shall be deemed to be the property of the Landlord, provided that the value attributed to the Lands is no less than

- 31 -

the value required to support the minimum annual rental currently payable by the Tenant for the Lands at that time, and the interest of the Tenant shall be deemed to be the leasehold interest thereof for the remainder of the term herein granted together with any building or buildings or improvements which form part of the said leasehold interest.

#### ARTICLE XIV

##### ARBITRATION

14.01 All arbitration proceedings specified in this lease as available to the parties in the event of any dispute shall, subject to the terms of this lease, be deemed to be available only as between the Landlord and the Tenant and shall be commenced and carried out as follows:

- (a) Arbitration proceedings shall be commenced by either party as aforesaid giving notice to the other party of its desire to submit the matters in difference to arbitration, at which time the party giving notice of arbitration shall give the name of the arbitrator who is its nominee. Within fifteen (15) days of the receipt of such notice, the other party shall give notice of the name of its arbitrator to the party desiring such arbitration. If either party fails to appoint an arbitrator and to notify the other party of such appointment, the party who has appointed the arbitrator may apply to a Judge of the Supreme Court of the Province of Ontario to appoint an arbitrator to be the representative of the other party. The two arbitrators so appointed shall, within fifteen (15) days of their appointments, appoint a third arbitrator, and if they fail to agree on such appointment within such period, the third arbitrator shall be appointed by a Judge of the Supreme Court of the Province of Ontario on application of either party;
- (b) The three (3) arbitrators appointed as aforesaid shall forthwith proceed to arbitrate the dispute between the parties and they shall within thirty (30) days or so soon thereafter as may be practicable, render their



- 32 -

decision in writing; provided that any decision or decisions shall be final and binding and there shall be no appeal therefrom. The decision of the majority of the arbitrators so appointed shall prevail in all matters;

- (c) In the event of the death, resignation, incapacity, neglect or refusal to act of any arbitrator appointed under these provisions and if such neglect or refusal continues for a period of seven (7) days after notice thereof has been given by either party, another arbitrator shall be appointed to replace such arbitrator by the party whose representative he was, or by the two arbitrators if he was appointed as the third arbitrator; and failing the making of such appointment, the vacancy shall be filled by a Judge of the Supreme Court of the Province of Ontario upon application by either party;
- (d) The cost of the arbitration shall be apportioned between the parties or against either of them as the arbitrators may decide;
- (e) Only those matters specifically referred to as being subject to arbitration shall be the proper subject of any arbitration proceedings and without limiting the generality of the foregoing, including the following:
  - (i) The establishment of fair market rental pursuant to Article 5.01;
  - (ii) Disputes respecting insurance proceeds pursuant to Article 6.07(b)(xiii);
  - (iii) Expropriation pursuant to Article XIII;
  - (iv) Destruction of the buildings during the last ten (10) years of term pursuant to Article 16.01.
- (f) Nothing in this Article shall be deemed to relieve the Tenant of its obligations to pay the rent or other charges as hereinbefore reserved on the days hereinbefore specified.

ARTICLE XVRIGHTS OF FIRST REFUSAL

15.01 The Landlord covenants with the Tenant that, if during the term of this Lease, the Landlord should receive a bona fide offer to purchase the Lands which the Landlord desires to accept, the Landlord shall upon receipt of such offer to purchase inform the Tenant, in writing, of receipt of such offer and shall forward a copy thereof to the Tenant. The Tenant shall thereupon have the right and option to purchase the Lands upon the same terms and conditions as may be contained in the said offer; provided, however, that such right must be exercised within seven (7) days of the delivery of the said notice and copy of offer by delivery to the Landlord of an offer and deposit (if applicable) within the said time and upon the said terms and conditions. Failing exercise of the said right and option within the time, as aforesaid, the Landlord shall be at liberty to sell the Lands to a third party under the terms contained in the said offer and this right and option shall be null and void thereafter if the Lands are so sold. It is further understood and agreed that any transaction respecting the lands providing for a transfer of interest to any member or members of the family or families of the Landlord or to any other person, corporation or trust with whom the Landlord does not deal at arm's length within the meaning of the Income Tax Act (Canada) will not constitute a bona fide offer to purchase within the meaning of this Article, provided such transferees agree to be bound by the provisions of this Article XV.

ARTICLE XVIDAMAGE DURING LAST TEN YEARS OF TERM

16.01 Notwithstanding anything contained in Article VI, if during the last ten (10) years of the term hereof, any building or buildings standing upon the Lands are damaged or destroyed by fire or other casualty and if such damage or destruction cannot be repaired or rebuilt or such building or buildings made fit for the purposes of the Tenant or sub-tenants thereof within one hundred and eighty (180) days of such damage or destruction, then the Tenant may within sixty (60) days of the date of such damage or destruction by notice in writing to the Landlord, elect not to

- 34 -

repair or restore the building or buildings, and provided that the said building or buildings have been or may be severed from the remainder of the lands (at the cost of the Tenant) then and in such event from and after the date of the giving of such notice, the Tenant shall not be liable for the payment of rental on the Lands. In addition, the Tenant shall remove the buildings from the Lands and the term hereof in respect thereto shall then become ended and determined, and it shall be lawful for the Landlord thereupon and without demand to enter into possession of the relevant premises in the same manner as is provided for at the expiration of the full term hereof. The right of the Tenant herein may only be exercised in the event that the damage or destruction occurs as a result of any insured casualty in respect of which insurance proceeds are payable in an amount equal to the replacement value of the improvements, and that the Tenant delivers to the Landlord a release or releases by any leasehold mortgagee and any other claimants of their right of control or right to receive any insurance proceeds resulting from such damage, destruction or other casualty together with such proceeds which shall be the sole and absolute property of the Landlord; the giving of such notice by the Tenant shall constitute a full and complete release by the Tenant to the Landlord in and to all monies payable in respect of such damage, destruction or other casualty; property taxes, hydro rates, water rates, water meter charges, rentals, fire and other insurance premiums and other items of expense with respect to the operation of the building or buildings shall be pro-rated and apportioned between the Landlord and Tenant as of the date of such termination. In the event of any dispute as to whether there is a destruction of the buildings pursuant to this Article XVI, such dispute shall be resolved by arbitration pursuant to Article XIV hereof.

#### ARTICLE XVII

##### CROSS DEFAULT PROVISION

17.01 The Tenant has entered into a lease ("Municipal Lease"), as tenant, with The Corporation of the Borough of Etobicoke, as landlord, for the lands marked on Schedule "B". The parties agree that any default by the Tenant, as tenant, under the Municipal Lease shall be considered a default (if not cured) under this Lease.

ARTICLE XVIIIPLANNING ACT

18.01 The within lease is subject to compliance with Section 29 of The Planning Act, R.S.O. 1970, as amended.

ARTICLE XIXGUARANTEE

19.01 In consideration of the sum of One (\$1.00) Dollar now paid by the Landlord to the Guarantor and other valuable consideration the receipt whereof is hereby acknowledged, the Guarantor and each of them jointly and severally hereby covenants with the Landlord that the Tenant shall duly perform and observe each and every covenant, provision, condition and agreement in this Lease on the part of the Tenant to be performed and observed, including the payment of rent and all other payments agreed to be paid or payable under this Lease on the days and at the times and in the manner herein specified, and that if any default be made by the Tenant, whether in payment of rent or other sums from time to time falling due hereunder as and when they become due and payable or in the performance or observance of any of the covenants, provisoes, conditions or agreements which under the terms of this Lease are to be performed, or observed by the Tenant, the Guarantor shall forthwith pay to the Landlord on demand such rent and other sums in respect of which such default shall have occurred and shall be responsible for all damages that may arise in consequence of the non-observance or non-performance of any of the said covenants, provisoes, conditions or agreements.

19.02 The Guarantor covenants with the Landlord that the Guarantor and each of them is jointly and severally bound with the Tenant for the fulfillment of all obligations of the Tenant under this Lease. In the enforcement of its rights hereunder the Landlord may proceed against the Guarantor as if the Guarantor were named tenant hereunder.

19.03 The Guarantor hereby waives any right to require the Landlord to proceed against the Tenant or to proceed against or to exhaust any security held from the Tenant or to pursue any other remedy whatsoever which may be available to the Landlord before



proceeding against the Guarantor.

19.04 No neglect or forbearance of the Landlord in endeavouring to obtain payment of the rent reserved herein or other payments required to be made under the provisions of this Lease as and when they become due, no delay of the Landlord in taking any steps to enforce performance or observance of the several covenants, provisoes and conditions contained in this lease to be performed or observed by the Tenant, no extension or extensions of time which may be given by the Landlord from time to time to the Tenant, no amendments, alterations or changes of any kind to the terms and conditions of the within lease, no granting of Peel-off leases, and no other act or failure to act of or by the Landlord shall release, discharge or in any way reduce the obligations of the Guarantor under the guarantee contained in this Article XIX.

19.05 In the event of termination of this Lease, except by surrender accepted by the Landlord, or in the event of disclaimer of this Lease pursuant to any statute, then at the option of the Landlord the Guarantor shall execute a new lease of the premises between the Landlord as Landlord and the Guarantor as Tenant for a term equal in duration to the residue of the term remaining unexpired at the date of such termination or such disclaimer. Such lease shall contain the like Landlord's and Tenant's obligations respectively, and the like covenants, provisoes, agreements and conditions in all respects (including the proviso for re-entry) as are contained in this Lease.

19.06 The foregoing provisions of this Article XIX, are subject to the condition that the Landlord will release the Guarantor from all the provisions and obligations of the within Article XIX at such time as the Guarantor or Tenant has delivered to the Landlord evidence by way of a Certificate drawn by an independent architect or an independent professional engineer stating that at least 600,000 square feet of gross floor area in the buildings erected on the Lands herein and the lands in any Peel-off leases of the Master Lease are rented to tenants who according to material provided to the deponent are bona fide tenants who deal at arm's length with the Tenant; provided, that a corporation having capital, surplus and undivided profits of at least Five Million (\$5,000,000) Dollars dealing not at arm's length with the Tenant for the purposes of this sub-paragraph shall be deemed to be dealing at arm's length with the Tenant; provided further, however, that the release aforesaid shall not

- 37 -

release the Guarantor from any amount that may be at that time payable or owing by the Guarantor under the provisions hereof (whether demanded or not) arising out of a default by the Tenant then already occurred nor shall it release the Guarantor from the provisions of or relating to any new lease as provided for in paragraph 19.05, if the Landlord shall have duly exercised its option to require the Guarantor to enter into such a new lease as contained in said paragraph 19.05 prior to the date of such release.

## ARTICLE XX

### NET LEASE

20.01 It is the intention of the parties hereto that this shall be a net lease and the rental provided to be paid to the Landlord hereunder shall be net to the Landlord and, save as herein specifically provided, shall yield to the Landlord the entire rental herein specified during the full term of this lease and that all costs, expenses and obligations of every kind and nature whatsoever relating to the said Lands and the improvements shall be paid by the Tenant, provided that this clause shall not be construed so as to obligate the Tenant to pay any charges or taxes personal to the Landlord such as succession duties, estate taxes, corporation taxes, income taxes, or any other taxes upon the income derived by the Landlord from the said Lands.

## ARTICLE XXI

### AMENDMENTS

21.01 This Indenture shall not be modified or amended except by an instrument in writing of equal formality herewith and signed by the parties hereto or by their successors or assigns.

- 38 -

ARTICLE XXIINOTICE

22.01 Any notice, demand or request to be given pursuant to this lease shall be sufficiently given, only if in writing, and served personally, or sent by prepaid registered mail, addressed in the case of the Landlord to it at 360 Bloor Street West, Suite 510, Toronto, Ontario, with a copy to Minden, Gross, Grafstein & Greenstein, at 111 Richmond Street West, Toronto, Ontario; and to the Tenant at: c/o Imbrook Properties Limited, Suite 500, 330 Bay Street, Toronto, Ontario. M5H 2S8; with a copy to: Rockford Developments Limited, 215 Carlingview Drive, Unit #211, Rexdale, Ontario. M9W 5E8; unless either party gives notice to the other of a change of address by registered mail. Provided postal service is being maintained in the Municipality of Metropolitan Toronto, notices, demands and requests which are sent by prepaid registered post in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereof on the second (2nd) mail delivery day next following the date of mailing.

ARTICLE XXIIIREPRESENTATIONS AND WARRANTIES

23.01 The terms of this lease express and constitute the entire agreement between the parties, and there are no representations, warranties, collateral agreements, or conditions affecting this lease except as expressed herein.

ARTICLE XXIVTIME

24.01 Time shall in all respects be of the essence of this lease.

ARTICLE XXVCERTIFICATES

25.01 The Tenant agrees that it will at any time and from time to time upon not less than five (5) days' notice execute and deliver to the Landlord a statement in writing certifying that this lease is unmodified and in full force and effect (or if modified, stating the modifications and that the same is in full force and effect as modified), the amount of the annual rental then being paid hereunder, the dates to which the same and other charges hereunder have been paid and whether or not there is any existing default on the part of the Landlord of which the Tenant has notice.

The Landlord agrees that it will at any time and from time to time upon not less than five (5) days' prior notice execute and deliver to the Tenant a similar statement stating in addition as to whether or not there is any existing default on the part of the Tenant of which the Landlord has notice, the particulars and amount of insurance policies in which its interest is noted and the amount of the annual rental then being paid hereunder, the dates to which rent and other charges hereunder have been paid and the amount of arrears or other charges in arrears, if any.

And it is hereby agreed that any such statement delivered pursuant to the provisions of this Article may be conclusively relied upon by any purchaser or any mortgagee of the fee of the leasehold or any sublessee, save as to any default on the part of the Landlord or the Tenant of which the party giving such statement does not have notice at the date thereof.

- 40 -

ARTICLE XXVIPAYMENTS

26.01 All payments of rent hereunder shall be divided equally between Beatrice Wintrob as to one-half and Samuel Black, Joseph Black and Norman Black jointly as to the other half and such payments shall be remitted or delivered promptly as provided hereunder to each of the parties as follows:

TO Beatrice Wintrob,  
625 Avenue Road, Apartment #1003,  
Toronto, Ontario.

TO Samuel Black,  
Joseph Black and  
Norman Black,  
360 Bloor Street West, Suite 510,  
Toronto, Ontario.

or to such other address as the said parties may advise the Tenant in writing.

ARTICLE XXVIINO PARTNERSHIP

27.01 It is understood and agreed that neither the provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship other than that of landlord and tenant.

ARTICLE XXVIIIINTERPRETATION

28.01(a) This lease shall be read with all changes of number and gender as the context may require.

(b) This lease shall be interpreted in accordance with the laws of the Province of Ontario.



(c) The headings introducing the articles are for convenience of reference only and shall in no way affect the interpretation of this lease.

(d) This lease shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals, the corporate party affixing its corporate seal duly attested by the hand of its proper signing officer, in that behalf.

SIGNED, SEALED AND DELIVERED

In The Presence Of:

Betty Murphy  
Betty Murphy  
Betty Murphy  
illgall

Samuel Black  
Samuel Black

Joseph Black  
Joseph Black

Norman Black  
Norman Black

Beatrice Wintrob  
Beatrice Wintrob

ROCKFORD DEVELOPMENTS LIMITED

per: [Signature] (c/s)

IMBROOK PROPERTIES LIMITED

per: [Signature] VICE-PRESIDENT: FINANCE

[Signature] (c/s)  
PRESIDENT

Louis Frieberg

[Signature]  
Geyda Frieberg

SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land situate, lying and being in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, Province of Ontario, and being composed of that part of Lot 21, Concession 3 fronting the Humber River shown designated as Part 3 on a plan of survey of record deposited in the Land Registry Office for the Registry Division of Toronto Boroughs and York South (No. 64) as Plan 64R-8647 and containing therein 7.720 Acres.

### SCHEDULE "B"

PLAN OF SURVEY OF  
 PART OF LOTS 20 & 21, CONCESSION 3, FRONTING THE HUMBER RIVER  
 AND PART OF ROAD ALLOWANCE BETWEEN CONCESSIONS 2 AND 3  
 BOROUGH OF ETOBICOKE  
 MUNICIPALITY OF METROPOLITAN TORONTO

METRIC MEASUREMENTS SHOWN ON THIS PLAN  
 ARE IN METERS AND MAY BE CONVERTED  
 TO FEET BY MULTIPLYING BY 0.3048

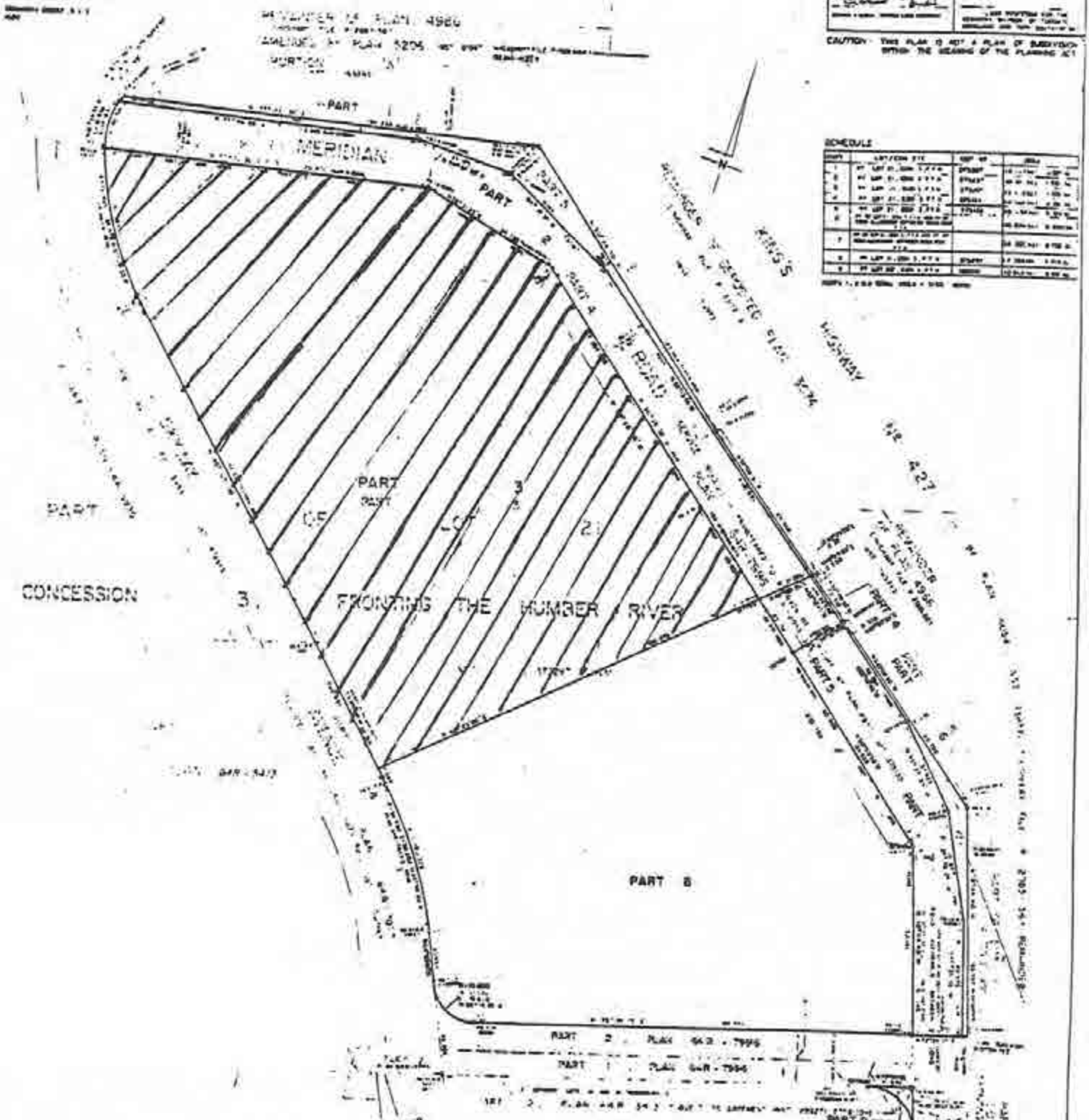
PLAN GAR-8647

THE SURVEYOR'S NAME AND ADDRESS: Anton Kikas Limited 1500 SHEPPARD AVENUE EAST TORONTO, ONTARIO M2M 3L7 CANADA	THE DATE OF SURVEY: July 31, 1986	THE SCALE OF THE PLAN: AS SHOWN	THE PROJECT NO. OR OTHER IDENTIFYING NUMBER: PLAN GAR-8647
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CAUTION - THIS PLAN IS NOT A PLAN OF SUBDIVISION  
 WITHIN THE MEANING OF THE PLANNING ACT

SCHEDULE

NO.	DESCRIPTION	AREA	PERCENTAGE
1	PART OF LOT 20, CONCESSION 3	1,234.56	100.00
2	PART OF LOT 21, CONCESSION 3	1,234.56	100.00
3	PART OF ROAD ALLOWANCE BETWEEN CONCESSIONS 2 AND 3	1,234.56	100.00
4	CONCESSION 3	1,234.56	100.00
5	PART OF ROAD ALLOWANCE BETWEEN CONCESSIONS 2 AND 3	1,234.56	100.00
6	PART OF LOT 20, CONCESSION 3	1,234.56	100.00
7	PART OF LOT 21, CONCESSION 3	1,234.56	100.00
8	PART OF ROAD ALLOWANCE BETWEEN CONCESSIONS 2 AND 3	1,234.56	100.00
9	PART OF LOT 20, CONCESSION 3	1,234.56	100.00
10	PART OF LOT 21, CONCESSION 3	1,234.56	100.00
11	PART OF ROAD ALLOWANCE BETWEEN CONCESSIONS 2 AND 3	1,234.56	100.00



- NOTES
1. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY ACT, R.S.O. 1980, CHAPTER S.5.
  2. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY REGULATIONS, R.R.O. 1980, CHAPTER S.6.
  3. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY ACT, R.S.O. 1980, CHAPTER S.5.
  4. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY REGULATIONS, R.R.O. 1980, CHAPTER S.6.
  5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY ACT, R.S.O. 1980, CHAPTER S.5.
  6. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY REGULATIONS, R.R.O. 1980, CHAPTER S.6.
  7. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY ACT, R.S.O. 1980, CHAPTER S.5.
  8. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY REGULATIONS, R.R.O. 1980, CHAPTER S.6.
  9. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY ACT, R.S.O. 1980, CHAPTER S.5.
  10. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEY REGULATIONS, R.R.O. 1980, CHAPTER S.6.

#### SURVEYOR'S CERTIFICATE

I, the undersigned, being a duly qualified and sworn Surveyor, do hereby certify that the above plan was prepared by me or under my supervision and in accordance with the provisions of the Survey Act, R.S.O. 1980, Chapter S.5, and the Survey Regulations, R.R.O. 1980, Chapter S.6, and that the same is a true and correct copy of the original plan as shown to me by the person or persons claiming to be the owner or owners of the land therein described.

Dated this July 31, 1986.

*Anton Kikas*

**AK Anton Kikas Limited**  
 Toronto, Ontario  
 1500 SHEPPARD AVENUE EAST  
 TORONTO, ONTARIO M2M 3L7  
 CANADA



SCHEDULE "C"

THIRD RENTAL PERIOD means the period of twenty-five (25) years immediately following the expiry of the Second Rental Period, namely, the period from the 1st day of March, 2014 to the 28th day of February, 2039;

FOURTH RENTAL PERIOD means the period of fifteen (15) years immediately following the expiry of the Third Rental Period, namely, the period from the 1st day of March, 2039 to the 28th day of February, 2054;

FIFTH RENTAL PERIOD means the period of nineteen (19) years immediately following the expiry of the Fourth Rental Period, namely, the period from the 1st of March, 2054 to the 28th day of February, 2073.

There will be no SIXTH RENTAL PERIOD.

SCHEDULE "D"

FOURTH RENTAL PERIOD means the period of twenty-five (25) years immediately following the expiry of the Third Rental Period, namely, the period from the 1st day of March, 2029 to the 28th day of February, 2054;

FIFTH RENTAL PERIOD means the period of nineteen (19) years immediately following the expiry of the Fourth Rental Period, namely, the period from the 1st of March, 2054 to the 28th day of February, 2073.

There will be no SIXTH RENTAL PERIOD.

AFFIDAVIT OF SUBSCRIBING WITNESS

I Betty Murphy  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the City of Toronto by SAMUEL BLACK

\*See footnote

\*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto

this 17 day of Oct

19 80

Betty Murphy

[Signature]  
PEGGY LEE BRENNER, a Commissioner,  
etc., Province of Ontario, for J. Hudson, Gross,  
Gustafson & Green, Ch. Barristers  
& Solicitors. Expires May 3rd, 1981.  
A COMMISSIONER FOR TAKING AFFIDAVITS ETC

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

MARCH, 1978

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I/WE SAMUEL BLACK  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say: When I executed the attached instrument,

\* If attorney see footnote

I/WE was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978:—

a) I was not a spouse.

Strike out inapplicable clauses.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~OX~~ ~~XXXXXXXXXXXX~~

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

\*\*Not a Matrimonial Home, etc. see footnote.

Resident of Canada, etc.

~~XXXXXXXXXXXX~~ SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto  
this 17 day of Oct 19 80.

[Signature]  
SAMUEL BLACK

[Signature]  
PEGGY LEE BRENNER, a Commissioner,  
etc., Province of Ontario, for J. Hudson, Gross,  
Gustafson & Green, Ch. Barristers  
& Solicitors. Expires May 3rd, 1981.  
A COMMISSIONER FOR TAKING AFFIDAVITS ETC

\*Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".

\*\*Where spouse does not join in or consent, see Section 18(2) of The Family Law Reform Act, 1978 (or complete separate affidavit).

AFFIDAVIT OF SUBSCRIBING WITNESS

I, Betty Murphy  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the City of Toronto by JOSEPH BLACK

\*See footnote

See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto

this 17 day of Oct 19 80.

Betty Murphy

[Signature]

PEGGY LEE BRENNER, a Commissioner,  
Province of Ontario, for Minden, Gross,  
Grafstein & Co., Barristers  
& Solicitors, Expires May 3rd, 1981.

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for every clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

BACK 1878

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I/~~WE~~ JOSEPH BLACK  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

If attorney see footnote

make oath and say: When I executed the attached instrument,

I/~~WE~~ was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978.—

a) I was NOT a spouse.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~SEX~~

~~XXXXXXXXXXXX~~

like not applicable clauses.

Not a Matrimonial Home, etc. see footnote.

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

Resident of Canada, etc.

~~XXXXXXXXXXXX~~ SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto

this 17 day of Oct 19 80.

Joseph Black  
JOSEPH BLACK

[Signature]

PEGGY LEE BRENNER, a Commissioner,  
Province of Ontario, for Minden, Gross,  
Grafstein & Co., Barristers  
& Solicitors, Expires May 3rd, 1981.

\* Where affidavit made by a party substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".

\*\* Where spouse does not join in or consent, see Section 42(5) of The Family Law Reform Act, 1978 (or complete separate affidavits).

**AFFIDAVIT OF SUBSCRIBING WITNESS**

I, Betty Murphy  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the City of Toronto by NORMAN BLACK


\*See footnote

\*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto  
this 17 day of Oct 19 80.

Betty Murphy

  
ELIZABETH LEE BREMNER, a Commissioner for Taking Affidavits, etc. in Ontario, and Barristers & Solicitors. Expires May 3rd, 1981.

\*Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

MARCH, 1978

**AFFIDAVIT AS TO AGE AND SPOUSAL STATUS**

I/~~WE~~ NORMAN BLACK  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say: When I executed the attached instrument,

\*If attorney see footnote

I/~~WE~~ was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978.—

a) I was not a spouse.

~~XX~~

~~OX~~

~~XX~~

Strike out inapplicable clauses.


\*Not a Matrimonial Home, etc. see footnote.

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

Resident of Canada, etc.

~~XXXXXXXXXXXX~~ SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto  
this 17 day of Oct 19 80.

Norman Black  
NORMAN BLACK

  
ELIZABETH LEE BREMNER, a Commissioner for Taking Affidavits, etc. in Ontario, for Minden, Gresham & Co., Barristers & Solicitors. Expires May 3rd, 1981.

\*Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".  
\*Where spouse does not join in or consent, see Section 48(2) of The Family Law Reform Act, 1978 (or complete separate affidavit).

AFFIDAVIT OF SUBSCRIBING WITNESS

I, MARTIN Sable  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the City of Toronto by BEATRICE WINTROB

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto

this 17 day of Oct 19 80.

PEGGY LEE PRYOR, a Commissioner,  
Province of Ontario, J. J. Cross,  
Gravelly Hill, Toronto, Ont. M5R 3K8  
& Solicitors. Expires May 3rd 1981

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

ARCH. 1978

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I/WOMEN BEATRICE WINTROB  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say: When I executed the attached instrument,

I/WOMEN was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978:—

a) I was not a spouse.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXX~~

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

~~XXXXXXXXXXXX~~ SWORN before me at the City of Toronto, in the Municipality of Metropolitan Toronto

this 17 day of Oct 19 80.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

  
BEATRICE WINTROB

\*\*Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".

\*\*Where spouse does not join in or consent, see Section 18(3) of The Family Law Reform Act, 1978 (or complete separate affidavits).

DATED: \_\_\_\_\_ day of \_\_\_\_\_, 1980.

BETWEEN:

SAMUEL DLACK  
JOSEPH BLACK  
NORMAN BLACK  
BEATRICE WINTROB

- and -

ROCKFORD DEVELOPMENTS LIMITED  
and  
IMBROOK PROPERTIES LIMITED

- and -

LOUIS FRIEBERG and GERDA FRIEBERG

-----  
LEASE  
-----

MESSRS. ROBINS AND PARTNERS  
Barristers and Solicitor  
130 Adelaide Street West, Suite 2500  
Toronto, Ontario  
M5H 2M2



NOTICE OF LEASE

THE REGISTRY ACT

NOTICE is hereby given pursuant to Subsection 7 of Section 22 of The Registry Act of an unregistered Lease dated the 1st day of October, 1980 made between SAMUEL BLACK, JOSEPH BLACK, NORMAN BLACK, and BEATRICE WINTROB, all of the City of Toronto, in the Municipality of Metropolitan Toronto, as Lessors and ROCKFORD DEVELOPMENTS LIMITED, and IMBROOK PROPERTIES LIMITED, both Corporations incorporated under the laws of the Province of Ontario, as Lessees, and LOUIS FRIEBERG and GERDA FRIEBERG, both of the City of Toronto, in the Municipality of Metropolitan Toronto, as Guarantors, affecting the land described in Schedule "A" appended hereto (hereinafter referred to as the "demised premises"), containing the following terms and conditions:

<u>Term:</u>	Ninety-Two (92) years, five (5) months
<u>Commencement Date:</u>	October 1, 1980;
<u>Expiry Date:</u>	February 28, 2073;
<u>Address of Tenants:</u>	Rockford Developments Limited 215 Carlingview Drive Unit #211 Rexdale, Ontario M9W 5E8
	Imbrook Properties Limited 330 Bay Street Suite 500 Toronto, Ontario M5H 2S8
<u>Address of Landlords:</u>	Beatrice Wintrob 625 Avenue Road Apt. 1003 Toronto, Ontario
	Samuel Black, Joseph Black & Norman 360 Bloor Street West Suite 510 Toronto, Ontario
<u>Address of Guarantors:</u>	Mr. Louis Frieberg and Gerda Frieberg c/o Rockford Developments Limited 215 Carlingview Drive Unit #211 Rexdale, Ontario M9W 5E8

Pursuant to Subsection 22(7) of The Registry Act of Ontario, the Registrar of the Registry Office of Metropolitan Toronto was given notice of this Lease on October 1, 1980, and the Registrar has registered this Lease in the Registry Office of Metropolitan Toronto on October 1, 1980.

THE LAND TRANSFER TAX ACT  
 ON REGISTRATION OF THIS TRANSFER  
 NO LAND TRANSFER TAX  
  
 COMPTROLLER OF REVENUE

TRANSFER TAX



R. E. BARBER



Option to Purchase: Nil  
Right of First Refusal: Yes

DATED at the City of Toronto, in the Municipality of  
 Metropolitan Toronto, this 27<sup>th</sup> day of October, 1980.

WITNESS:

*Ron Lancer*

ROCKFORD DEVELOPMENTS LIMITED  
 and  
IMBROOK PROPERTIES LIMITED  
 by their solicitors

Messrs. ROBINS AND PARTNERS  
 Per:

  
 \_\_\_\_\_  
 GERALD TAUB



SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land situate, lying and being in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, Province of Ontario, and being composed of that part of Lot 21, Concession 3 fronting the Humber River shown designated as Part 3 on a Plan of Survey of Record deposited in the Land Registry Office for the Registry Division of Toronto Boroughs and York South (No.64) as Plan 64 R-8647 and containing therein 7.720 Acres.

M. L. BARBER



M. L. BARBER

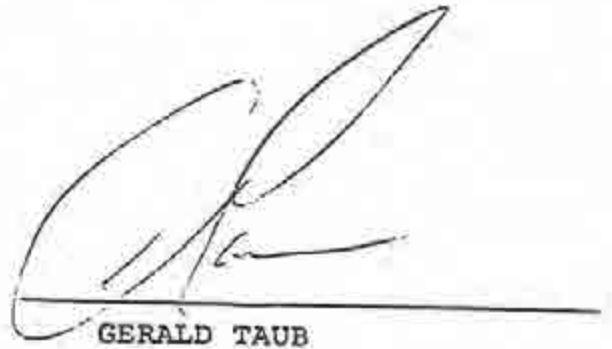
A F F I D A V I T

I, GERALD TAUB, of the City of Toronto, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am the solicitor for the Tenants, ROCKFORD DEVELOPMENTS LIMITED and IMBROOK PROPERTIES LIMITED, mentioned in the attached Notice of Lease and as such have knowledge of the matters therein deposed.
2. The Notice of Lease is not being registered for any fraudulent or improper purpose.

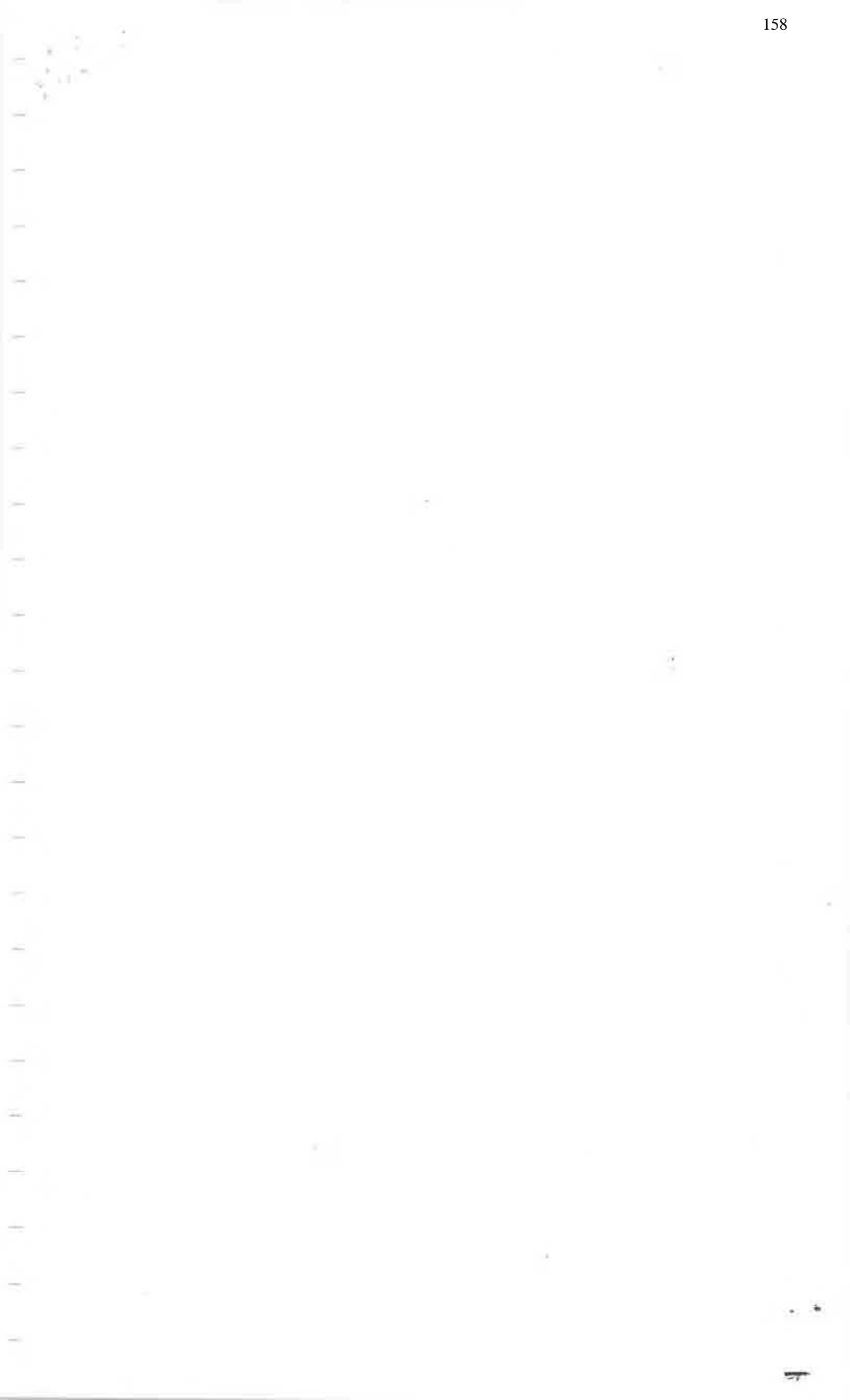
SWORN BEFORE ME at the City  
of Toronto, in the Municipality of Metropolitan Toronto, this 22<sup>nd</sup> day of October, 1980.

*Ron. Pancer*  
A Commissioner etc.



GERALD TAUB

RONALD CHARLES PANCER, a  
Commissioner for taking Affidavits,  
Province of Ontario, for Robins and  
Partners, Barristers & Solicitors,  
Student-At-Law.  
Expires July 30th, 1983.



A F F I D A V I T

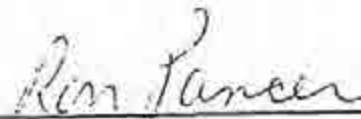
I, RONALD C. PANCER, of the City of North York, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am a subscribing witness to the attached instrument and I was present and saw it executed at the City of Toronto, by Gerald Taub.

SWORN BEFORE ME at the  
City of Toronto, in the  
Municipality of Metro-  
politan Toronto, this 22<sup>nd</sup>  
day of October, 1980.



A Commissioner etc.



RONALD C. PANCER

SHIRLEY MARIE DICKS, a Commissioner  
for taking Affidavits, Judicial District of York,  
for Robins and Partners, Barristers & Solicitors,  
Expires September 9th, 1983.

BOOK 529850

LIBRARY L29856

DATED: October , A.D. 1980

REGISTRY DIVISION OF ONTARIO RECORDS (No. 64)

NOTE THAT THIS INSTRUMENT IS REGISTERED AS OF

26 P.M. OCT 20 1980

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SAMUEL BLACK, JOSEPH BLACK  
NORMAN BLACK and BEATRICE  
WINTROB

- and -

ROCKFORD DEVELOPMENTS LIMITED  
and IMBROOK PROPERTIES  
LIMITED

NOTICE OF LEASE

21 Con 3 FH Et66

ROBINS AND PARTNERS  
Barristers and Solicitors  
130 Adelaide St. W.  
Suite 2500  
Toronto, Ontario  
M5H 2M2

GT:cmb  
File No. 1034/80

PROPERTY OF THE  
REGISTRY OFFICE

80 OCT 30 P3:36

LAND REGISTRY

1 Con 3

This is Exhibit "C" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

Municipal Lease.

07/10/80

THIS INDENTURE OF LEASE made as of the 1st day of  
October, 1980

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

THE CORPORATION OF THE BOROUGH OF  
ETOBICOKE,

(hereinafter referred to as the "Landlord")

OF THE FIRST PART

- and -

ROCKFORD DEVELOPMENTS LIMITED, and,  
IMBROOK PROPERTIES LIMITED, both corpora-  
tions incorporated under the laws of the  
Province of Ontario,

(hereinafter referred to as the "Tenant")

OF THE SECOND PART

- and -

SAMUEL BLACK, Executive,  
JOSEPH BLACK, Executive,  
NORMAN BLACK, Executive, and  
BEATRICE WINTROB, (formerly known as  
Beatrice Minden), all of the City of  
Toronto, in the Municipality of  
Metropolitan Toronto,

(hereinafter collectively referred to as  
the "Master Lands Landlord")

OF THE THIRD PART

WITNESSETH THAT:

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.01 The following expressions, where used in this lease,  
shall have the following meaning:

- (a) "Lands" means all and singular the lands situate, lying  
and being in the Borough of Etobicoke, in the Municipality of  
Metropolitan Toronto and being more particularly described in  
Schedule "A" attached hereto and cross-hatched on the plan of  
survey attached hereto as Schedule "B";



- 2 -

- (b) "Initial Rental Period" means the period of time beginning on the Commencement Date and ending on the 28th day of February, 1999;
- (c) "Second Rental Period" means the period of fifteen (15) years immediately following the expiry of the Initial Rental Period, namely, the period from the 1st day of March, 1999 to the 28th day of February, 2014;
- (d) "Third Rental Period" means the period immediately following the expiry of the Second Rental Period, to the 8th day of February, 2029;
- (e) "Fourth Rental Period" means the period immediately following the expiry of the Third Rental Period, to the 28th day of February, 2044;
- (f) "Fifth Rental Period" means the period immediately following the expiry of the Fourth Rental Period, to the 28th day of February, 2059;
- (g) "Sixth Rental Period" means the period immediately following the expiry of the Fifth Rental Period, to the 28th day of February, 2073, the last mentioned date being the expiry date of the lease herein;
- (h) "Master Lease" means that lease notice of which was registered against title to the Master Lands (and other lands demised) by instrument number Etobicoke 434528 in the Land Registry Office for the Registry Division of Toronto Boroughs and York South on the 5th day of June, 1974 and an undivided one-half (1/2) interest of which was assigned to Imbrook Properties Limited by assignment of lease registered in the said Land Registry Office on the 28th day of March, 1980 as Etobicoke 521973, until there is a Peel-Off Lease with respect to the Master Lands thereunder as that term is defined therein or by an amendment thereto and thereafter means the "Peel-Off Lease";
- (i) "Master Lands" means part of the lands demised by Master Lease and described in Schedule "C" and hatched on Schedule "B";
- (j) "Commencement Date" means the 1st of October, 1980.

ARTICLE IIDEMISE

2.01 In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hereby demises and leases the Lands to the Tenant for the term hereof.

ARTICLE IIITERM

3.01 TO HAVE AND TO HOLD the Lands for a term to commence on the 1st day of October, 1980, and to end on the 28th day of February, in the year 2073.

ARTICLE IVRENT

4.01 YIELDING AND PAYING THEREFOR yearly and every year during the Initial Rental Period, without any right of set off, deduction or abatement whatsoever, the sum of Seventeen Thousand and Eight Hundred (\$17,800) Dollars payable in equal consecutive monthly instalments of One Thousand, Four Hundred and Eighty-three Dollars and Thirty-three (\$1,483.33) Cents in advance on the first day of each and every month during the said Initial Rental Period, commencing on the first day of October and monthly thereafter to and including the first day of February, 1999.

4.02 AND YIELDING AND PAYING THEREFOR yearly and every year during the Second Rental Period, the Third Rental Period, the Fourth Rental Period, the Fifth Rental Period and the Sixth Rental Period, respectively, without any right of set off, deduction or abatement whatsoever, rent for the particular Rental Period which shall be determined by multiplying the rental for the Rental Period pursuant to the terms of the Master Lease calculated on a per acreage basis by the area of the Lands.

The said annual rental shall be paid in twelve (12) equal consecutive monthly instalments, payable in advance on the first day of each and every month during the relevant rental period; provided that, in no event, shall the annual rent for any rental period hereinbefore referred to be less than a sum prorated at the rate of Ten Thousand (\$10,000) Dollars per acre of Lands.

4.03 In the event there is a merger of the Master Lease into the ownership of the Master Lands then the rent for the remainder of the Second, Third, Fourth, Fifth and Sixth Rental Periods shall be established subject to Article 4.02 above, by using the formulas set out in the Master Lease with Definitions 1 or 2 therein as the case may be.

#### ARTICLE V

##### ESTABLISHING RENT

5.01 In the event that the rental has not been determined under the Master Lease at or before the commencement date of the next ensuing rental period, then the monthly instalments previously payable by the Tenant shall continue to be paid on account of rental, until the said rental is made known, at which time an appropriate adjustment shall be made forthwith between the parties.

#### ARTICLE VI

##### TENANT'S COVENANTS

6.01(a) The Tenant covenants to pay rent;

(b) The Tenant covenants to pay, when due, all real estate taxes, including all charges for local improvements, assessments and other charges, rates, duties, licence fees or levies of any kind or nature whatsoever which may be made, levied or imposed on the said Lands, and on the improvements thereon, or upon the Landlord or the Tenant on account thereof, whether such taxes, assessments, charges, rates, duties, licence fees or levies are charged by any municipal, school, or other body and whether or not of a kind now existing or within

the contemplation of the parties hereto (hereinafter called "Property Taxes"); provided, however, that Property Taxes shall not include any charges or taxes personal to the Landlord or any of them, such as, succession duties, estate taxes, corporation taxes, income taxes or any other taxes upon the income derived by the Landlord from the said Lands. The obligation of the Tenant to pay Property Taxes shall commence as of the Commencement Date of the term hereof, and shall be apportioned for the current taxation year between the Landlord and Tenant as at such date, and the Tenant shall pay its appropriate share thereof. Upon the expiry or termination of this lease, Property Taxes during the taxation year of termination shall be similarly apportioned between the parties as at the termination date.

- (c) The Tenant further covenants that upon the written request of the Landlord, it will promptly deliver to the Landlord for inspection, receipts or other reasonable evidence for the payment of any and all of the Property Taxes which were due and payable up to thirty (30) days prior to the said request. The Tenant shall have the right and privilege in its own name, or if required and upon agreeing to indemnify the Landlord in respect of such action and all costs relating thereto, in the name of the Landlord (and the Landlord hereby agrees to consent to such proceedings), of appealing assessments or of applying for a reduction of any of the Property Taxes provided that it shall first either pay the Property Taxes under protest, or furnish security for payment thereof by bond or otherwise, reasonably satisfactory to the Landlord in the event of failure of such appeal or application.

If and so often as the Tenant shall neglect or omit to pay the Property Taxes, the Landlord may, but shall not be obliged to, pay the same and may thereupon charge the same to the Tenant together with interest on the amount thereof at twelve (12%) percent per annum. The Tenant hereby covenants and agrees to pay the same to the Landlord forthwith upon receipt from the Landlord of a notice stating the amount thereof paid by it and the date of payment and the Tenant agrees that any and all of such amounts so paid by the Landlord shall be

recoverable by the Landlord as if the same were, and in the same manner as, rent reserved and in arrears under the terms of this lease.

6.02 The Tenant shall, at its own cost and expense, during the entire term, put and keep in good order and condition the Lands and any buildings to be erected thereon and the improvements standing thereon at any time, and the appurtenances and equipment thereof, both inside and outside, including but not limited to, fixtures, walls, foundations, roofs, vaults, elevators and similar devices, heating and air-conditioning equipment, sidewalks on the property, yards and area ways, water and sewer mains and connections, water, gas and electric pipes and conduits, and all other fixtures in and appurtenances to the said Lands and buildings erected thereon, and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall make any and all necessary repairs, replacements, substitutions, improvements and additions, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise. Such repairs shall be completed in a good and workmanlike manner and in all respects consistent in quality and workmanship with the location and use of the said buildings, and shall meet the requirements of municipal or governmental regulations and the fire insurance underwriters. The Tenant shall commit or suffer no waste or injury to the said Lands and buildings erected thereon or any part thereof save and except any demolition and alteration respecting buildings and improvements on the Lands as hereinafter specifically provided for and shall not use or occupy or permit to be used or occupied the Lands and buildings erected thereon or any part thereof so as to constitute a nuisance or for any illegal or unlawful purpose, nor in any manner which may be extra-hazardous, nor in any manner which may contravene any lawful restrictions of the use thereof by any municipal or governmental authorities, and the Tenant shall at all times, at its own expense, keep the sidewalks, curbs, area ways and right-of-way adjacent to the Lands and buildings erected thereon, clean from rubbish, ice and snow and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any



manner; and shall not injure or disfigure the Lands and buildings erected thereon or permit the same to be injured or disfigured in any way save and except as hereinafter provided, and, at the expiration or the termination of this lease, the Tenant shall surrender and deliver up the said Lands subject to the right to maintain and use the buildings and improvements and the aforesaid appurtenances and equipment thereof until the buildings are destroyed or demolished. The Tenant agrees not to call upon the Landlord at any time during the demised term to make any repairs or replacements of any part of the Lands and buildings erected thereon or any improvements thereon erected or which may be erected, whether structural or otherwise, this being a net lease. The intention of this lease is that the rent received by the Landlord shall be free and clear of any expenses in connection with the construction, alteration, care, maintenance, operation or repair of the Lands or any improvements or equipment at any time thereon.

- 6.03 The Landlord acknowledges and declares that if the Tenant or a subtenant erects part of a building or structure on the Lands and part of the same building or structure on adjoining lands, neither the erection of the part of the building or structure on the Lands nor their being left on the Lands after termination of this lease will be considered to be an act of waste.
- 6.04(a) The Tenant covenants that it will install or cause to be installed all municipal services required to be constructed and installed in connection with any plan of subdivision or development plan for the Lands and shall pay all levies, imposts, deposits and charges required by the municipality or any public utility or other authority having jurisdiction, which services may be installed as local improvements and the Tenant shall indemnify and save harmless the Landlord of and from all claims and demands relating thereto, it being the intention of the parties that the Landlord shall not be required at any time to pay any levies, imposts, deposits or other charges whatever in connection with the servicing or preparation of the Lands from time to time for building, use or occupancy. Without limiting

the generality of the foregoing, the Tenant shall, at its own expense, install or cause to be installed paved roadways, sanitary sewers, storm sewers, sidewalks, curbs, street lighting, water pipes, underground hydro facilities as may be required by the municipality or other relevant authorities. The Tenant further covenants that it shall construct, renew and repair all services with respect to the Lands and buildings thereon as the municipality, utilities or other relevant authorities shall require from time to time without expense to or contribution from the Landlord.

- (b) The Tenant covenants and agrees to consent to the Landlord maintaining the existing utilities in, under or over the Lands. For this purpose, the Landlord, its successors and assigns, workmen and designees shall have access to the Lands to maintain the utilities and install such other utilities in, under or over the Lands (exclusive of the portion thereof covered by buildings). The Landlord covenants to exercise this privilege with as little interruption as reasonably possible of the Tenant's (or a subtenant's) business. Upon completion of such maintenance or installation the Landlord shall restore the Lands to the same condition existing before such repair, maintenance or installation.

- 6.05(a) The Tenant covenants that it will comply with all provisions of law relating to the Lands, the equipment and the maintenance and use of every building and every improvement on the Lands and in connection with the erection, alteration, improvement, demolition and replacement of same and will indemnify and save harmless the Landlord from each and every demand, action, cause of action and expense, including counsel and solicitors' fees on a solicitor and his client basis, by reason of failure so to do, or arising out of any act of omission or commission of the Tenant or any of its agents, employees or contractors in or about the Lands, the operation, construction, improvement, maintenance, alteration, repair, demolition or replacement of any of the buildings, structures or improvements on the Lands or arising out of the breach of any of the covenants, terms and provisions of this lease binding upon or to be observed or performed by the Tenant. The Tenant covenants that at all times the use made of the buildings will be in conformity with all of the

requirements of the zoning and building by-laws or as amended by the Committee of Adjustment or a successor body and any other municipal or governmental regulations which may affect the Lands. The Tenant shall comply with all police, fire and sanitary regulations imposed by any municipal or provincial or federal authorities or recommendations or requirements made by fire insurance underwriters, and observe and obey all municipal and governmental regulations governing the conduct of any businesses carried on on the Lands and buildings erected thereon or with respect to the use of the said Lands and buildings erected thereon, and save the Landlord harmless from any damages, charges, actions or costs arising out of non-compliance with or violation of any of the said laws and regulations or from any liability for costs for damage or injury to any person or property resulting therefrom on and after the commencement of this lease;

- (b) Throughout the term, the Tenant covenants and agrees to indemnify the Landlord and to save the Landlord harmless from all claims, costs, losses, damages and expenses arising from injury to property or injury to any person, firm, partnership or corporation, caused by the use, occupancy or presence of the Tenant or any other person, firm, partnership or corporation at, in, on or upon the Lands or the buildings erected thereon.

6.06(a) The Tenant covenants, at its expense,

- (i) to insure and keep insured the improvements, excluding foundations, in a stated amount as determined by the Tenant's insurance advisers, but not exceeding the full insurable value thereof, against all risk of loss or damage caused by or resulting from fire, lightning, explosion, collapse of any boilers, pipes or accessories in or about the improvements or any peril defined in a standard fire insurance additional perils supplementary contract normally in use from time to time during the term of this lease or any extension thereof for buildings and structures in the Municipality of Metropolitan Toronto similar in nature to the improvements;
- (ii) to maintain public liability and property damage



- 10 -

- insurance protecting and indemnifying the Tenant and the Landlord against any and all claims for damage or injury to persons or property or for the loss of life occurring in or upon the said Lands, and all buildings, structures and improvements from time to time thereon, the limit whereof shall initially be not less than Five Hundred Thousand (\$500,000) Dollars in respect of bodily injury or death of any one person and not less than Five Million (\$5,000,000) Dollars in respect of any one occurrence and to the limit of not less than Five Hundred Thousand (\$500,000) Dollars for property damage; and,
- (iii) if obtainable, to maintain boiler and pressure apparatus insurance, the limit whereof shall initially be not less than Five Hundred Thousand (\$500,000) Dollars in respect of any one accident, as may be required by the Landlord's insurance advisers at such time as buildings have been erected on the Lands, and if applicable.
- (b) All contracts of insurance required to be maintained under the provisions of this lease shall be with a company or companies licensed to do business within the Province of Ontario;
- (c) All such contracts of insurance placed by the Tenant hereunder, insofar as they relate to the said Lands and the building, structures and improvements thereon (other than those referred to in sub-article (a)(ii) above, which contracts shall be written in the names of the Tenant and any sub-tenant as joint insured), shall show the Tenant and any mortgagee of any sub-tenant, as joint insured, as their interests may from time to time appear.
- (d) If the Tenant fails to obtain the policies of insurance required hereunder, the Landlord may itself obtain such policies and shall give the Tenant a notice setting out the amount and dates of payment of all costs and expenses incurred by the Landlord in connection therewith to the date of such notice; the Tenant will, with the next instalment of rent which becomes due, pay the same to the Landlord with interest at twelve (12%)

- 11 -

percent per annum, calculated on the various amounts from the respective dates of payment thereof by the Landlord. Any sum so expended by the Landlord, together with such interest as aforesaid, shall constitute rent hereunder and be collectable as such rent.

- (e) The Tenant shall furnish the Landlord with certificates or other acceptable evidence of all such insurance promptly upon request.

6.07 The complete or partial destruction or damage, by fire or other casualty, of the building or buildings or improvements erected on the Lands shall not terminate this lease or entitle the Tenant to surrender possession of the Lands or to have or to demand any abatement or reduction of the rent or other charges payable under this lease, any law or statute to the contrary notwithstanding and the Tenant is not obligated to repair any such damage so caused.

6.08 The Tenant covenants and agrees to waive and renounce (so far as it may be permitted to do so by applicable legislation) the benefit of any present or future act in force in the Province of Ontario which takes away or limits the Landlord's right of distress, and that the Landlord may seize and sell the Tenant's goods and chattels for payment of rent and additional rent and costs as fully as the Landlord might have done if such act had not been enacted or passed.

6.09 The Tenant covenants and agrees not to permit any mechanic's, labourer's, materialman's or similar lien to stand against the Lands for any labour or materials furnished to, or with the consent of, the Tenant, its agents, or contractors, in connection with work of any character performed or claimed to have been performed on the Lands or buildings and structures so erected by or at the direction or sufferance of the Tenant; provided, however, that the Tenant shall have the right to contest the validity of or the amount claimed under or in respect of, any such lien, if such contestation shall involve no forfeiture, foreclosure, or sale of the premises or any part thereof, but pending a final determination of such contest the Tenant shall immediately cause such lien to be discharged and released.

6.10 The Tenant covenants and agrees that in the maintenance, use and occupation of the Lands and buildings and structures to be erected thereon, it will at its own cost and expense comply with

every applicable regulation or order of the Canadian Fire Underwriters Association, or any body having similar functions, and of any liability or fire insurance company by which the Landlord or the Tenant may be insured, and with all applicable laws, ordinances, and regulations of duly constituted public authorities having jurisdiction now or hereafter in any matter affecting the Lands, buildings and/or structures as the case may be or the use or occupation thereof, whether or not such regulations, orders, laws or ordinances which may hereafter be promulgated, issued or enacted involve a change of policy or require structural or other changes or alterations in or about the said Lands, buildings and structures.

6.11 At the expiration of the term hereby granted, whether by forfeiture or lapse of time, the Tenant covenants and agrees to surrender and deliver to the Landlord the Lands together with the building or buildings erected on the Lands subject to the Tenant being able to maintain thereon any buildings until their eventual destruction. In the event that the term is forfeited by the Landlord the surrender and delivery herein contemplated shall not relieve the Tenant from liability for any loss or damage suffered by the Landlord by reason of any default by the Tenant. Upon such surrender the Tenant shall assign to the Landlord the benefit of the Tenant's interest in all leases, licence agreements and other agreements and rights benefiting the Lands (exclusive of building or buildings as the case may be,) if the Landlord shall require benefits to be so assigned except that if there is in effect a sublease of the Lands made by the Tenant, the Tenant shall assign the benefit of those interests to the subtenant if the subtenant so requires. Provided further, that the Tenant may at the expiration of this lease, if it shall not then be in default hereunder, remove from the Lands and any building or buildings and improvements located thereon all the Tenant's fixtures, but shall in such removal do no damage to the premises or shall promptly make good any damage which may be occasioned thereto and restore the said Lands and buildings to their condition prior to such removal.

6.12 The Tenant covenants not to construct any building on the Lands or to make any major structural alterations, additions or changes to any existing building or buildings without obtaining the prior written approval of the Landlord thereto which approval will not unreasonably be withheld, which approval or reasons for withholding same shall be given within thirty (30) days of written request therefor. The Landlord agrees to cause the Landlord's official designated by Council to provide its reasonable requirements within the said thirty (30) days in the event that it chooses not to grant approval, failing which an approval shall

be deemed to have been given at the end of the said thirty (30) day period. When requesting the approval of the Landlord, the Tenant shall submit to the Landlord plans and specifications in duplicate. Provided further that such building or buildings or alterations, additions or changes as the case may be shall meet with the requirements of the municipal, provincial and federal governments or other relevant authorities, the relevant insurance underwriters and any leasehold mortgagee or leasehold mortgagees. Without limiting the generality of the foregoing the Tenant, at its sole cost and expense, shall have the right to remove or demolish any or all of the buildings and improvements hereafter erected on the Lands.

## ARTICLE VII

### LANDLORD'S COVENANTS

7.01 The Landlord covenants with the Tenant as follows:

- (a) For quiet enjoyment;
- (b) To execute:
  - (i) any and all plans and documents required to facilitate the registration of a Plan or Plans of Subdivision of the Lands;
  - (ii) any and all plans and documents required to apply to re-zone the Lands to a superior standard, including executing agreements with the Municipality or any Municipal Authority;
  - (iii) any documents required to transfer the Lands into the Land Titles system;
  - (iv) any development agreement affecting the Lands as requested by any governmental authority;

but despite the provisions of this paragraph the Tenant will not make an application to re-zone all or part of the Lands during the currency of a sublease of the Lands made by the Tenant without first obtaining the written consent of the sublessee save and except for the application presently pending before the Municipality as the same may be amended.

It is further understood and agreed that it is intended that the Landlord execute all documentation as required by paragraph (b) as a consenting party only. However when required, the Landlord will execute documentation other than as consenting party subject to the Tenant's agreement to indemnify and save harmless the Landlord from any claims and costs arising therefrom.



ARTICLE VIIIASSIGNING, MORTGAGING AND SUB-LETTING

- 8.01(a) Save and except as hereinafter set out in this Article the Tenant agrees not to assign, sub-let, mortgage, pledge or encumber this lease or the Lands or any part or parts of the Lands without first obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld;
- (b) The Landlord agrees that the Tenant may, without the Landlord's consent, sublet all or part of the Lands to Hudson's Bay Company Developments Limited and then subsequently assign this lease to Hudson's Bay Company Developments Limited without any consent from the Landlord provided Hudson's Bay Company Developments Limited agrees to be bound by all terms, covenants and conditions of this Lease;
- (c) The Tenant or a sub-tenant from time to time during the lease term may make one or more mortgages provided that:
- (i) each mortgage shall be by way of assignment or sub-lease to an institutional mortgagee (that is an institution commonly known to hold mortgages upon a security of leases or real property and without limiting the generality of the foregoing, a loan company, a trust company, a bank, a pension fund, a savings and loan association, an insurance company, an employees profit sharing trust, and similar institutions) which is advancing mortgage monies respecting improvements erected or to be erected on the within Lands provided always that any such mortgage shall at all times be subject to the prior right, title and interest of the Landlord in and to the Lands and improvements;
- (ii) if a mortgage covers only a portion of the Lands the Tenant and Landlord shall enter into a separate lease (hereinafter called the "Peel-off Lease") with respect to the portion of the Lands to be encumbered at the rent and upon the terms and conditions set forth in paragraph (d) hereof;
- (d) The Tenant not being in default hereunder, such Peel-off Lease or leases shall be executed by the Landlord within thirty (30) days of request therefor, provided that the terms of the

said Peel-off Lease or leases shall be as follows:

- (i) the amount of rent to be paid shall be that proportion of the rental due to the Landlord that the square footage of the Lands forming the subject matter of the Peel-off Lease is to the area of the Lands forming the subject matter of the within lease (hereinafter referred to as the "Original Lease"). For the purposes of this provision, the area of the Lands shall mean the area of the Lands vested in the Landlord after conveyance to the municipality or other governmental authority of portions thereof for roadways and similar purposes. It is the intention of the parties that the total rental paid by the Tenant on the total of the peeled-off leases shall not exceed the rent payable hereunder;
- (ii) Subject to Article 8.04, the lands demised by such Peel-off lease or leases shall be as set forth herein and as approved by the appropriate body of the municipality (at the date hereof being the Committee of Adjustments) but otherwise the provisions of such Peel-off lease or leases shall be identical with the provisions of this lease, but only for the balance of the term of this Lease. Upon the execution and delivery of the Peel-off lease or leases in accordance with the provisions of the within Article, the Original Lease shall not be applicable to the Lands being the subject of the Peel-off Lease. However, in no event shall the within Article or the granting of Peel-off Leases be deemed to alter the obligations of the Tenant hereunder since it is intended that the Peel-off Leases shall be granted only in order to assist the Tenant or sub-tenants in obtaining financing if required and that notwithstanding any Peel-off Leases all liabilities and obligations of the Tenant hereunder shall continue in full effect and no dealings with Peel-off Leases whether with or without the consent of the Tenant shall affect such liability or obligations.

In the event of any dispute as to the terms of Peel-off Leases herein provided the same shall be submitted to arbitration in accordance with provisions of Article XIV of the within lease.

8.02 If the Tenant or sub-tenant shall make a mortgage (the holder of such mortgage being herein referred to as the

"institutional mortgagee" and such mortgage being herein sometimes referred to as the "institutional mortgage") and if an institutional mortgagee shall have given to the Landlord a notice ("institutional mortgagee's notice") specifying the name and address of the institutional mortgagee, the Landlord shall give to the institutional mortgagee a copy of each notice of default by the Tenant at the same time as and whenever any such notice of default shall thereafter be given by the Landlord to the Tenant, addressed to the institutional mortgagee at the address last furnished to the Landlord. No such notice of default by the Landlord shall be deemed to have been given to the Tenant unless and until a copy thereof shall have been so given to the institutional mortgagee. Save and except as to default in payment of monies reserved hereunder, such institutional mortgagee shall thereupon have a period of ten (10) days more, after service of such notice upon it, for remedying the default or causing the same to be remedied, than is given to the Tenant after service of such notice upon it. Such institutional mortgagee, in case the Tenant shall be in default shall, within the period and otherwise as herein provided have the right to remedy such default or cause the same to be remedied. The Landlord will accept performance by the institutional mortgagee of any covenant, condition or agreement on the Tenant's part to be performed hereunder with the same force and effect as though performed by the Tenant. Save and except as to default in payment of monies reserved hereunder for which default the Tenant and institutional mortgagee shall be given fifteen (15) days after written notice to remedy, and save and except as to defaults which require no more than thirty (30) days' notice to cure, the institutional mortgagee shall be given the opportunity in good faith to commence properly to rectify the claimed default within thirty (30) days' written notice of same and to prosecute the same to completion with diligence and continuity. The time of the institutional mortgagee to cure any default by the Tenant which reasonably requires that the said institutional mortgagee be in possession of the demised premises to do so shall be deemed extended to include the period of time required by the said institutional mortgagee to obtain such possession with due diligence provided, however, that during such period all of the other obligations of the Tenant under this lease including without limiting the generality of the foregoing the payment of monies reserved hereunder, are being duly performed. From and after receiving the institutional mortgagee's notice, the Landlord and Tenant will not cancel, surrender, modify or amend this lease in any respect without the prior written consent of the institutional mortgagee save and except as to any rights reserved



hereunder which may remain at the sole discretion of the Landlord. No institutional mortgagee shall become liable under the provisions of this lease, unless and until such time as it becomes and then only for as long as it remains, the owner of the leasehold estate; provided no mortgage or encumbrance of this lease or the Tenant's interest hereunder or in the Lands or the improvements (by way of assignment, sublease or otherwise) shall be made by the Tenant unless the mortgagee or encumbrancer shall covenant with the Landlord to be bound by all the covenants and obligations of the Tenant hereunder as soon as such mortgagee or encumbrancer enters into possession of the Tenant's interest, or otherwise takes steps to enforce its security which have the effect of depriving the Tenant of the ability fully to perform those covenants and obligations; and such covenant shall continue to bind such mortgagee or encumbrancer so long as the mortgagee continues in possession or continues to enforce its security with the effect as aforesaid; and upon any exercise of any power of sale, the assignee of the mortgaged rights shall covenant with the Landlord to perform all the Tenant's obligations under this lease but so soon as the assignee becomes bound by the Tenant's obligations, the mortgagee or encumbrancer shall be relieved from its covenant.

The Tenant shall observe and perform all its obligations incurred in respect of assignments, subleases, agreements for tenancy, mortgages and encumbrances of its leasehold interest and its interest in the improvements, and shall not suffer or allow any such obligations to be in default, and if any such default shall occur the Landlord may, but shall not be obliged to, rectify such default for the account of the Tenant, and any amount paid by the Landlord in so doing, together with all reasonable costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand together with interest thereon at twelve (12%) percent per annum from the date of expenditure by the Landlord to the date of reimbursement by the Tenant.

8.03(a) Subject to the rights of the Master Lands Landlord and any purchaser or mortgagee of the interest of the Master Lands Landlord in Article 17.01, the Landlord agrees with the Tenant that at the request of the Tenant, the Landlord and any purchaser or mortgagee of the interest of the Landlord in the Lands, promptly will execute under seal and deliver to the Tenant an agreement to be made between the Landlord, such purchaser or mortgagee, the Tenant, Hudson's Bay Company Developments Limited and any mortgagee of the leasehold estate created by a sublease made by the Tenant (as landlord), which will provide that if during the term of any sublease of the Lands made by the Tenant (as landlord) this lease is



terminated for any reason other than the breach of a covenant to be observed or performed by the Tenant, the observance or performance of which, as between the Tenant and the subtenant, has become by the terms of the sublease the responsibility of the subtenant, the Landlord, subject to the condition in the following sentence and without relinquishing any rights it may have against the Tenant, will accept the subtenant as the tenant of the Landlord upon the terms of this Lease subject to,

- (i) the conditions of this Lease;
- (ii) the subtenant curing the default of the Tenant and suffered by the Landlord;
- (iii) the Master Landlord not exercising its prior rights under Article XVII hereof;

and thereafter, the sublease, amended where necessary so that its terms are the same as the terms of this lease, will have the same effect as though it had been between the Landlord as the sublandlord and the subtenant as the subtenant.

- (b) Any agreement entered into in pursuance of subsection (a) must provide for a notice thereof to be executed in a form acceptable for registration in the Land Registry Office for the Registry Division of Toronto Boroughs and York South (No. 64). The Landlord agrees to execute all documents and to perform all acts necessary or reasonably required by the Tenant in order validly to give effect to such agreement as effectively as if it had been executed at the date of this Lease, and agrees to cause such purchaser or mortgagee of the interest of the Landlord in the Lands to agree likewise.

8.04 Notwithstanding the provisions of paragraph 8.01(a) hereof, the Landlord agrees to permit the Tenant to sublet the whole or part or parts of any fully erected building or structure or to make any agreement to sublet a building or structure intended to be erected, without the consent of the Landlord being required.

8.05 Upon execution of each Peel-off Lease the within lease shall be deemed to be amended by reduction of the rent payable hereunder by an amount equal to the rent payable under each Peel-off lease and by deletion from the lands demised hereunder of those lands being the subject matter of each Peel-off Lease.

ARTICLE IXREMEDIES

9.01 Proviso for re-entry by the Landlord on non-payment of rent or non-performance of covenants.

9.02 It is mutually agreed that if the Landlord shall re-enter the Lands and enter the improvements erected thereon as provided herein or if the lease shall be terminated, all payments for which the Tenant is liable under this lease shall immediately become due and payable, together with the reasonable expenses of the Landlord including but not restricted to legal costs, solicitors fees on a solicitor and his client basis, brokerage charges and the expense of keeping the Lands and improvements thereon in good order or preparing the Lands and improvements thereon for reletting. Despite the provisions of this Article, if a subtenant wishes to cure the default of the Tenant pursuant to clause (ii) of Article 8.03(a), the subtenant need make only the payments for which the Tenant was liable up to the time of such re-entry, entry or termination in order to cure that part of the default of the Tenant consisting of non-payment of money; and upon such payment by the subtenant the balance of the payments for which the Tenant is liable under this lease will be considered not to have become due and payable.

9.03 It is mutually agreed that, if the Tenant shall be in default in performing any of the terms, covenants or provisions of this lease other than the provisions requiring the payment of rent, and if the Landlord shall give to the Tenant notice in writing of such default, and if the Tenant shall fail to fully cure such default within thirty (30) days after the date of receipt as defined herein of such notice, subject to the provisions of Article 9.04 hereof, then and in such event, the Landlord may enter the Lands and improvements thereon and may cure the default for the account of and at the cost and expense of the Tenant and such cost and expense shall be paid by the Tenant to the Landlord forthwith upon demand.

9.04 Notwithstanding anything else herein contained it is mutually agreed that, if the Tenant shall be in default in performing any of the terms, covenants or provisions of this lease other than the provisions requiring the payment of rent and if the Landlord shall give to the Tenant or sub-tenant and sub-tenants of which the Landlord has notice, notice in writing of such default, and if the Tenant shall fail to remedy such default

within thirty (30) days after receipt of such notice, then, at its option, the Landlord may treat this lease as cancelled and terminated, and the term and estate vested in the Tenant, as well as all other rights of the Tenant hereunder, shall immediately cease and expire as fully and with like effect as if the entire term herein provided for had expired, and the Landlord may enter upon the demised Lands, with or without process of law, and take possession thereof together with any and all buildings and improvements which may have been erected thereon, the Tenant waiving any demand for possession thereof; and all improvements made upon the Lands shall be forfeited to and become the property of the Landlord as liquidated damages without compensation therefor to the Tenant. Provided, however, if the default complained of reasonably requires more time to cure than the thirty (30) day period aforesaid, the Tenant or any leasehold Mortgagee shall be deemed to have complied with the remedying thereof if the Tenant or sub-tenant or any leasehold Mortgagee shall have commenced remedying or curing the same within the said thirty (30) day period and diligently thereafter completes the same.

9.05 If the Tenant shall be in default in the payment of any moneys reserved hereunder and such default shall continue for fifteen (15) days after written notice thereof to the Tenant and sub-tenant of which the Landlord has notice, the Landlord, in addition to all other rights which it may have under this lease or otherwise, shall have the right to enter the Lands and buildings thereon as the agent of the Tenant without being liable for any prosecution therefor and to relet the same as the agent of the Tenant for whatever term and under whatever conditions the Landlord may deem advisable and to receive the rent therefor and as agent of the Tenant to take possession of any buildings, chattels, furniture or other property on the Lands and to lease the same or sell the same at public or private sale with or without notice and to apply the proceeds of such lease or sale and any rent derived from reletting the premises, on account of the rent or other charges under this lease.

9.06 In the event of a breach or threatened breach by the Tenant of any of the covenants, provisions or terms hereof, the Landlord shall have the right to invoke any remedy allowed at law or in equity (including injunction) as if re-entry and other remedies were not provided for herein.

9.07 Mention in this lease of any particular remedy shall not preclude the Landlord from any other remedy in law or in equity, subject always to the express provisions of this lease.

9.08 Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso, condition or obligation contained in this lease shall not operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, nor so as to defeat or affect in any way the rights of the Landlord hereunder in respect of any such continuing or subsequent default, breach or non-observance and all rights and remedies herein contained of the Landlord shall be deemed to be cumulative and alternative.

9.09 Whenever the Landlord shall have paid or expended any monies, which under the terms of this lease it is the obligation of the Tenant to pay, but which the Tenant has refused or neglected so to pay, then upon the Landlord giving written notice to the Tenant of such payment, the monies so paid or expended together with interest thereon at the rate of twelve (12%) percent per annum from the date of their payment or expenditure until reimbursement by the Tenant, shall be collectible as rent.

#### ARTICLE X

##### OWNERSHIP OF BUILDINGS AND IMPROVEMENTS

10.01 The parties hereto agree that the Tenant or its sub-tenant shall be the owner and shall have the right, title and interest in and right to possession of all buildings, improvements, installations, fixtures, alterations, changes or additions on the said Lands (hereinafter in this paragraph called "buildings"), notwithstanding any rule of law as to immediate vesting of the title to and ownership of, the buildings in the Landlord as owner of the Lands.

In the event that on a termination or expiry of this lease there is erected on the Lands a portion of a building having a gross floor area of less than five (5%) percent of the gross floor area of the total area of the building erected on the Master Lands then the tenant or owner of the Master Lands shall be permitted to maintain and use the encroachment on the Lands until such time as the building which encroaches is demolished or destroyed. In this event the Tenant shall continue to pay rent for the Lands at a fair market value to be agreed to and to be reviewed annually and failing agreement to be determined by arbitration and observe the covenants herein contained until such encroachment is removed.



ARTICLE XIBANKRUPTCY

11.01 If the term hereby granted shall at any time be seized or taken in execution by any creditor of the Tenant, or if the Tenant shall make a general assignment for the benefit of creditors or be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against itself or shall file an application or petition or answer or consent, seeking reorganization or re-adjustment of its indebtedness under the Bankruptcy Act or any law of Canada or any Province thereof relating to bankruptcy or insolvency or shall consent to the filing of any such application or petition or shall consent to the appointment of a receiver, or if a receiver, interim receiver, trustee or liquidator of property shall be appointed or applied for by it or if a judgment, decree or order shall be entered by a court of competent jurisdiction adjudging it bankrupt or insolvent or subject to the provisions of the Bankruptcy Act or determining that proceedings for reorganization, arrangements, adjustment, composition, liquidation, dissolution or winding up or any similar relief under the Bankruptcy Act or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Tenant, rent for the then current month together with rent for the three (3) months next ensuing after the then current month shall immediately become due and payable and this lease shall at the option of the Landlord immediately become terminated. Provided, however, that such termination shall be entirely without prejudice to the rights of the Landlord to recover arrears of rent or damages for any antecedent breach of covenant on the part of the Tenant and provided further that notwithstanding any such termination, the Landlord may subsequently recover from the Tenant all costs and damages suffered by reason of the lease having been prematurely determined.

ARTICLE XIIMONTHLY TENANCY

12.01 If, upon the termination of this lease or any extension thereof, by the passage of time, the Landlord permits the Tenant to remain in possession of the said Lands and accepts

rent in respect thereof, a tenancy from year to year or otherwise shall not be created by implication of law, and the Tenant shall be deemed to be a monthly tenant only, at the then current rent on the terms and conditions herein contained.

#### ARTICLE XIII

##### EXPROPRIATION

13.01 It is agreed that, if the whole of the Lands and buildings thereon shall at any time be expropriated by any competent authority, the entire compensation or damages which may be awarded for such taking shall be apportioned between the Landlord and the Tenant, and, if they cannot agree upon such apportionment, by arbitration as hereinafter provided in Article 14 hereof. It is further agreed that, if a part only of the Lands and/or buildings thereon shall be expropriated, the rights, duties and obligations of the Landlord and Tenant shall be determined, if they cannot agree by arbitration as hereinafter provided, taking into consideration the quantity and value of the Land and/or buildings taken, the extent of the injury thereby caused to the buildings, the cost of restoring the buildings and the value of the buildings if restored, the period of the unexpired term of the lease and all other facts and circumstances which the arbitrators shall deem material, including full power and authority to determine, along with other things as they deem just and equitable, any one or more of the following matters: that the whole or any part of the compensation or damages which may be awarded for such partial taking shall be applied to the restoration of the buildings which may be upon the Lands at the time of the taking; that such compensation or damages shall be apportioned between the Landlord and the Tenant or be paid to either one of them; that the whole or any part of the rent shall be abated from the time of the taking henceforth or for any less time; that the lease shall be otherwise modified; or that the lease shall determine - and to award and direct specific performance of any one or more of the said or any other matters which they shall determine, to the end that the rights, duties and obligations of the parties shall be fully, justly, equitably and finally determined upon all the facts and circumstances as they shall then exist. For the purposes of this paragraph and any arbitration arising therefrom as hereinbefore provided, the whole of the Lands shall be deemed to be the property of the Landlord, provided that the value attributed to the Lands is no less than

the value required to support the minimum annual rental currently payable by the Tenant for the Lands at that time, and the interest of the Tenant shall be deemed to be the leasehold interest thereof for the remainder of the term herein granted together with any building or buildings or improvements which form part of the said leasehold interest.

ARTICLE XIV

ARBITRATION

14.01 All arbitration proceedings specified in this lease as available to the parties in the event of any dispute shall, subject to the terms of this lease, be deemed to be available only as between the Landlord and the Tenant and shall be commenced and carried out as follows:

- (a) Arbitration proceedings shall be commenced by either party as aforesaid giving notice to the other party of its desire to submit the matters in difference to arbitration, at which time the party giving notice of arbitration shall give the name of the arbitrator who is its nominee. Within fifteen (15) days of the receipt of such notice, the other party shall give notice of the name of its arbitrator to the party desiring such arbitration. If either party fails to appoint an arbitrator and to notify the other party of such appointment, the party who has appointed the arbitrator may apply to a Judge of the Supreme Court of the Province of Ontario to appoint an arbitrator to be the representative of the other party. The two arbitrators so appointed shall, within fifteen (15) days of their appointments, appoint a third arbitrator, and if they fail to agree on such appointment within such period, the third arbitrator shall be appointed by a Judge of the Supreme Court of the Province of Ontario on application of either party;
- (b) The three (3) arbitrators appointed as aforesaid shall forthwith proceed to arbitrate the dispute between the parties and they shall within thirty (30) days or so soon thereafter as may be practicable, render their decision in writing; provided that any decision or decisions shall be final and binding and there shall be

no appeal therefrom. The decision of the majority of the arbitrators so appointed shall prevail in all matters;

- (c) In the event of the death, resignation, incapacity, neglect or refusal to act of any arbitrator appointed under these provisions and if such neglect or refusal continues for a period of seven (7) days after notice thereof has been given by either party, another arbitrator shall be appointed to replace such arbitrator by the party whose representative he was, or by the two arbitrators if he was appointed as the third arbitrator; and failing the making of such appointment, the vacancy shall be filled by a Judge of the Supreme Court of the Province of Ontario upon application by either party;
- (d) The cost of the arbitration shall be apportioned between the parties or against either of them as the arbitrators may decide;
- (e) Only those matters specifically referred to as being subject to arbitration shall be the proper subject of any arbitration proceedings and without limiting the generality of the foregoing, including the following:
- (i) Expropriation pursuant to Article 13;
  - (ii) Disputes respecting Peel-off leases pursuant to Article 8.
- (f) Nothing in this Article shall be deemed to relieve the Tenant of its obligations to pay the rent or other charges as hereinbefore reserved on the days hereinbefore specified.

#### ARTICLE XV

##### RIGHTS OF FIRST REFUSAL

15.01 The Landlord covenants with the Tenant and the Master Lands Landlord, that, if during the term of this lease the Landlord should receive a bona fide offer to purchase the Lands which the Landlord desires to accept, the Landlord shall upon receipt of such offer to purchase inform the Tenant and Master Lands Landlord in writing of receipt of such offer and shall



forward a copy thereof to the Tenant and Master Lands Landlord. The Tenant and Master Lands Landlord shall separately thereupon have the right and option to purchase the Lands upon the same terms and conditions as may be contained in the said offer save and except if the Landlord is prohibited by statute from selling the Lands to anyone other than the person who made such offer; provided, however, that such right must be exercised within seven (7) days of the delivery of the said notice and copy of offer by delivery to the Landlord of an offer and deposit (if applicable) within the said time and upon the said terms and conditions. Failing exercise of the said right and option within the time as aforesaid, the Landlord shall be at liberty to sell the Lands to a third party under the terms contained in the said offer and this right and option shall be null and void thereafter if the Lands are so sold. If both the Master Lands Landlord and Tenant exercise such right then the right of the Master Lands Landlord shall have priority to the rights of the Tenant and the Master Lands Landlord covenants with the Tenant to complete the transaction should the Master Lands Landlord exercise the rights granted to it in this Article 15.01.

15.02 If the Master Lands Landlord shall sell the Master Lands to the Tenant in a bona fide sale at fair market value and upon reasonable terms then the Tenant shall contemporaneously with the execution of the agreement of purchase of the Master Lands have the right to purchase the Lands upon the same terms and conditions as the Master Lands except for price which shall be pro rated on an acreage basis. Such right must be exercised not later than seven (7) days after the completion of the closing of the sale of the Master Lands and must be completed within sixty (60) days after notice is given by the Tenant to the Landlord. Failing exercise of the right and option within the time as aforesaid this right shall be null and void. The foregoing clause is subject to the necessary approval under The Municipal Act at the time the rights contained therein are exercised.

## ARTICLE XVI

### DAMAGE DURING LAST TEN YEARS OF TERM

16.01 Notwithstanding anything contained in Article VI, if during the last ten (10) years of the term hereof, any building or buildings standing upon the Lands or the Master Lands are damaged

or destroyed by fire or other casualty and if such damage or destruction cannot be repaired or rebuilt or such building or buildings made fit for the purposes of the Tenant or sub-tenants thereof within one hundred and eighty (180) days of such damage or destruction, then the Tenant may within sixty (60) days of the date of such damage or destruction by notice in writing to the Landlord, elect not to repair or restore the building or buildings, and provided that the said building or buildings have been or may be severed from the remainder of the lands (at the cost of the Tenant) then and in such event from and after the date of the giving of such notice, the Tenant shall not be liable for the payment of rental on the Lands. In addition, the Tenant shall remove the buildings from the Lands and the term hereof in respect thereto shall then become ended and determined, and it shall be lawful for the Landlord thereupon and without demand to enter into possession of the relevant premises in the same manner as is provided for at the expiration of the full term hereof. In the event of any dispute as to whether there is a destruction of the buildings pursuant to this Article XVI, such dispute shall be resolved by arbitration pursuant to Article XIV hereof.

#### ARTICLE XVII

##### RIGHTS OF MASTER LANDS LANDLORD

17.01 Subject to the condition in the following sentence, the Landlord agrees with the Master Lands Landlord and any purchaser or mortgagee of the interest of the Master Lands Landlord that if during the term of this Lease, this lease is terminated for any reason other than the breach of a covenant to be observed or performed by the Master Lands Landlord, the Landlord will accept the Master Lands Landlord as tenant of the Landlord upon the terms of this Lease subject to the Master Lands Landlord curing the default of the Tenant and thereafter this Lease will have the same effect as though it had been made by the Landlord as landlord and the Master Lands Landlord as tenant. The condition referred to in the preceding sentence is that the Master Lands Landlord or any purchaser or mortgagee of the interest of the Master Lands Landlord will have agreed with Hudson's Bay Company Developments Limited under its sublease of the Lands made by the Tenant (as landlord) that the sublease, amended where necessary so that its terms are the same as the terms of this lease, will have the same effect as though it had been between the Master Lands Landlord as the sublandlord and Hudson's Bay Company Developments Limited as the subtenant; and failing compliance with this condition, Article 8.03(a) will apply.

Upon the Master Lands Landlord curing such default, the parties shall enter a new lease upon the terms and conditions herein contained mutatis mutandis.

17.02 The Master Lands Landlord as owner of the fee simple estate in the Master Lands consents to this Lease of the Lands by the Landlord to the Tenant.

17.03 The Tenant agrees with the Master Lands Landlord that default under this Lease by it shall mean default under the Master Lease unless and until the default is cured in accordance with the curative provisions contained in the within Lease.

#### ARTICLE XVIII

##### PLANNING ACT

18.01 The within lease is subject to compliance with Section 29 of The Planning Act.

#### ARTICLE XIX

##### NET LEASE

19.01 It is the intention of the parties hereto that this shall be a net lease and the rental provided to be paid to the Landlord hereunder shall be net to the Landlord and, save as herein specifically provided, shall yield to the Landlord the entire rental herein specified during the full term of this lease and that all costs, expenses and obligations of every kind and nature whatsoever relating to the said Lands and the improvements shall be paid by the Tenant, provided that this clause shall not be construed so as to obligate the Tenant to pay any charges or taxes personal to the Landlord such as succession duties, estate taxes, corporation taxes, income taxes, or any other taxes upon the income derived by the Landlord from the said Lands.

#### ARTICLE XX

##### AMENDMENTS

20.01 This Indenture shall not be modified or amended except by an instrument in writing of equal formality herewith and signed by the parties hereto or by their successors or assigns.

ARTICLE XXINOTICE

21.01 Any notice, demand or request to be given pursuant to this lease shall be sufficiently given, only if in writing, and served personally, or sent by prepaid registered mail, addressed in the case of the Master Lands Landlord to it at 360 Bloor Street West, Suite 510, Toronto, Ontario, with a copy to Minden, Gross, Grafstein & Greenstein, at 111 Richmond Street West, Toronto, Ontario, and addressed in the case of the Landlord to it at: 550 Burnhamthorpe Road, Etobicoke, Ontario, M9C 2Y2; Attention: The Clerk; and to the Tenant at: c/o Imbrook Properties Limited, Suite 500, 330 Bay Street, Toronto, Ontario. M5H 2S8; with a copy to: Rockford Developments Limited, 215 Carlingview Drive, Unit #211, Rexdale, Ontario. M9W 5E8; unless either party gives notice to the other of a change of address by registered mail. Provided postal service is being maintained in the Municipality of Metropolitan Toronto, notices, demands and requests which are sent by prepaid registered post in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereof on the second (2nd) mail delivery day next following the date of mailing.

ARTICLE XXIIREPRESENTATIONS AND WARRANTIES

22.01 The terms of this lease express and constitute the entire agreement between the parties, and there are no representations, warranties, collateral agreements, or conditions affecting this lease except as expressed herein.

ARTICLE XXIIITIME

23.01 Time shall in all respects be of the essence of this lease.



ARTICLE XXIVCERTIFICATES

24.01 The Tenant agrees that it will at any time and from time to time upon not less than five (5) days' notice execute and deliver to the Landlord a statement in writing certifying that this lease is unmodified and in full force and effect (or if modified, stating the modifications and that the same is in full force and effect as modified), the amount of the annual rental then being paid hereunder, the dates to which the same and other charges hereunder have been paid and whether or not there is any existing default on the part of the Landlord of which the Tenant has notice.

The Landlord agrees that it will at any time and from time to time upon not less than five (5) days' prior notice execute and deliver to the Tenant a similar statement stating in addition as to whether or not there is any existing default on the part of the Tenant of which the Landlord has notice, the particulars and amount of insurance policies in which its interest is noted and the amount of the annual rental then being paid hereunder, the dates to which rent and other charges hereunder have been paid and the amount of arrears or other charges in arrears, if any.

And it is hereby agreed that any such statement delivered pursuant to the provisions of this Article may be conclusively relied upon by any purchaser or any mortgagee of the fee of the leasehold or any sublessee, save as to any default on the part of the Landlord or the Tenant of which the party giving such statement does not have notice at the date thereof.

ARTICLE XXVNO PARTNERSHIP

25.01 It is understood and agreed that neither the provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship other than that of landlord and tenant.

ARTICLE XXVIINTERPRETATION

26.01(a) This lease shall be read with all changes of number and gender as the context may require.

(b) This lease shall be interpreted in accordance with the laws of the Province of Ontario.

(c) The headings introducing the articles are for convenience of reference only and shall in no way affect the interpretation of this lease.

(d) This lease shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals, the corporate party affixing its corporate seal duly attested by the hand of its proper signing officer, in that behalf.

SIGNED, SEALED AND DELIVERED

In The Presence Of:

THE CORPORATION OF THE BOROUGH OF ETOBICOKE

per: *Thomas J. ...*  
MAYOR

*R. E. ...*  
CLERK

*Betty Murphy*  
As to the signature of SAMUEL BLACK

*Samuel Black*  
Samuel Black

*Betty Murphy*  
As to the signature of JOSEPH BLACK

*Joseph Black*  
Joseph Black

*Betty Murphy*  
As to the signature of Norman Black

*Norman Black*  
Norman Black

*Beatrice Wintrob*  
As to the signature of Beatrice Wintrob

*Beatrice Wintrob*  
Beatrice Wintrob

ROCKFORD DEVELOPMENTS LIMITED

per: *[Signature]* <sup>Per</sup>  
c/s

IMBROOK PROPERTIES LIMITED

per: *B. E. ...*  
VICE-PRESIDENT: FINANCE / c/s  
*[Signature]*  
PRESIDENT

SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land situate, lying and being in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, Province of Ontario, and being composed of that part of Lot 21, Concession 3 fronting the Humber River, shown designated as Parts 1 and 2 on a plan of survey of record deposited in the Land Registry Office for the Registry Division of Toronto Boroughs and York South (No. 64) as Plan 64R-8647 and containing therein 1.780 Acres.

SCHEDULE "B"

PLAN OF SURVEY OF  
PART OF LOTS 20 & 21, CONCESSION 3, FRONTING THE HUMBER RIVER  
AND PART OF ROAD ALLOWANCE BETWEEN CONCESSIONS 2 AND 3  
BOROUGH OF ETOBICOKE  
MUNICIPALITY OF METROPOLITAN TORONTO

SCALE 1" = 200'  
STANDARD METRE 3.15  
1985

APPROVED BY PLAN 4986

APPROVED BY PLAN 5205

MURTON

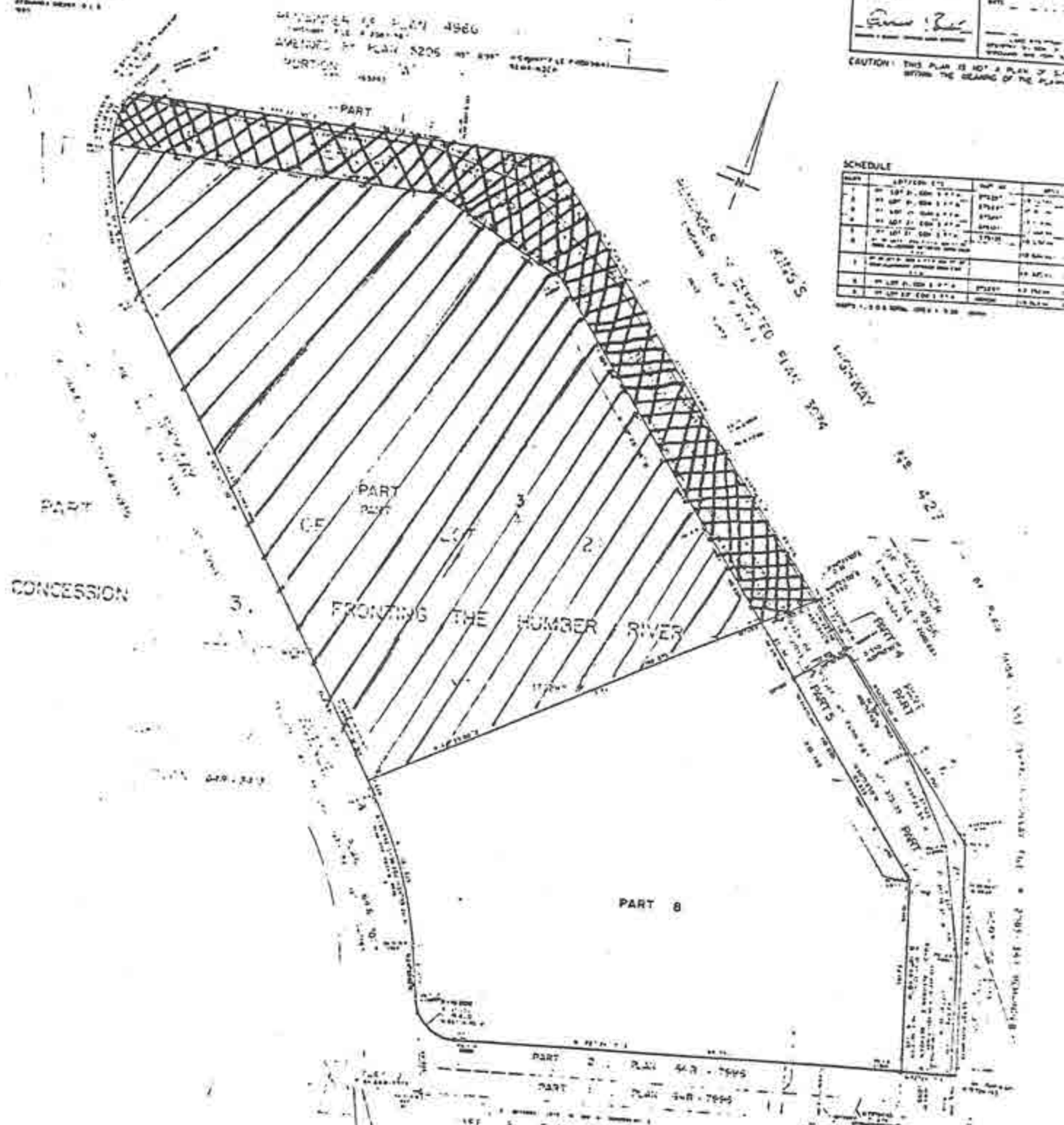
METRIC MEASUREMENTS SHOWN ON THIS PLAN  
SHOULD BE METRIC AND MAY BE CONVERTED  
TO FEET BY DIVIDING BY 0.3048

PLAN 640  
APPROVED BY PLAN 640  
APPROVED BY PLAN 640  
APPROVED BY PLAN 640

CAUTION: THIS PLAN IS NOT A PLAN OF RECORD  
UNTIL THE DEPOSIT OF THE PLAN

SCHEDULE

NO.	DESCRIPTION	DATE	BY
1	APPROVED BY PLAN 4986	1986	MURTON
2	APPROVED BY PLAN 5205	1986	MURTON
3	APPROVED BY PLAN 640	1986	MURTON
4	APPROVED BY PLAN 640	1986	MURTON
5	APPROVED BY PLAN 640	1986	MURTON
6	APPROVED BY PLAN 640	1986	MURTON
7	APPROVED BY PLAN 640	1986	MURTON
8	APPROVED BY PLAN 640	1986	MURTON
9	APPROVED BY PLAN 640	1986	MURTON
10	APPROVED BY PLAN 640	1986	MURTON



- NOTES
1. THE DISTANCE SHOWN IS A FRACTION OF THE DISTANCE...
  2. THE DISTANCE SHOWN IS A FRACTION OF THE DISTANCE...
  3. THE DISTANCE SHOWN IS A FRACTION OF THE DISTANCE...
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  8. THE DISTANCE SHOWN IS A FRACTION OF THE DISTANCE...
  9. THE DISTANCE SHOWN IS A FRACTION OF THE DISTANCE...
  10. THE DISTANCE SHOWN IS A FRACTION OF THE DISTANCE...

LOT 20, CONCESSION 3  
FRONTING THE HUMBER RIVER

SURVEYOR'S CERTIFICATE

I, the Surveyor, have examined the plan and the field notes and the measurements made thereon and certify that the same are correct and true to the best of my knowledge and belief.

Dated this 31st day of July 1986

Anton Kixas Limited  
Surveyors & Engineers  
1000 Sheppard Avenue East, Toronto, Ontario M2P 1L7



*Betty H. Murphy*  
 of the City of Toronto

I, *Betty H. Murphy*  
 of the City of Toronto  
 in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed at the City of Toronto by SAMUEL BLACK

\*See footnote

\*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto,  
 in the Municipality of Metropolitan Toronto

*Betty H. Murphy*  
 \_\_\_\_\_

this *17<sup>th</sup>* day of *October* 19 *80*.

*Peggy Lee Bremner*  
 \_\_\_\_\_

PEGGY LEE BREMNER, a Commissioner,  
 etc., Province of Ontario, for Minden, Gross,  
 Gralstein & Green, Barristers  
 & Solicitors. Expires May 3rd, 1981.

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

MARCH, 1978

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I/WE SAMUEL BLACK  
 of the City of Toronto  
 in the Municipality of Metropolitan Toronto

\* If attorney see footnote

make oath and say: When I executed the attached instrument,

I/WE was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978:—

Strike out inapplicable clauses.

a) I was not a spouse.

~~b) I was at least eighteen years old.~~

~~c) I was not a spouse.~~

~~d) I was at least eighteen years old.~~

\*\*Not a Matrimonial Home, etc. see footnote.

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

Resident of Canada, etc.

~~SWORN~~ SWORN before me at the City of Toronto, in the Municipality of Metropolitan Toronto

*Samuel B. Black*  
 \_\_\_\_\_  
 SAMUEL BLACK

this *17* day of *Oct.* 19 *80*.

PEGGY LEE BREMNER, a Commissioner,  
 etc., Province of Ontario, for Minden, Gross,  
 Gralstein & Green, Barristers  
 & Solicitors. Expires May 3rd, 1981.  
 A COMMISSIONER FOR AFFIDAVITS, ETC.

\* Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".

\*\* Where spouse does not join in or consent, see Section 12(3) of The Family Law Reform Act, 1978 (or complete separate affidavit).

AFFIDAVIT OF SUBSCRIBING WITNESS

I, Betty Murphy  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the City of Toronto by JOSEPH BLACK

\*See footnote

\*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto  
this 17th day of October 19 80.

Betty Murphy

fbm

PEGGY LEE BREMNER, a Commissioner,  
for the Province of Ontario, for Minden, Gross,  
Graustein & Crawford, Barristers  
& Solicitors, Expires May 2nd, 1981.

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for first clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

MARCH, 1978

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

I/W/E: JOSEPH BLACK  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

\* If attorney see footnote

make oath and say: When I executed the attached instrument,

I/W/E was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978:—

Strike out inapplicable clauses.

a) I was not a spouse.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~OX~~

~~XXXXXXXXXXXX~~

\*\*Not a Matrimonial Home, etc. see footnote.

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

Resident of Canada, etc.

~~XXXXXXXXXX~~ SWORN before me at the City of Toronto, in the Municipality of Metropolitan Toronto  
this 17 day of Oct 19 80.

Joseph Black  
JOSEPH BLACK

fbm

PEGGY LEE BREMNER, a Commissioner,  
for the Province of Ontario, for Minden, Gross,  
Graustein & Crawford, Barristers  
& Solicitors, Expires May 2nd, 1981.

\* Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she



Betty Murphy

of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the City of Toronto by NORMAN BLACK

I verily believe that each person whose signature I witnessed is the party of the same name referred  
to in the instrument.

SWORN before me at the City of Toronto,  
in the Municipality of Metropolitan Toronto

this 17 day of October 1980.

Betty Murphy

PEGGY LEE BREMNER, a Commissioner,  
of the Province of Ontario, for Minden, Gross,  
Graham, Greenstein, Barristers,  
& Solicitors. Expires May 3rd, 1981.  
I.F. 1-10204-8 AFFIDAVITS, ETC.

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add  
"after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney  
insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose  
signature I witnessed was authorized to execute the instrument as attorney for (name)".

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

MARCH, 1978

I/WE NORMAN BLACK  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

make oath and say: When I executed the attached instrument,

\* If attorney see footnote

I/WE was at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978.---

a) I was not a spouse.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXXXXXX~~

~~QX~~

Strike out inapplicable clauses.

\*\*Not a Matrimonial Home, etc. see footnote.

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

Resident of Canada, etc.

~~XXXXXXXXXX~~ SWORN before me at the City of Toronto, in the Municipality of Metropolitan Toronto  
this 17 day of Oct 1980.

NORMAN BLACK

PEGGY LEE BREMNER, a Commissioner,  
of the Province of Ontario, for Minden, Gross,  
Graham, Greenstein, Barristers,  
& Solicitors. Expires May 3rd, 1981.  
I.F. 1-10204-8 AFFIDAVITS, ETC.

\* Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".  
\*\* Where spouse does not join in or consent, see Section 12(3) of The Family Law Reform Act, 1978 (or complete separate affidavit).

AFFIDAVIT OF SUBSCRIBING WITNESS

I, **JACK FRIEBERG**  
of the **City of Toronto**  
in the **Municipality of Metropolitan Toronto**

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at the **City of Toronto** by **LOUIS FRIEBERG and GERDA FRIEBERG**

\*See footnote

\*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the **City of Toronto**, in  
the **Municipality of Metropolitan Toronto**

this **14** day of **OCT** 19 **80**.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

MARCH, 1978

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

**X/WE** **LOUIS FRIEBERG and GERDA FRIEBERG**  
of the **City of Toronto**  
in the **Municipality of Metropolitan Toronto**

\* If attorney see footnote

make oath and say: When **we** executed the attached instrument,

**X/WE** were at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978.—

Strike out inapplicable clauses.

~~XX~~

b) We were spouses of one another.

~~X~~

~~XXXXXXXXXXXX~~

\*\*Not a Matrimonial Home, etc. see footnote.

The lands herein do not constitute family assets as defined by The Family Law Reform Act, 1978, as more particularly defined in Section 3(b) of that Act.

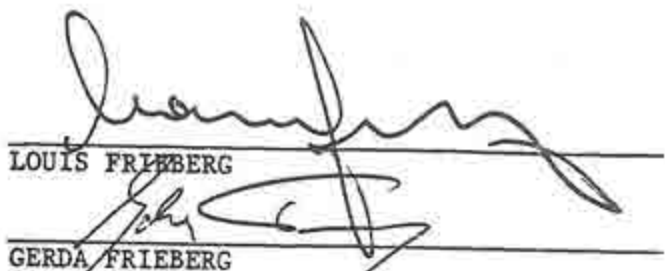
Resident of Canada, etc.

(SEVERALLY) SWORN before me at the **City of Toronto**, in the **Municipality of Metropolitan Toronto**

this **14** day of **OCT** 19 **80**.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



**LOUIS FRIEBERG**

**GERDA FRIEBERG**

\*Where affidavit made by attorney substitute: "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".

\*\*Where spouse does not join in or consent, see Section 12(3) of The Family Law Reform Act, 1978 (or complete separate affidavit).



# THE LAND TRANSFER TAX ACT, 1974 AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

39

IN THE MATTER OF a Lease OF (insert brief description of land) Part of Lot 21, Concession 3  
fronting the Humber River, in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, designated as PARTS 1 and 2, Reference Plan 64R-8647  
BY (print names of all transferors in full) THE CORPORATION OF THE BOROUGH OF ETOBICOKE

TO (see instruction 1 and print names of all transferees in full) ROCKFORD DEVELOPMENTS LIMITED and IMBROOK PROPERTIES LIMITED

1. (see instruction 2 and print name(s) in full) GERALD M. TAUB, of the City of Toronto, in the Municipality of Metropolitan Toronto

### MAKE OATH AND SAY THAT:

I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s)): (see instruction 2)

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A ~~trustee~~ Tenant named in the above-described Lease;
- (d) The authorized agent or solicitor acting in this transaction for ROCKFORD DEVELOPMENTS LIMITED and IMBROOK PROPERTIES LIMITED (insert name(s) of principal(s) described in paragraph(s) ~~XXXXXX~~ (c) above; (strike out references to inapplicable paragraphs))
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for (insert name(s) of corporation(s) described in paragraph(s) (a), (b), (c) above; (strike out references to inapplicable paragraphs))
- (f) A transferee described in paragraph ( ) (insert only one of paragraph (a), (b) or (c) above, as applicable) and am making this affidavit on my own behalf and on behalf of (insert name of spouse) who is my spouse described in paragraph ( ); (insert only one of paragraph (a), (b) or (c) above, as applicable)

and as such, I have personal knowledge of the facts herein deposed to.  
I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. (see instruction 3)

The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. (see instruction 4) None

### THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

(a) Monies paid or to be paid in cash	\$	<u>NIL</u>	
(b) Mortgages (i) Assumed (show principal and interest to be credited against purchase price)	\$	<u>NIL</u>	
(b) (ii) Given back to vendor	\$	<u>NIL</u>	
(c) Property transferred in exchange (detail below)	\$	<u>NIL</u>	
(d) Securities transferred to the value of (detail below)	\$	<u>NIL</u>	
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	\$	<u>NIL</u>	
(f) Other valuable consideration subject to land transfer tax (detail below)	\$	<u>NIL</u>	
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX (total of (a) to (f))	\$	<u>NIL</u>	\$ <u>178,000</u>
(h) VALUE OF ALL CHATTELS — items of tangible personal property (Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c. 415, as amended.)	\$	<u>NIL</u>	\$ <u>NIL</u>
(i) Other consideration for transaction not included in (g) or (h) above	\$	<u>NIL</u>	\$ <u>NIL</u>
(j) TOTAL CONSIDERATION	\$	<u>NIL</u>	\$ <u>NIL 178,000</u>

ALL BLANKS MUST BE FILLED IN. INSERT "NIL" WHERE APPLICABLE.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. (see instruction 5)  
Not Applicable

6. Other remarks and explanations, if necessary The document intended for registration is a Lease of the lands herein described. The lands being leased has an agreed to value between the Landlord and Tenants of \$178,000.00.

SWORN before me at the City of Toronto  
in the Municipality of Metropolitan Toronto  
this 29th day of October, 1980.

A Commissioner for taking Affidavits, etc. RONALD CHARLES PANCER, a Commissioner for taking Affidavits, Province of Ontario, for Robins and Partners, Barristers & Solicitors, Student-At-Law.  
GERALD M. TAUB (signature(s))

### PROPERTY INFORMATION RECORD

- A. Describe nature of instrument LEASE
- B. (i) Address of property being conveyed (if available) not available
- (ii) Assessment Roll # (if available) not available
- C. Mailing address(es) for future Notices of Assessment under The Assessment Act for property being conveyed (see instruction 6)
- D. (i) Registration number for last conveyance of property being conveyed (if available) not available
- (ii) Legal description of property conveyed: Same as in D.(i) above. Yes  No  Not Known
- E. Name(s) and address(es) of each transferee's solicitor ROBINS, T. PARTNERS, 100 WELLS ST. W., SUITE 2500, TORONTO, ONT. M5H 2A2

For Land Registry Office use only	
REGISTRATION NO.	
LAND REGISTRY OFFICE NO.	
REGISTRATION DATE	

529855

529355

DATED: \_\_\_\_\_ day of \_\_\_\_\_ 1980.

*15*

BETWEEN:

THE CORPORATION OF THE BOROUGH OF ETOBICOKE  
-- and -- 1244

ROCKFORD DEVELOPMENTS LIMITED and  
IMBROOK PROPERTIES LIMITED

-- and --

SAMUEL BLACK  
JOSEPH BLACK  
NORMAN BLACK  
BEATRICE WINTROB

178,000<sup>00</sup>

LEASE

21-001 B 11

*1812*

MESSRS. ROBINS AND PARTNERS  
Barristers and Solicitor  
130 Adelaide Street West, Suite 2500  
Toronto, Ontario

PROPERTY OF 1155H 2M2

REGISTERED OFFICE

57428

REGISTRY DIVISION OF  
ONTARIO DECEASES (No. 64)

CERTIFY THAT THIS INSTRUMENT  
IS REGISTERED AS OF

3:31 P.M. OCT 30 1980

IN THE

and  
Registry Office  
Toronto,  
Ontario  
*[Signature]*  
LAND REGISTRAR

*21 1003*

*[Signature]*

This is Exhibit "D" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in cursive script, appearing to read "Stephen Gaudreau".

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**



LAND  
REGISTRY  
OFFICE #66

07424-0200 (LT)

PAGE 1 OF 3  
PREPARED FOR HYChan14  
ON 2020/07/29 AT 11:24:34

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT LT 21 CON 3 FTH ETOBICOKE CLOSED BY EB528845, PT 1, 2, 4, 5, 64R8647; S/T EB529811; TORONTO (ETOBICOKE) ; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:  
2004/06/21

OWNERS' NAMES  
CITY OF TORONTO

CAPACITY SHARE  
BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2004/06/18 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2004/06/21 **						
EB375135	1970/10/01	PLAN MISCELLANEOUS				C
REMARKS: PL8837						
EB412063	1973/01/29	NOTICE			DEPARTMENT OF TRANSPORT, CANADA	C
REMARKS: AIRPORT ZONING REGULATION						
64R7996	1979/10/10	PLAN REFERENCE				C
64R8647	1980/09/12	PLAN REFERENCE				C
EB528845	1980/10/02	BYLAW				C
EB529811	1980/10/30	TRANSFER EASEMENT			HIRAM WALKER-CONSUMER HOME LTD VIZ THE CONSUMERS' GAS COMPANY	C
EB529855	1980/10/30	LEASE			ROCKFORD DEVELOPMENTS LIMITED	C
EB530152	1980/11/04	AGREEMENT			BOROUGH OF ETOBICOKE	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

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OFFICE #66

07424-0200 (LT)

PAGE 2 OF 3  
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ON 2020/07/29 AT 11:24:34

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: SITE CONTROL				
EB530258	1980/11/06	LEASE			HUDSON'S BAY COMPANY DEVELOPMENTS LIMITED	C
EB537696	1981/06/08	LEASE			ROCKFORD DEVELOPMENTS LTD. IMBROOK PROPERTIES LTD.	C
		REMARKS: SKETCH ATTACHED.				
EB540360	1981/08/10	ACKNOWLEDGEMENT				C
		REMARKS: EB530258				
TB288767	1985/12/04	ASSIGNMENT LEASE			ELEF INVESTMENTS INC.	C
		REMARKS: EB529855				
TB296816	1986/01/17	ASSIGNMENT LEASE			IMBROOK PROPERTIES LTD.	C
		REMARKS: EB537696				
TB419322	1987/06/05	DEBENTURE	\$11,100,000		MIDLAND BANK CANADA	C
TB419504	1987/06/05	ASSIGNMENT GENERAL				C
		REMARKS: RENTS				
TB464831	1987/11/25	NOTICE OF LEASE			COLDWELL BANKER CANADA INC.	C
TB478544	1988/01/27	AGREEMENT			CITY OF ETOBICOKE	C
TB760210	1991/05/31	TRANSFER			VINCA ESTATES LTD. 908498 ONTARIO LTD.	C
CA339842	1995/04/05	NOTICE				C
CA387591	1996/01/23	NOTICE				C
CA387592	1996/01/23	NOTICE				C
CA387593	1996/01/23	NOTICE				C
CA387594	1996/01/23	NOTICE				C
CA387595	1996/01/23	AGREEMENT			CITY OF ETOBICOKE	C
CA662395	2000/04/28	NOTICE				C
		REMARKS: AIRPORT ZONING				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

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REGISTRY  
OFFICE #66

07424-0200 (LT)

PAGE 3 OF 3  
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ON 2020/07/29 AT 11:24:34

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT1090598	2006/03/21	NOTICE <i>REMARKS: PEARSON AIRPORT ZONING REGULATION</i>		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
AT4492754	2017/02/22	NO ASSG LESSEE INT <i>REMARKS: EB529855.</i>	\$1,611,368	IVANHOE CAMBRIDGE I INC.	NAFA PROPERTIES INC.	C
AT4492755	2017/02/22	NO ASSG LESSEE INT <i>REMARKS: EB530258. PT 1 AND 2, 64R8647</i>	\$3,494,316	IVANHOE CAMBRIDGE I INC.	NAFA PROPERTIES INC.	C
AT4492758	2017/02/22	NO CHARGE LEASE <i>REMARKS: EB529855. PTS 1 AND 2 ON 64R8647</i>	\$7,240,000	NAFA PROPERTIES INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
AT4492759	2017/02/22	NO ASSGN RENT GEN <i>REMARKS: PT 1 AND 2, 64R8647..AT4492758</i>		NAFA PROPERTIES INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
AT5261369	2019/10/11	NO CHARGE LEASE <i>REMARKS: EB529855.</i>	\$100,000,000	NAFA PROPERTIES INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

This is Exhibit "E" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

LAND  
REGISTRY  
OFFICE #66

07424-0195 (LT)

PAGE 1 OF 5  
PREPARED FOR HYChan14  
ON 2020/07/29 AT 11:25:54

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT LT 21 CON 3 FTH ETOBICOKE; PT RDAL BTN CON 2 & 3 FTH ETOBICOKE CLOSED BY EB528845, PT 3, 6, 7, 8 64R8647; S/T DEBTS IN EB373297; S/T EB529811; TORONTO (ETOBICOKE) ; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

2004/06/21

OWNERS' NAMES

REBECCA'S GIFT HOLDINGS LIMITED  
BLACK, ANNE  
BLACK, LORNE GARY  
BLACK, STEPHEN HOWARD  
BLACK, IAN NEIL  
BLACK, JOSEPH-ESTATE  
1350739 ONTARIO LIMITED

CAPACITY SHARE

TCOM 1/2  
TWW  
TWW  
TWW  
TWW  
1/6  
2/6

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2004/06/18 **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 2004/06/21 **</p>						
EB373297	1970/08/12	TRANSFER	\$2		MINDEN, BEATRICE BLACK, SAMUEL BLACK, JOSEPH BLACK, NORMAN	C
EB412063	1973/01/29	NOTICE REMARKS: AIRPORT ZONING REGULATION			DEPARTMENT OF TRANSPORT, CANADA	C
64R3413	1974/01/23	PLAN REFERENCE				C
EB434528	1974/06/05	NOTICE OF LEASE REMARKS: SKETCH ATTACHED.			ROCKFORD DEVELOPMENTS LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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OFFICE #66

07424-0195 (LT)

PAGE 2 OF 5  
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\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
64R7996	1979/10/10	PLAN REFERENCE				C
EB521973	1980/03/28	ASSIGNMENT LEASE <i>REMARKS: EB434528</i>			IMBROOK PROPERTIES LIMITED	C
64R8647	1980/09/12	PLAN REFERENCE				C
EB528844	1980/10/02	AGREEMENT			THE CORPORATION OF THE BOROUGH OF ETOBICOKE	C
EB529811	1980/10/30	TRANSFER EASEMENT			HIRAM WALKER-CONSUMER HOME LTD VIZ THE CONSUMERS' GAS COMPANY	C
EB529856	1980/10/30	NOTICE OF LEASE			ROCKFORD DEVELOPMENTS LIMITED IMBROOK PROPERTIES LIMITED	C
EB530152	1980/11/04	AGREEMENT <i>REMARKS: SITE CONTROL</i>			BOROUGH OF ETOBICOKE	C
EB530258	1980/11/06	LEASE			HUDSON'S BAY COMPANY DEVELOPMENTS LIMITED	C
EB537697	1981/06/08	LEASE			ROCKFORD DEVELOPMENTS LTD IMBROOK PROPERTIES LTD.	C
EB540360	1981/08/10	ACKNOWLEDGEMENT <i>REMARKS: EB530258</i>				C
TB288766	1985/12/04	ASSIGNMENT LEASE <i>REMARKS: EB529856</i>			ELEF INVESTMENTS INC.	C
TB291556	1985/12/17	CHARGE <i>REMARKS: LEASEHOLD AND EASEMENT RIGHTS AMENDED BY E589585</i> <i>CORRECTIONS: 'CHARGE' CHANGED FROM 'CANADA PERMANENT TRUST COMPANY' TO 'MONTREAL TRUST COMPANY OF CANADA' ON 2002/10/24 BY D. THOMPSON - LRO #66.</i>	\$166,194,000		MONTREAL TRUST COMPANY OF CANADA	C
TB296815	1986/01/17	ASSIGNMENT LEASE <i>REMARKS: MULTI</i> <i>CORRECTIONS: PARTY TO NAME CHANGED FROM IMBROOK PROPERTIES LTD. TO IMBROOK PROPERTIES LIMITED ON 2016/03/23 AT 12:36 BY LEMOINE, TRACY.</i>			IMBROOK PROPERTIES LIMITED	C
TB366644	1986/11/04	AGREEMENT			CITY OF ETOBICOKE	C
TB375487	1986/12/08	LEASE <i>REMARKS: SKETCH ATTACHED.</i> <i>CORRECTIONS: PARTY TO NAME CHANGED FROM IMBROOK PROPERTIES LTD. TO IMBROOK PROPERTIES LIMITED ON 2016/03/11 AT 14:28 BY BELOS0, PHILLIP.</i>			IMBROOK PROPERTIES LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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REGISTRY  
OFFICE #66

07424-0195 (LT)

PAGE 3 OF 5  
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ON 2020/07/29 AT 11:25:54

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
TB396460	1987/03/13	AGREEMENT			CITY OF ETOBICOKE	C
TB419322	1987/06/05	DEBENTURE	\$11,100,000		MIDLAND BANK CANADA	C
TB419504	1987/06/05	ASSIGNMENT GENERAL				C
	REMARKS: RENTS					
TB464831	1987/11/25	NOTICE OF LEASE			COLDWELL BANKER CANADA INC.	C
TB478920	1988/01/28	AGREEMENT				C
	REMARKS: LANDLORD					
TB760211	1991/05/31	TRANSFER	\$2		VINCA ESTATES LIMITED 908498 ONTARIO LIMITED	C
TB885447	1993/02/15	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
TB893345	1993/04/05	NOTICE				C
	REMARKS: CHANGE OF ADDRESS, MULTI					
TB898449	1993/05/10	NO ASSGN RENT GEN		*** COMPLETELY DELETED ***		
	REMARKS: TB885447					
	CORRECTIONS: 'INSTRUMENT TYPE' CHANGED FROM 'AGREEMENT' TO 'NO ASSGN RENT GEN' ON 2005/07/27 BY SUSY MARTINO.					
CA311546	1994/10/18	TRANSFER			REBECCA'S GIFT HOLDINGS LIMITED	C
CA339842	1995/04/05	NOTICE				C
CA342980	1995/04/28	AGREEMENT				C
CA387591	1996/01/23	NOTICE				C
CA387592	1996/01/23	NOTICE				C
CA387593	1996/01/23	NOTICE				C
CA387594	1996/01/23	NOTICE				C
CA387596	1996/01/23	AGREEMENT				C

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OFFICE #66

07424-0195 (LT)

PAGE 4 OF 5  
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\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
CA662395	2000/04/28	NOTICE REMARKS: AIRPORT ZONING				C
66R21954	2005/08/08	PLAN REFERENCE				C
AT1077427	2006/03/02	DISCH OF CHARGE REMARKS: RE: TB885447		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
AT1090598	2006/03/21	NOTICE REMARKS: PEARSON AIRPORT ZONING REGULATION		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
AT1255957	2006/09/15	TRANSMISSION-LAND		*** COMPLETELY DELETED *** BLACK, SAMUEL	GREENSTEIN, HERBERT JACK GEIST, HARVEY BLACK, SAMUEL-ESTATE	
AT1255958	2006/09/15	TRANSMISSION-LAND		BLACK, JOSEPH	BLACK, ANNE BLACK, LORNE GARY BLACK, STEPHEN HOWARD BLACK, IAN NEIL BLACK, JOSEPH-ESTATE	C
AT1255959	2006/09/15	TRANSMISSION-LAND		*** COMPLETELY DELETED *** BLACK, NORMAN	FRANKLIN, KAY LEE BLACK, THOMY SUE MEITEEN, ELIZABETH ANN BLACK GREENSTEIN, HERBERT JACK BLACK, NORMAN-ESTATE	
AT2453920	2010/07/21	TRANS PERSONAL REP	\$766,667	GREENSTEIN, HERBERT JACK GEIST, HARVEY	1350739 ONTARIO LIMITED	C
AT2472527	2010/08/11	TRANS PERSONAL REP	\$766,667	BLACK, THOMY SUE FRANKLIN, KAY LEE GREENSTEIN, HERBERT JACK MEITEEN, ELIZABETH ANN BLACK	1350739 ONTARIO LIMITED	C
AT4174167	2016/03/23	APL CH NAME INST REMARKS: TB296815.		IMBROOK PROPERTIES LIMITED	DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY	C
AT4174168	2016/03/23	APL CH NAME INST		IMBROOK PROPERTIES LIMITED	DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND  
REGISTRY  
OFFICE #66

07424-0195 (LT)

PAGE 5 OF 5  
PREPARED FOR HYChan14  
ON 2020/07/29 AT 11:25:54

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: TB375487.				
AT4492753	2017/02/22	NO ASSG LESSEE INT REMARKS: EB529856. PT 3, 64R8647	\$3,494,316	IVANHOE CAMBRIDGE I INC.	NAFA PROPERTIES INC.	C
AT4492755	2017/02/22	NO ASSG LESSEE INT REMARKS: EB530258. PT 3, 64R8647	\$3,494,316	IVANHOE CAMBRIDGE I INC.	NAFA PROPERTIES INC.	C
AT4492756	2017/02/22	NO CHARGE LEASE REMARKS: EB529856. PT 3 64R8647	\$7,240,000	NAFA PROPERTIES INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
AT4492757	2017/02/22	NO ASSGN RENT GEN REMARKS: PT 3 ON 64R8647...AT4492756		NAFA PROPERTIES INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
AT5261368	2019/10/11	NO CHARGE LEASE REMARKS: EB529856. AT4492753	\$100,000,000	NAFA PROPERTIES INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C

This is Exhibit "F" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Step Gaudreau". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

Court File No.: CV-19-00630241-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 28<sup>TH</sup>

JUSTICE McEWEN

)

DAY OF NOVEMBER, 2019

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,  
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH  
AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,  
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR  
AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA  
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z  
OO and NAFA POLSKA SP. Z OO

(the "**Applicants**")**ORDER****(Approving Conditions for Sale of Ground Leases)**

**THIS MOTION** made by the Applicants for an order approving certain conditions in respect of the listing for sale and sale of the Ground Leases (as defined in the affidavit of Doug Lawson, sworn November 27, 2019) as set out in greater detail herein, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Doug Lawson, sworn November 27, 2019 and the Exhibits thereto (the "**Lawson Affidavit**"), the Second Report of Deloitte Restructuring Inc., in its capacity as monitor for the Applicants (in such capacity, the "**Monitor**") and on hearing the submissions of counsel for the Applicants, counsel to the Monitor, counsel to Business Development Bank of Canada ("**BDC**"), as lender with first-ranking security over the Ground Leases, counsel to the Canadian Imperial Bank of Commerce, as agent (in such capacity, the "**Agent**") for the lenders party to the Fourth and Restated Credit Agreement dated as of September 27, 2019 (as may be amended or amended and restated, the "**Credit Agreement**")

from time to time (the “**Lenders**”), and all other counsel listed on the counsel slip, no one appearing for any other person on the Service List, although properly served as appears on the Affidavit of Service of Jessica Wuthmann, sworn November 27, 2019, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that terms not otherwise defined in this Order shall have the meaning set out in the Initial Order of the Honourable Justice McEwen, dated October 31, 2019 (as amended and restated) (the “**Initial Order**”).

### **TERMINATION OF GROUND LEASES**

3. **THIS COURT ORDERS** that North American Fur Auctions Inc. (“**NAFA**”) shall provide sixty (60) days advance notice to NAFA Properties Inc. (“**LeaseCo**”), BDC and the Agent of its intention to terminate its tenancy at the Skyway Property (as defined in the Lawson Affidavit).

### **SALES PROCESS FOR THE GROUND LEASES**

4. **THIS COURT ORDERS** that LeaseCo is hereby authorized and directed to:
- (a) Enter into a listing agreement for the sale of the Ground Leases as soon as reasonably practicable, in form and substance satisfactory to the Monitor and BDC, in consultation with the Agent;
  - (b) Determine an appropriate marketing and sales strategy in respect of the Ground Leases in consultation with the Monitor, BDC and the Agent and prior to taking any material steps relating to the Ground Leases, obtain the consent of BDC, in consultation with the Agent, or further Order of the Court;

- (c) Provide at least bi-weekly updates to BDC and the Agent on the status of the sale of the Ground Leases and advise BDC and the Agent immediately of any material developments with respect thereto;
- (d) Provide information as soon as reasonably practicable relating to the Ground Leases that is reasonably requested by BDC or the Agent; and
- (e) In the event that there is an offer to purchase one or more of the Ground Leases which is acceptable to the Applicants, the Monitor and BDC, bring a motion before the Court for an order approving such offer as soon as reasonably practicable.

#### **GROUND LEASE PAYMENTS**

5. **THIS COURT ORDERS** that, until the earlier of (i) the expiration of the Notice Period, (ii) the sale of the Ground Leases, or (iii) further Order of the Court, the Applicants are hereby authorized and directed to continue making any and all payments relating to the Ground Leases due and owing in the ordinary course including, without limitation, any ordinary course rent payments, tax and utility payments, maintenance payments, and mortgage payments to BDC, and the Applicants and the Monitor are hereby authorized and directed to provide the Agent with particulars of any such payments.

#### **LIMITATION AS TO FEES AND CHARGES**

6. **THIS COURT ORDERS** that the security granted to BDC in respect of the Ground Leases shall rank in priority to the Charges (but only to the extent of the security held by BDC over the Ground Leases and not any other security granted to BDC), and subject to the costs incurred pursuant to paragraph 7 below which would, for greater certainty, rank in priority to the security held by BDC in respect of the Ground Leases.

7. **THIS COURT ORDERS** that only those reasonable costs directly associated with the Ground Leases and the sale of the Ground Leases including, without limitation, transaction costs, the legal fees and disbursements of counsel for the Applicants, and the fees and disbursements of

the Monitor and counsel to the Monitor (collectively, the “Costs”), shall be paid from the proceeds resulting from a sale of the Ground Leases.

8. **THIS COURT ORDERS** that the Applicants and the Monitor shall provide BDC and the Agent with a monthly accounting of the Costs incurred by the Applicants and the Monitor relating to the sale of the Ground Leases within three weeks of months’ end.

#### **PLAN OF ARRANGEMENT**

9. **THIS COURT ORDERS** that no Plan shall compromise any indebtedness or obligations owing by LeaseCo to BDC or any encumbrance or security interest securing the security granted to BDC in respect of the Ground Leases, except with respect to any shortfall incurred by BDC after its security is realized upon.

#### **ADVICE AND DIRECTIONS**

10. **THIS COURT ORDERS** that the Applicants, the Monitor, BDC and the Agent may from time to time apply to this Court for advice and directions in respect of this Order.



REGISTRE DE LA COURTE A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 28 2019

PER / PAR: 

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.ZOO and NAFA POLSKA SP. ZOO (the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
 Proceeding commenced at Toronto

**ORDER**

**BLANEY MCMURTRY LLP**  
 Barristers & Solicitors  
 2 Queen Street East, Suite 1500  
 Toronto ON M5C 3G5

**David T. Ullmann** (LSO # 423571)  
 Tel: (416) 596-4289  
 Fax: (416) 594-2437  
 Email: [DUllmann@blaney.com](mailto:DUllmann@blaney.com)

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 Tel: (416) 596-4279  
 Fax: (416) 594-2506  
 Email: [ATeodorescu@blaney.com](mailto:ATeodorescu@blaney.com)

**Jessica Wuthmann** (LSO #72442W)  
 Tel: (416) 593-3924  
 Fax: (416) 594-3595  
 Email: [JWuthmann@blaney.com](mailto:JWuthmann@blaney.com)

Counsel for the Applicants

This is Exhibit "G" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is written in a cursive style with a horizontal line at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**



# CBRE CANADA & TEAM LAFONTAINE

---





# TEAM LAFONTAINE



**JOHN LAFONTAINE\***

VICE CHAIRMAN  
LEAD STRATEGIST & NEGOTIATOR



**ERIC CHIASSON\***

Market Intelligence & Site Selection



**HEATHER DEBRUIN\***

Team Lead & Project Management



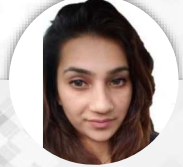
**LISA MAHARAJ\***

Transaction Management & Lease Administration



**TANYA BARNETT\***

Project Coordinator & Administration



**GHAZAL MOIN**

Marketing Assistant & Graphics Design

\*Sales Representative

## Clients Represented



HUDSON'S BAY CO.



READY FOR THE WORKDAY™



PEPSICO



LG



Sun Life Financial



LOWE'S



BOSCH



Walmart



Purolator



Roots



CATERPILLAR®



Nestle



Keurig DrPepper



Indigo



Michaels  
MAKE CREATIVITY HAPPEN



BLACK+DECKER



Ryder  
Ever better.™



ULINE®  
SHIPPING SUPPLY SPECIALISTS



MAPLE LEAF



Radial



Loblaws



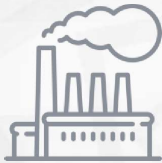
# TEAM LAFONTAINE PERFORMANCE

TOP INDUSTRIAL TEAM IN CANADA

TRANSACTIONS COMPLETED IN PAST 5 YEARS



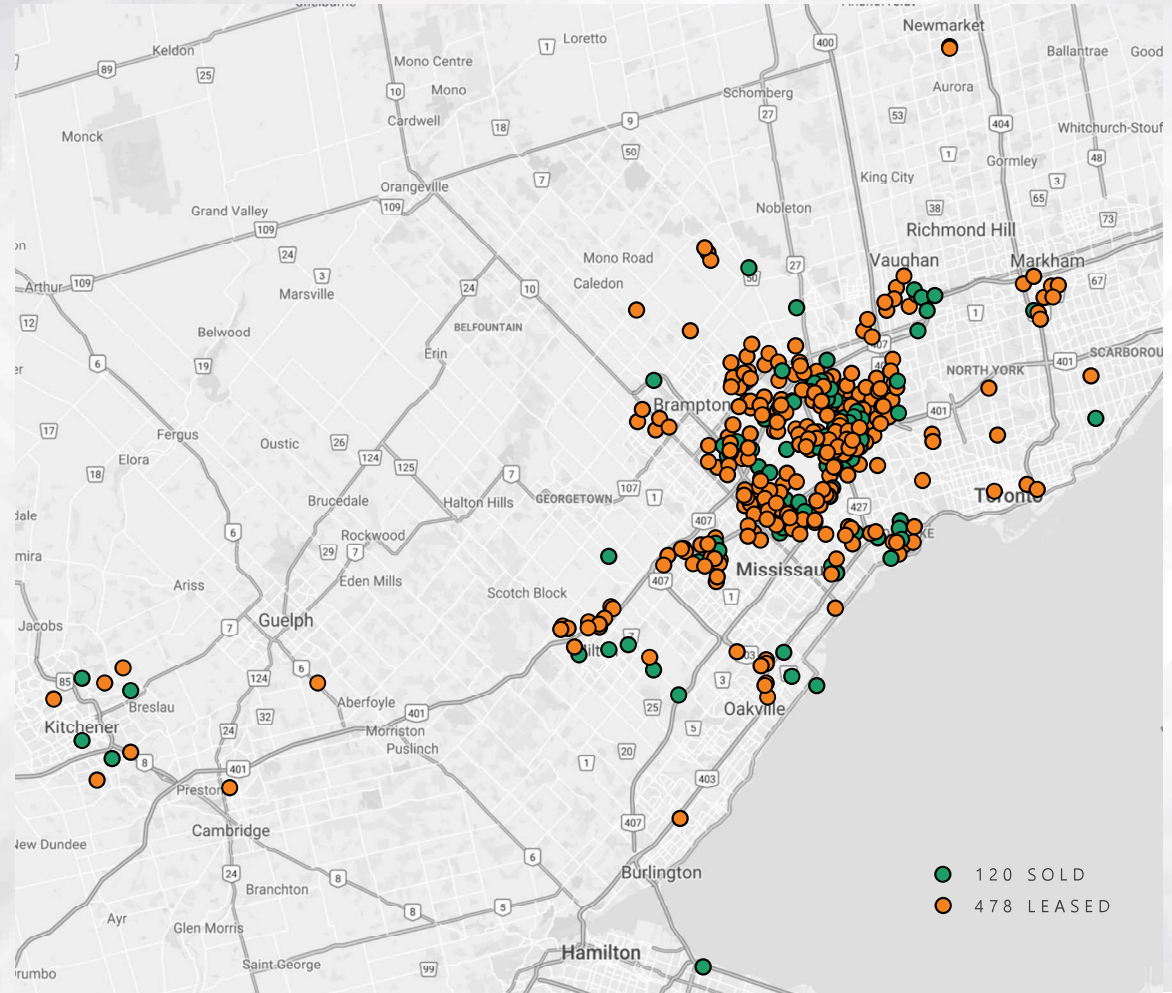
**\$1,875,797,722**  
TOTAL TRANSACTION VALUE



**36.4M Sq. Ft.**  
TOTAL TRANSACTION AREA



**598**  
OF TOTAL TRANSACTIONS



● 120 SOLD  
● 478 LEASED

CRITERIA: GTA, Industrial Buildings & Land, Sale or Lease, Past 5 Years

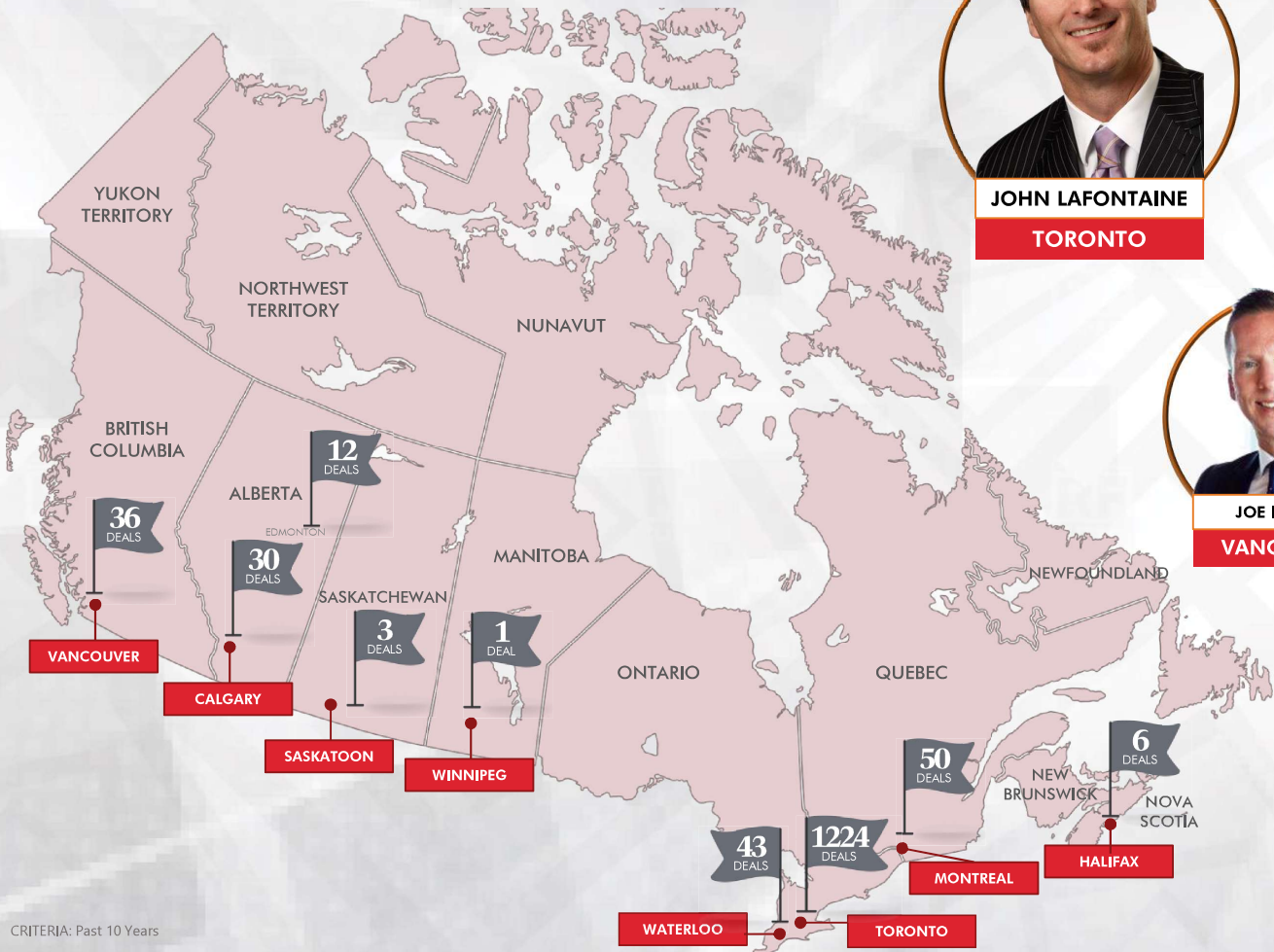
MARKET UPDATE - JANUARY 2020





OUR INDRUSTRIAL TEAM PROVIDES YOU WITH

# NATIONAL COVERAGE



**JOHN LAFONTAINE**  
TORONTO

**MITCHELL BLAINE**  
WATERLOO

**RYAN CYMET**  
MONTREAL

**JOE INKSTER**  
VANCOUVER

**IAIN FERGUSON**  
CALGARY

**RYAN BEHIE**  
WINNIPEG

**MICHAEL BRATVOLD**  
SASKATCHEWAN

**GARY MACKENZIE**  
HALIFAX

CRITERIA: Past 10 Years

MARKET UPDATE - JANUARY 2020

# CBRE CANADA AT A GLANCE



**2018**  
INVESTMENT SALES  
\$13.1B  
VALUE

975  
TRANSACTIONS

LEASING  
\$6.3B  
VALUE

4,460  
TRANSACTIONS



TOTAL TRANSACTION  
VALUE

**\$19.4B**

TOTAL TRANSACTION  
COUNT

**5,435**

**22 OFFICES**

**9 PROVINCES**

**2,275+ EMPLOYEES**

**375+ ADVISORS**

2018 CANADIAN BUSINESS ACTIVITY STATISTICS



**INDUSTRIAL & LOGISTICS**

**\$68.9B**

TOTAL TRANSACTION VALUE

**3,300**

SALE TRANSACTIONS

**12,625**

LEASING TRANSACTIONS



**OFFICE**

\$189.2B  
TOTAL TRANSACTION  
VALUE

2,500  
SALE TRANSACTIONS

34,800  
LEASING  
TRANSACTIONS



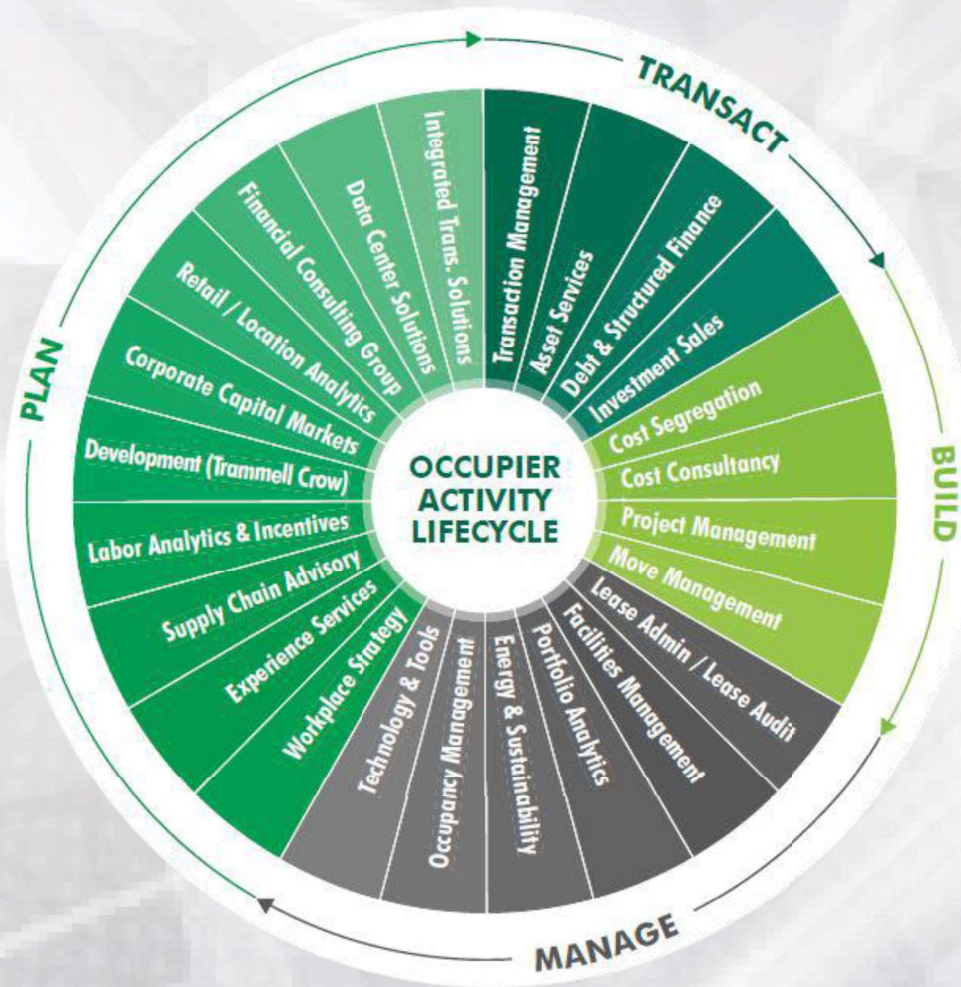
**RETAIL**

\$47.5B  
TOTAL TRANSACTION  
VALUE

2,800  
SALE TRANSACTIONS

14,700  
LEASING  
TRANSACTIONS

# CBRE SERVICES



## OUR TECHNOLOGY

We believe technology is only as effective as the quality of the data that fuels it and the expertise of the organization that leverages it. In the ever-evolving digital economy, technology is pervasive. Successfully applying it to create client value, however, is not.

Technology can not only impact real estate performance and potential, but actually drive it, by revealing dynamic insights and enabling actionable strategies.

Our technologies do just that.

Powered by the industry's best intelligence across all asset classes, coupled with our people's unrivaled global expertise, CBRE's Suite of Enablement Technologies powers superior outcomes for every client we serve.

Welcome to CBRE Vantage



This is Exhibit "H" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Step Gaudreau". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**



# Agreement of Purchase and Sale Commercial

## Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 1st day of October, 2020

**BUYER:** Niche Bakers Properties Inc, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER:** NAFA Properties Inc., the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address [REDACTED]

fronting on the ..... side of .....

in the .....

and having a frontage of ..... more or less by a depth of ..... more or less

and legally described as .....

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

**PURCHASE PRICE:** Dollars (CDN\$) [REDACTED]  
..... Dollars

**DEPOSIT:** Buyer submits .....  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)  
See schedule "C" Dollars (CDN\$) .....

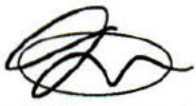
by negotiable cheque payable to.. As Per schedule "C" "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required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


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

**SCHEDULE(S) A** A2, B,C,D attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 10pm on  
(Seller/Buyer) (a.m./p.m.)  
the 1st day of October, 2020, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

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

**INITIALS OF BUYER(S):** 

**INITIALS OF SELLERS(S):** 



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

FAX No.: .....  
(For delivery of Documents to Seller)

FAX No.: .....  
(For delivery of Documents to Buyer)

Email Address: .....  
(For delivery of Documents to Seller)

Email Address: .....  
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

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

5. **FIXTURES EXCLUDED:**

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

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

7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



- 8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of....., 20....., (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (.....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
- 9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
- 10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
- 11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.
- 12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
- 13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
- 14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



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

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):

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**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) ..... (Buyer/Authorized Signing Officer) ..... **Oct 1 2020**  
(Seal) (Date)  
(Witness) ..... (Buyer/Authorized Signing Officer) ..... (Seal) (Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) ..... (Seller/Authorized Signing Officer) ..... **Oct 1/20**  
(Seal) (Date)  
(Witness) ..... (Seller/Authorized Signing Officer) ..... (Seal) (Date)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) ..... (Spouse) ..... (Seal) (Date)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at ..... this ..... day of ....., 20.....  
(a.m./p.m.)

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)		
Listing Brokerage	<b>CBRE Limited Real Estate Brokerage</b>	<b>416 7986229</b>
	<b>John Fontaine</b>	(Tel.No.)
	(Salesperson/Broker/Broker of Record Name)	
Co-op/Buyer Brokerage	<b>The Behar Group Inc.</b>	<b>\$16 5654889</b>
	<b>Jay Richmond</b>	(Tel.No.)
	(Salesperson/Broker/Broker of Record Name)	

**ACKNOWLEDGEMENT**

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

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

(Seller) ..... (Date) **Oct 1/20**  
..... (Date)  
Address for Service .....  
..... (Tel. No.)  
Seller's Lawyer .....  
Address .....  
Email .....  
..... (Tel. No.) ..... (Fax. No.)

(Buyer) ..... (Date)  
..... (Date)  
Address for Service .....  
..... (Tel. No.)  
Buyer's Lawyer .....  
Address .....  
Email .....  
..... (Tel. No.) ..... (Fax. No.)

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

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# Schedule A2

## Agreement of Purchase and Sale - Commercial

### Form 500

for use in the Province of Ontario

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

**BUYER:** ..... **Niche Bakers Properties Inc** ....., and

**SELLER:** ..... **NAFA Properties Inc.** .....

for the purchase and sale of .. [REDACTED] .....

..... dated the **1st** day of **October**, 20**20** .....

Buyer agrees to pay the balance as follows:

**Notwithstanding anything to the contrary contained in the pre-printed portion of this agreement, this agreement is subject to all terms and conditions set out in Schedule C attached hereto. To the extent that any term or condition set out in Schedule C attached hereto conflicts with or is inconsistent with any term(s) of the pre-printed portion of this agreement, then in every such case the terms of Schedule C hereto shall prevail.**

>  
> ~~The acceptance of the within agreement by the seller is subject to approval of the terms and conditions set out on Schedule C hereto by the seller's lawyer (except respecting the purchase price or the deposits), acting reasonably, on or before 5:00 p.m. (Toronto time) on Monday October 5, 2020, which such acceptance shall be delivered in writing (by email) to the buyer by such time, failing which the terms of this agreement are without legal force or effect.~~

This Agreement is conditional upon the Buyer's and Seller's respective solicitors, both acting reasonably, agreeing to the final form of Schedule "C" attached hereto (all parties agree that the amount of the purchase price and the deposits shall remain as currently drafted). Unless notice is provided to each party personally or in accordance with any other provisions for delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 5 p.m. on the 7th day of October, 2020, that this condition is fulfilled, this Agreement shall be null and void and any deposit shall be returned to the Buyer in full without deduction.

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

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**

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## Schedule C

DATED: October 7, 2020

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**NICHE BAKERS PROPERTIES INC.**

- and -

**NAFA PROPERTIES INC.**

---

**AGREEMENT OF PURCHASE AND SALE**

**LEASEHOLD INTEREST IN 65 SKYWAY AVENUE, ETOBICOKE, ONTARIO**

---

Fogler, Rubinoff LLP  
77 King Street West  
Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, Ontario M5K 1G8

**AGREEMENT OF PURCHASE AND SALE**

**LEASEHOLD INTEREST IN 65 SKYWAY AVENUE, ETOBICOKE, ONTARIO**

THIS AGREEMENT is dated as of the 7<sup>th</sup> day of October, 2020,

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

**NICHE BAKERS PROPERTIES INC.**

(the "**Purchaser**")

- and -

**NAFA PROPERTIES INC.**

(the "**Vendor**")

**WHEREAS** the Vendor is the owner of the Purchased Assets and has agreed to sell, transfer and assign the Purchased Assets to the Purchaser and the Purchaser has agreed to purchase, acquire and assume the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement;

**NOW THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**1.  
INTERPRETATION**

**1.1. Definitions.** In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"**Acceptance Date**" means the date that this Agreement is executed and delivered by each of the Vendor and the Purchaser.

"**Agreement**" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"**Applicable Laws**" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

**"Assignment of Contracts"** means an assignment by the Vendor and an assumption by the Purchaser of all of the right, title and interest of the Vendor in the Assumed Contracts and the benefit of all covenants, guarantees and indemnities thereunder, including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under the Assumed Contracts for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to Claims under the Assumed Contracts for matters occurring prior to the Closing Date, with such assignment and assumption taking effect from the Closing Date.

**"Assignment of Ground Leases"** means an assignment by the Vendor and an assumption by the Purchaser of all of the right, title and interest of the Vendor in the Ground Leases and the benefit of all covenants, guarantees and indemnities thereunder, including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under the Ground Leases for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to Claims under the Ground Leases for matters occurring prior to the Closing Date, with such assignment and assumption taking effect from the Closing Date.

**"Assignment of Montana's Sublease "** means an assignment by the Vendor and an assumption by the Purchaser of all of the right, title and interest of the Vendor in the Montana's Sublease and the benefit of all covenants, guarantees and indemnities thereunder, including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under the Montana's Sublease for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to Claims under the Montana's Sublease for matters occurring prior to the Closing Date, with such assignment and assumption taking effect from the Closing Date.

**"Assumed Contracts"** means those Contracts the Purchaser has elected to assume, if any, pursuant to Section 5.6 of this Agreement.

**"Buildings"** means, collectively, the buildings, structures, erections, improvements and appurtenances located on, in or under the Lands and any fixtures owned by the Vendor located on, in or under the Lands.

**"Business Day"** means any day other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario.

**Chattels"** means that equipment, inventory, supplies and other chattels owned by the Vendor as more particularly described in *Schedule D* which forms part of this Agreement.

**"City Ground Lease"** means the lease dated October 1, 1980 between the Original City Ground Lease Landlord (now the City Ground Lease Landlord), as landlord, and the Original City Ground Lease Tenant, as tenant, with respect to a portion of the Property, as same has been assigned through a series of assignments from the Original City Ground Lease Tenant to the Vendor, as same has been amended and/or supplemented from time to time, as more particularly described in described in *Schedule B-2* attached hereto.

**"City Ground Lease Landlord"** means the City of Toronto.



**"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

**"Closing"** means the closing and consummation of the transaction of purchase and sale contemplated by this Agreement including, without limitation, the satisfaction of the Purchase Price and the delivery of the Closing Documents in accordance with Section 6.1 of this Agreement, on the Closing Date.

**"Closing Date"** means the date that is later to occur of: (i) fifteen (15) days following the Due Diligence Date; and (ii) seven (7) days following the date on which the Transaction Approvals have been obtained; as same may be extended pursuant Section 4.6.

**"Closing Documents"** means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

**"Contracts"** means, collectively, all contracts and agreements to enter into contracts with respect to the development, construction, operation, fire protection, insurance, servicing, maintenance, repair and cleaning of the Property, or the furnishing of supplies or services to the Property entered into by the Vendor or any previous tenant of the Property pursuant to the Ground Leases, or any manager or agent on behalf of such parties, and includes, without limitation, the Warranties thereunder, but specifically excludes any property management agreements.

**"Deposit"** means the sum or sums paid by the Purchaser pursuant to Sections 2.3(a) and 2.3(b) of this Agreement.

**"Due Diligence Date"** means October 31, 2020; provided, however, if the Purchaser has not received responses to all of its search requests by October 31, 2020, the Purchaser shall have the right, by delivery of Notice to the Vendor on or prior to October 31, 2020, to extend the Due Diligence Date to November 4, 2020.

**"Encumbrance"** means any mortgage, lien, charge, encumbrance, restriction, security interest, conditional sale agreement, lease, restriction, covenant, easement, encroachment and any other similar claim or interest.

**"Estoppel Certificates"** has the meaning given to it in Section 5.7 of this Agreement.

**"Ground Leases"** means, collectively, the City Ground Lease and the Main Ground Lease.

**"HST"** means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada).

**"Interim Period"** means the period between the Acceptance Date and the Closing Date.

**"Lands"** means the lands municipally known as 65 Skyway Avenue, Etobicoke, Ontario, together with all easements, rights-of-way and interests appurtenant thereto, all as more particularly described in *Schedule A* attached hereto.

**"Notice"** has the meaning set out in Section 7.3(1) of this Agreement.

**"Main Ground Lease"** means the lease dated October 1, 1980 between the Original Main Ground Lease Landlord, as landlord, and the Original Main Ground Lease Tenant, as tenant, with respect to a portion of the Property, as same has been assigned from the Original Main Ground Lease Landlord to the Main Ground Lease Landlord and as has been assigned through a series of assignments from Original Main Ground Lease Tenant to the Vendor, as same has been amended and/or supplemented from time to time, as more particularly described in described in *Schedule B-2* attached hereto.

**"Main Ground Lease Landlord"** means Meadowvale Land Limited, Rebecca's Gift Holdings Limited, 1350739 Ontario Limited and The Estate of Joseph Black.

**"Montana's Sublease"** means the lease dated May 9, 2005 between Ivanhoe Cambridge II Inc., as landlord, and Kelsey's Holdings Inc., as tenant, as same has been assigned by Ivanhoe Cambridge II Inc. to the Vendor, as landlord and Cara Operations Limited is successor in interest to Kelsey's Holdings Inc., as tenant, as same has been renewed, amended and/or supplemented from time to time.

**"Original City Ground Lease Landlord"** means The Corporation of the Borough of Etobicoke.

**"Original City Ground Lease Tenant"** means Rockford Developments Limited and Imbrook Properties Limited.

**"Original Main Ground Lease Landlord"** means Samuel Black, Joseph Black, Norman Black and Beatrice Wintrob.

**"Original Main Ground Lease Tenant"** means Rockford Developments Limited and Imbrook Properties Limited.

**"Permitted Encumbrances"** means those Encumbrances listed in *Schedule B* attached hereto.

**"Person"** means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

**"Plans"** means all documentation relevant to the construction of the Buildings including, without limitation, working drawings, detail drawings, shop drawings or other documentation prepared to illustrate or define a particular aspect of the Buildings, plans submitted with all building permits issued for the Property, copies of all building permits issued for the Property, building and area certificates, occupancy permits, governmental reports outlining compliance with

applicable zoning by-laws and codes and any information relating to the Buildings' status and specifications.

**"Property"** means, collectively, the Lands and the Buildings.

**"Property Documents"** means:

- (a) copies of the Ground Leases, together with copies of all amendments and supplements thereto;
- (b) a copy of the Montana's Sublease, together with copies of all amendments and supplements thereto;
- (c) the Plans, to the extent within the possession or control of the Vendor;
- (d) all documents pertaining the environmental status of the Property including, without limitation, geological soils audits, assessments, all permits and test reports (including soil and geotechnical tests) in the possession or control of the Vendor;
- (e) copies of all mechanical, electrical engineering, building condition, and structural studies and reports relating to the Property, and copies of any other studies or reports concerning the state or condition of repair of the Property, in the possession or control of the Vendor;
- (f) copies of all Contracts and Warranties, if any;
- (g) the most recent topographical and boundary survey in respect of the Property, in the possession or control of the Vendor;
- (h) copies of any current realty tax assessment notices and tax bills relating to the Property for the previous three (3) fiscal years and details of any outstanding tax appeals or reassessments and copies of any notices of any outstanding realty tax appeals and correspondence relating thereto, including copies of any working papers issued by the applicable assessment authorities used in calculating a notional allocation of the assessment; and
- (i) copies of maintenance and repair bills relating to the Property for the last three (3) years.

**"Purchase Price"** has the meaning set out in Section 2.2 of this Agreement, as adjusted pursuant to Section 2.5 of this Agreement.

**"Purchased Assets"** means, collectively:

- (a) the leasehold interest in the Property granted pursuant to the Ground Leases;
- (b) the Ground Leases;
- (c) the Montana's Sublease;

- (d) the Assumed Contracts; and
- (e) the Chattels.

**"Purchaser's Solicitors"** means Fogler, Rubinoff LLP.

**"Re-adjustment Agreement"** has the meaning set out in Section 2.6 of this Agreement.

**"Transaction Approvals"** has the meaning set out in Section 4.1(d) of this Agreement.

**"Vendor's Solicitors"** means Blaney McMurtry LLP and/or such solicitor or firm of solicitors appointed by the Vendor to act as legal counsel on its behalf in connection with the transactions contemplated by this Agreement and so designated from time to time by Notice to the Purchaser and the Purchaser's Solicitors.

**"Warranties"** means all warranties, guarantees or contractual obligations, if any, that entitle the Vendor to any rights against a contractor or supplier engaged in the construction or maintenance of all or any of the Property or any part thereof.

- 1.2. Extended Meanings.** Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.
- 1.3. Headings.** The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.
- 1.5. Currency.** Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.
- 1.6. Severability.** If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
- 1.7. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the Acceptance Date, unless otherwise provided.

- 1.8. Time.** Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

## 2. PURCHASE AND SALE

- 2.1. Purchase and Sale.** The Vendor hereby agrees to sell, transfer, assign, set over and convey the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume the Purchased Assets from the Vendor, for the Purchase Price and on the terms and subject to the conditions contained in this Agreement.
- 2.2. Purchase Price.** The purchase price (the "**Purchase Price**") for the Purchased Assets shall be [REDACTED].
- 2.3. Payment of Purchase Price.** Subject to adjustment in accordance with Section 2.5 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:
- (a) [REDACTED], by wire transfer of immediately available funds payable to Deloitte Restructuring Inc., in trust (the "**Monitor**"), within two (2) Business Days following the Acceptance Date;
  - (b) [REDACTED], by wire transfer of immediately available funds payable to the Monitor, in trust, within two (2) Business Days after the Purchaser provides Notice to the Vendor that the condition set out in Section 4.2(a) of this Agreement has been satisfied or waived; and
  - (c) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor or as it may in writing direct on the Closing Date.
- 2.4. Deposit.** The Deposit shall be held by the Monitor in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Monitor in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the respective dates on which the Deposit is received by the Monitor until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque or bank draft forthwith following the Closing Date. If this Agreement is not completed other than solely by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed as a result of

the default of the Purchaser, the Vendor shall be entitled to retain the Deposit (or such portion of it as has been delivered by the Purchaser), together with all interest accrued thereon, as liquidated damages and not as a penalty, without limiting the Vendor's right to claim additional damages and/or to pursue all other remedies against the Purchaser. The Monitor are hereby authorized and directed to pay the Deposit (or such portion of it as has been delivered by the Purchaser), together with all interest accrued thereon, in the manner contemplated by this Section subject to the terms of this Agreement.

The parties agree that the Monitor shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Monitor shall be entitled to bring an application to court to pay the Deposit and/or interest accrued thereon into court.

## **2.5. Adjustments.**

(1) General. Adjustments shall be made as of the Closing Date for prepaid rents and any other amounts prepaid by the Vendor under the Ground Leases and the tenants under the Montana's Sublease (and interest accrued thereon to the tenants' credit, if any), security deposits paid by the Vendor pursuant to the Ground Lease or by the tenant pursuant to the Montana's Sublease (and interest accrued thereon to the tenants' credit, if any), and to the extent the responsibility of the Vendor pursuant to the Ground Leases, realty taxes, local improvement rates and charges, water and assessment rates, utilities, fuel, licences necessary for the operation of the Property and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Purchased Assets. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the matters in this Agreement which are stated not to be the subject of adjustment.

(2) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than five (5) Business Days prior to the Closing Date and shall have annexed to it details of the calculations used by the Vendor to arrive at all debits and credits on the statement of adjustments and a final statement of adjustments shall be delivered to the Purchaser by the Vendor on the Closing Date.

(3) Day of Closing. The Purchaser shall receive all income and pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(4) Tenant Recoveries. Operating and other costs recoverable from the tenant under the Montana's Sublease shall be adjusted as soon as possible after the Closing Date upon receipt of information from such tenant and in accordance with the requirements of the Montana's Sublease. Such adjustment of operating and other costs recoverable from the tenant will be done on a *pro rata* basis between the Vendor and the Purchaser, with such proration to be based upon the number of days in each reporting period that are attributable to the landlord's interest in the Montana's Sublease by the Vendor and the Purchaser, respectively, during such reporting periods. Unless the parties otherwise agree, each party shall adjust for its respective period of its landlord's interest in the Montana's Sublease with

the tenant for all operating and other costs recoverable, it being intended that the Vendor shall collect from such tenant any undercollection and refund to such tenant any overcollection for the period prior to the Closing Date and that the Purchaser shall be similarly responsible for the period from and after the Closing Date.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

(6) Commissions, Allowances and Inducements. The Vendor will be responsible for all outstanding real estate commissions, tenant allowances and tenant inducements payable with respect to the Montana's Sublease and to the extent those have not been paid by the Vendor prior to the Closing Date, the Purchaser shall be credited with respect thereto on the statement of adjustments. If there is any unexpired rent-free or rent-reduced period allowed to the tenant under the Montana's Sublease, the Purchaser shall be credited on the statement of adjustments with the rent that would have been payable had there not been such rent-free or rent reduced period.

(7) Arrears. There shall be no adjustment for arrears of rent and accounts receivable (the "**Tenant Receivables**"), other than as noted herein, under the Montana's Sublease and any such Tenant Receivables shall remain the property of the Vendor. After the Closing Date, the Vendor will be permitted to take reasonable steps and commence actions to recover the Tenant Receivables under the Montana's Sublease, provided that the Vendor will not take any action (or threaten to take any action) to recover the Tenant Receivables that would threaten the tenant's right to possession of its premises or constitute a distraint against its personal property at its premises. The parties hereby agree that any Tenant Receivables shall include any existing rent deferral/payment plans which payments shall occur after the Closing Date but which relate to the period prior to the Closing Date.

(8) Prior Years Realty Tax Appeals and Rebates. In the event there are realty tax appeals for the period prior to, but not including, the calendar year in which Closing occurs, the Vendor shall be entitled to continue such appeals and shall be entitled to receive any payments resulting therefrom provided all costs for such appeals are borne exclusively by the Vendor and provided that any realty tax rebates owing to tenants as a result of any such reassessment are paid to them. The Purchaser, at no cost to the Purchaser, shall co-operate with the Vendor in connection with such appeals including execution of all documents required to allow the Vendor to pursue such appeals and to receive any payments resulting therefrom. Subject to the rights of tenants, any amount received by the Purchaser on account of any appeals attributable to the calendar year in which the Closing Date occurred shall be pro-rated between the Vendor and the Purchaser based on the number of days in such year that the Property was owned by the Vendor and the Purchaser, as the case may be. The provisions of this Section shall survive Closing.

**2.6. Re-adjustment.** If the final cost or amount of an item which is to be adjusted (other than operating costs recoverable from the tenant under the Montana's Sublease in respect of the month in which the Closing Date occurs) cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be



estimated by the parties, each acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within thirty (30) days of determination, provide a complete statement thereof to the other and within thirty (30) days thereafter the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by accountants appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. Within one hundred and twenty (120) days after the end of the calendar year in which the Closing Date occurs, the Vendor and the Purchaser shall adjust on a *pro rata* basis for taxes, utility charges and operating expenses for the calendar year in which the Closing Date occurs. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments required to be made, shall be requested in writing and in a detailed manner on or before the first (1<sup>st</sup>) anniversary date after the Closing Date, after which time neither party shall have any right to request re-adjustments.

### 3.

#### **COVENANTS, REPRESENTATIONS AND WARRANTIES**

**3.1. Representations of the Vendor.** The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the Acceptance Date and as of the Closing Date:

- (a) Corporate Status. The Vendor is a corporation duly incorporated and subsisting under the laws of the Province of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The execution and delivery of this Agreement and all other agreements contemplated by this Agreement by the Vendor, and the consummation of the transactions contemplated by this Agreement by the Vendor, have been duly authorized by all necessary corporate action;
- (c) No Breach of Laws or Instruments. Neither the entering into nor the delivery of this Agreement nor the completion by the Vendor of the transactions contemplated by this Agreement will conflict with, or constitute a default under, or result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Vendor; or (ii) any Applicable Laws;
- (d) Enforceability of Obligations. This Agreement has been validly executed and delivered by the Vendor and is a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms, subject to the limitations with respect to enforcement imposed by Applicable Laws in connection with bankruptcy, insolvency, liquidation, reorganization or other similar laws

- 11 -

affecting the enforcement of creditor's rights generally and subject to the availability of equitable remedies such as specific performance and injunction which are only available in the discretion of the court from which they are sought;

- (e) Residence. The Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (f) Ownership. The Vendor is the sole legal and beneficial owner of the Purchased Assets;
- (g) Rights of First Offer and First Refusal. None of the Purchased Assets are subject to any right of first offer or right of refusal pursuant to which any Person other than the Purchaser has a right or option to purchase the Purchased Assets or any of them;
- (h) No Employees. There are no employees employed in connection with the Purchased Assets in respect of which the Purchaser will incur any liabilities whatsoever as a result of the completion of the transactions contemplated by this Agreement;
- (i) No Expropriation. To the best of the Vendor's knowledge and belief, there are no proceedings by any governmental authority with respect to or in connection with the expropriation or rezoning of the Property, or any part thereof;
- (j) Labour and Materials. All amounts for labour and materials relating to construction of any services or utilities on the Lands by or on behalf of the Vendor have been paid in full and no one has a right to file a lien under the *Construction Act* (Ontario) in respect of any such construction;
- (k) Environmental. To the best of the Vendor's knowledge and belief, with respect to the Property, there is no pending litigation respecting environmental matters, no outstanding orders issued by the Ontario Ministry of Environment, Conservation and Parks or any investigations, changes or existing prosecutions in respect of environmental matters;
- (l) Leases. There are no leases, licenses, agreements to lease or other tenancy agreements with respect to the Property which are currently in effect, save and except the Ground Leases, the Montana's Sublease and an existing sublease (the "**NAFA Sublease**") with North American Fur Auctions Inc. ("**NAFA**"), a related entity to the Vendor, and at Closing there will be no leases, licenses, agreements to lease or other tenancy agreements with respect to the Property which are in effect at Closing, save and except the Ground Leases, the Montana's Sublease and any leases entered into during the Interim Period in accordance with Section 5.4 of this Agreement. To the best of the its knowledge, the Vendor is not in default of any of its obligations under the Ground Leases or the Montana's Sublease, and to the knowledge of the Vendor, neither the City Ground Lease Landlord or the Main Ground Lease Landlord are in default of their obligations under the Ground Leases and, subject to any rent deferral/payment plans with the tenant under the Montana's

lease, the tenant under the Montana's Lease is not in default of its obligations under the Montana's Sublease; and

- (m) Unregistered Rights. The Vendor is not aware of any unregistered easements, rights-of-way or other unregistered interests or claims (other than the Ground Leases, the Montana's Sublease and the NAFA Sublease) not disclosed by registered title to the Property.

**3.2. Representations of the Purchaser.** The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the Acceptance Date and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and subsisting under the laws of the Province of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action;
- (c) No Breach of Laws or Instruments. Neither the entering into nor the delivery of this Agreement nor the completion by the Purchaser of the transactions contemplated by this Agreement will conflict with, or constitute a default under, or result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Purchaser; or (ii) any Applicable Laws;
- (d) Enforceability of Obligations. This Agreement has been validly executed and delivered by the Purchaser and is a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to the limitations with respect to enforcement imposed by Applicable Laws in connection with bankruptcy, insolvency, liquidation, reorganization or other similar laws affecting the enforcement of creditor's rights generally and subject to the availability of equitable remedies such as specific performance and injunction which are only available in the discretion of the court from which they are sought;
- (e) No Bankruptcy. The Purchaser: (i) is not an insolvent Person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada); (ii) has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof; (iii) has not had any petition for a receiving order presented in respect of it; or (iv) has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution; and
- (f) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its HST registration number to the Vendor on or before the Closing Date.

(g) Landlord Consent Materials. The Purchaser will deliver all information and documents required by the Main Ground Lease Landlord and the City Ground Lease Landlord to provide the Ground Lease Consents forthwith upon request.

**3.3. Survival of Representations.** The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of one (1) year following the Closing Date. No claim for any breach of any such covenant, representation or warranty may be made by either party hereto after such one (1) year period.

**3.4. As Is, Where Is.** The Purchaser acknowledges and agrees that, except as provided in this Agreement: (i) there have been no representations and/or warranties by the Vendor whatsoever with respect to the Purchased Assets or the Property and that the Purchased Assets are being purchased on an "as is, where is" basis; and (ii) it shall rely entirely upon its own inspections and investigations with respect to the quality, quantity, value and title of the Purchased Assets and the Property. It is understood and agreed by the Purchaser that, except as expressly stated in this Agreement, the Vendor has not warranted the suitability of the Property for any development use or any other proposed use by the Purchaser. Save as otherwise provided in this Agreement, if Closing occurs, the Purchaser agrees that it shall not have any recourse to the Vendor as a result of the nature and condition of the Property or the Purchased Assets.

#### 4.

### CONDITIONS

**4.1. Conditions of the Vendor.** The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Transaction Approvals. The Vendor shall have obtained, at its sole cost and expense, all court and other approvals necessary to complete the transaction contemplated by this Agreement as are required in connection with the proceedings it has commenced under the *Companies' Creditors Arrangement Act* (Canada) (the "**Transaction Approvals**"), the scope and content of such Transaction Approvals

to be determined by the Vendor and the Purchaser and their respective counsel and advisors, each acting reasonably and in good faith, and which Transaction Approvals will include a vesting order which may be registered on title to the Property.

**4.2. Conditions of the Purchaser.** The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets and the Property including, without limitation, the physical condition of the Property, title to the Lands, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Property);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;
- (d) Performance of Terms, Covenants and Conditions. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed in all material respects;
- (e) Consents to Assignment of Ground Leases. The Vendor shall have delivered consents (the "**Ground Lease Consents**"), in forms acceptable to the Purchaser, acting reasonably, pursuant to which the City Ground Lease Landlord consents to the assignment of the City Ground Lease from the Vendor to the Purchaser and the Main Ground Lease Landlord consents to the assignment of the Main Ground Lease from the Vendor to the Purchaser, which consents shall expressly confirm that the options to purchase the portions of the Property to which such Ground Leases relate and the rights of first refusals, if any, shall be transferred from the Vendor to the Purchaser such that the Purchaser shall have the option to exercise such options. In the alternative, the Vendor may deliver an order of the court dispensing with any such consent of the City Ground Lease Landlord and the Main Ground Lease Landlord; provided that such court order shall expressly confirm that any and all options to purchase and rights of first refusal contained in the City Ground Lease and the Main Ground Lease are transferred to the Purchaser;

- (f) Estoppel Certificates – Ground Leases. Subject to Section 5.7(c), the Vendor shall have delivered to the Purchaser executed Estoppel Certificates signed by the City Ground Lease Landlord in respect of the City Ground Lease and the Main Ground Lease Landlord in respect of the Main Ground Lease;
- (g) Estoppel Certificates – Montana's Sublease. The Vendor shall have delivered to the Purchaser an executed Estoppel Certificate signed by the tenant under the Montana's Sublease in respect of the Montana's Sublease; and
- (h) Transaction Approvals. The Vendor shall have obtained all of the Transaction Approvals.

**4.3. Satisfaction of Conditions.** Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control. Upon reasonable request from time to time, each party shall advise the other party of its position on the satisfaction or waiver of each of such conditions. Notwithstanding the foregoing, nothing contained in this Agreement shall detract from the Purchaser's absolute discretion in determining whether or not to waive the condition contained in Section 4.2(a) of this Agreement.

**4.4. Waiver of Conditions.**

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit (or such portion of the Deposit as has been delivered), together with all interest accrued thereon, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit (or such portion of the Deposit as has been delivered), together with all interest accrued thereon, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d), 4.2(e), 4.2(f), 4.2(g) and 4.2(h) of this Agreement are not satisfied or waived on or prior to the Closing Date or other date specified therefore, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date or other date specified therefore, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit (or such portion of the Deposit as has been delivered), together with all interest accrued thereon, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d), 4.2(e), 4.2(f), 4.2(g) and 4.2(h) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d), 4.2(e), 4.2(f), 4.2(g) and 4.2(h) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

- 4.5. Not Conditions Precedent.** The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.
- 4.6. Postponement of Closing Date to Satisfy Certain Conditions.** Notwithstanding the timelines noted herein, if the conditions set out in Sections 4.2(e), 4.2(f) or 4.2(g) have not been satisfied on or prior to the date that is five (5) Business Days prior to the Closing Date, the Vendor or the Purchaser shall have the right (the "**Closing Date Extension Right**"), but not the obligation, by delivery of Notice to the other not less than five (5) Business Days prior to the Closing Date, to extend the Closing Date such that the Closing Date will then be deemed to be to the earlier of: (i) the date that is three (3) Business Days after the date that all such conditions have been satisfied; and (ii) the date that is forty-five (45) days in the aggregate after the originally scheduled Closing Date. Notwithstanding anything to the contrary contained in this Agreement, the Closing Date Extension Right may only be exercised one time and no party shall have any further rights to extend the Closing Date.
- 4.7. Costs Incurred.** The Purchaser agrees that it shall be responsible to pay, and shall pay the legal fees incurred by the City Ground Lease Landlord and the Main Ground Lease Landlord in granting the Ground Lease Consents, up to a maximum amount of Ten Thousand Dollars (\$10,000.00), exclusive of disbursements and HST.
- 4.8. Planning Act.** This Agreement shall be effective to create an interest in the Lands only if the provisions of the *Planning Act* (Ontario) are complied with.
- 4.9. Title.** On the Closing Date, title to the Lands shall be good and marketable and free and clear of all Encumbrances other than Permitted Encumbrances. The Purchaser shall have



until 5:00 p.m. (Toronto time) on the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit (or such portion of the Deposit as has been delivered) and any interest earned thereon shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity.

## 5. INTERIM PERIOD

- 5.1. Delivery of Documents.** To the extent that they are in the Vendor's possession, the Vendor shall deliver the Property Documents to the Purchaser within five (5) Business Days after the Acceptance Date and from time to time as Property Documents shall come into the possession of the Vendor during the Interim Period.
- 5.2. Access by Purchaser.** During the Interim Period, the Purchaser, its representatives and advisors shall have access to the Property on reasonable prior Notice to the Vendor, subject only to restrictions, if any, contained in the Montana Lease and, at the Vendor's discretion, in the company of a representative of the Vendor. The Vendor authorizes the Purchaser to carry out such reasonable non-invasive tests, environmental audits, surveys and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary, acting reasonably. In no event shall the Purchaser or its representatives be permitted to carry out any drilling, core sampling, or invasive testing at the Property without prior written consent of the Vendor, not to be unreasonably withheld, provided that as a precondition to any such invasive testing the Vendor may require that any engineers or consultants to be used to carry out such work are acceptable to the Vendor, acting reasonably, carry insurance that shows the Vendor as an additional insured for an amount of not less than \$1,000,000 per occurrence, and that all such work is done in the company of a representative of the Vendor. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections, and the Purchaser shall indemnify and save the Vendor harmless from all Claims, third party actions, damages and expenses which the Vendor may suffer as a result of the Purchaser's access to the Property and its tests and inspections, and the Vendor shall have recourse to the Deposit to satisfy any of the Purchaser's obligations under this indemnity. The Purchaser shall not communicate, directly or indirectly, with Montana until after the waiver of the Purchaser's Due Diligence Date Condition and only, at the Vendor's discretion, in the company of a representative of the Vendor.
- 5.3. Governmental Authorities.** During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or its solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the

authority may have with respect to each Property. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities.

**5.4. Approvals of the Purchaser.** During the Interim Period, the Vendor shall not be entitled to enter into any agreement affecting all or any part of the Property and shall not be entitled to agree to amend, terminate or surrender any Contract, the Ground Leases, the Montana's Sublease or other agreement affecting all or any part of the Property (each, a "**Proposed Agreement**") except as follows:

- (a) prior to the Due Diligence Date, the Vendor shall give Notice to the Purchaser of any Proposed Agreement, together with a true and complete copy of the Proposed Agreement and all information in the Vendor's possession that would be reasonably required for the Purchaser to be able to decide whether to grant its approval thereof. The Purchaser shall have a period of three (3) Business Days following receipt of such Notice from the Vendor within which to determine whether to grant its approval, such approval not to be unreasonably withheld or delayed. If the Purchaser fails to give Notice to the Vendor of its approval or disapproval within such three (3) Business Day period, the Purchaser shall be deemed to have approved the Proposed Agreement. In the case of actual disapproval by the Purchaser of a Proposed Agreement pursuant to this Section 5.4(a), the Vendor shall not enter into such Proposed Agreement; and
- (b) from and after the Due Diligence Date, the Vendor shall give Notice to the Purchaser of any Proposed Agreement that the Vendor proposes to enter into, together with a true and complete copy of the Proposed Agreement and all information that would be reasonably required for the Purchaser to be able to decide whether to grant its approval thereof. The Purchaser shall have a period of three (3) Business Days following receipt of such Notice from the Vendor within which to determine whether to grant its approval, which approval may be granted or withheld in the sole and absolute discretion of the Purchaser. If the Purchaser fails to give Notice to the Vendor of its approval or disapproval within such three (3) Business Day period, the Purchaser shall be deemed not to have approved of such Proposed Agreement. In the case of actual or deemed disapproval by the Purchaser of a Proposed Agreement pursuant to this Section 5.4(b), the Vendor shall not enter into such Proposed Agreement.

**5.5. Confidentiality.** Except as may be required to perform its obligations in accordance with the provisions of this Agreement, the Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. If the transactions contemplated by this Agreement are not completed for any reason, the Purchaser shall, upon the request of the Vendor, promptly return to the Vendor all documents delivered to the Purchaser pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.5); (ii)

to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

**5.6. Contracts.** On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall provide the Vendor with Notice in respect of which Contracts, if any, the Purchaser wants to assume on Closing. All such Contracts shall, subject to the receipt of any necessary third party consents, be assigned to the Purchaser on Closing pursuant to the Assignment of Contracts. To the extent any such Contract requires the consent of a third party as a condition of its assignment to the Purchaser, the Vendor shall use its reasonable commercial efforts to obtain such consent prior to Closing. The Vendor shall, on or prior to the Closing Date, at its sole cost and expense, terminate all Contracts that are not Assumed Contracts.

**5.7. Estoppel Certificates.**

(a) Subject to Section 5.7(c), The Vendor shall deliver estoppel certificates from: (i) the City Ground Lease Landlord in respect of the City Ground Lease; (ii) the Main Ground Lease Landlord in respect of the Main Ground Lease; and (iii) the tenant under the Montana's Sublease in respect of the Montana's Sublease, all of which shall be in a form agreed to by the Vendor and the Purchaser, each acting reasonably and in good faith (the "**Estoppel Certificates**").

(b) The form of Estoppel Certificates shall be agreeable to both the Purchaser and the Vendor, acting reasonably and shall not extend beyond those requirements noted in the Main Ground Lease, the City Ground Lease and the Montana's Sublease. The form of Estoppel Certificates shall be in a form that is agreeable to both parties prior delivery to the Persons required to sign such Estoppel Certificates.

(c) Notwithstanding any other provision contained herein relating to the requirement and delivery of the Estoppel Certificates from the Main Ground Lease Landlord and the City Ground Lease Landlord, the Purchaser acknowledges that the Main Ground Lease Landlord and City Ground Lease Landlord may insert the language that would otherwise be included in the Estoppel Certificates directly into the respective Ground Lease Consents.

**5.8. Work Orders.** Prior to the Closing Date, the Vendor shall, at its sole cost and expense, take such actions as are necessary so that all outstanding work orders, permits, inspection and investigation files that relate in any way to the Property and are the responsibility of the Vendor with any public authority are completed and closed without issue.

**6.**

**CLOSING ARRANGEMENTS**

**6.1. Closing Arrangements.** The Vendor and the Purchaser acknowledge that the electronic registration system (hereinafter referred to as the "**Teraview Electronic Registration System**" or "**TERS**") is operative on a mandatory basis in the Land Titles Office where the Property is located and accordingly, the following provisions shall prevail, namely:

- 20 -

(1) The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized TERS users and in good standing with the Law Society of Ontario, and they are hereby authorized by the parties hereto to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 or any successor version thereto (the "**Document Registration Agreement**" or "**DRA**"), together with the additional requirement that the registering solicitor shall also be obliged to provide the non-registering solicitor with a copy of the registration report printed by TERS upon the registration of the electronic documents, as evidence of the registration thereof, within one (1) Business Day of the Closing Date. It is understood and agreed that the DRA shall outline or establish the procedures and timing for completing the transactions contemplated by this Agreement electronically, and shall be executed by both the Vendor's Solicitors and the Purchaser's Solicitors and exchanged by courier, facsimile or other form of electronic transmission reproducing the original between said solicitors (such that each solicitor has a photocopy, telefaxed or other electronic copy of the DRA duly executed by both solicitors) by no later than two (2) Business Days before the Closing Date.

(2) The delivery and exchange of Closing Documents and the balance of the Purchase Price, and the release thereof to the Vendor and the Purchaser, as the case may be:

- (a) shall not occur contemporaneously with the registration of the transfer/deed of the Property and other documents, if any, to be registered electronically; and
- (b) shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents, or the balance of the Purchase Price, will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA.

(3) Each of the parties hereto agrees that the delivery of any of the Closing Documents not intended or required to be registered on title to the Property shall, unless the parties otherwise agree, be by way of delivery of originally executed copies thereof on the Closing Date to the other party.

(4) Notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this paragraph called the "**Tendering Party**") upon the other party (in this paragraph called the "**Receiving Party**") when the solicitor for the Tendering Party has:

- (c) delivered all applicable Closing Documents and/or the balance of the Purchase Price to the Receiving Party's solicitor in accordance with the provisions of this Agreement and the DRA;
- (d) advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

- (e) has completed all steps required by TERS in order to complete the transactions contemplated by this Agreement that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the transfer/deed of the Property and any other Closing Document, if any, to be registered electronically for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing same for registration by the Receiving Party's solicitor).

**6.2. Documents of the Vendor.** The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date or on such other date as may be specified:

- (a) Assignment of Ground Leases. The Assignment of Ground Leases, duly executed by the Vendor;
- (b) Notice and Direction to Ground Lease Landlord. Such notice or notices from the Vendor as the Purchaser may reasonably require to be given to City Ground Lease Landlord and the Main Ground Lease Landlord under the Ground Leases advising of the assignment of the Ground Leases;
- (c) Registrable Assignment of Ground Leases. Registrable assignments of lessee's interest of the Ground Leases from the Vendor to the Purchaser on title to the Property or in the alternative, a vesting order of the court assigning the lessee's interest of the Ground Leases from the Vendor to the Purchaser;
- (d) Assignment of Montana's Sublease. The Assignment of Montana's Sublease, duly executed by the Vendor;
- (e) Notice and Direction to Tenant. Such notice or notices from the Vendor as the Purchaser may reasonably require to be given to tenant under the Montana's Sublease advising of the assignment of the Montana's Sublease, together with a direction relating to the payment of rent and other payments under the Montana's Sublease, all in such form as the Purchaser may reasonably require;
- (f) Assignment of Contracts. If the Purchaser has elected to assume any Contracts by delivery of Notice to the Vendor on or prior to the Due Diligence Date, the Assignment of Contracts, duly executed by the Vendor;
- (g) Notice and Direction under Assumed Contracts. If necessary, such notice or notices as the Purchaser may reasonably require to be given to other parties under the Assumed Contracts of the assignment and assumption of the Assumed Contracts, duly executed by the Vendor;
- (h) Assignment of Warranties. An assignment of the Warranties from the Vendor to the Purchaser, duly executed by the Vendor;
- (i) Bill of Sale. A bill of sale in respect of the Chattels, duly executed by the Vendor;

- 22 -

- (j) General Conveyance. A general conveyance of the Purchased Assets, duly executed by the Vendor;
- (k) Certificate of the Vendor. A certificate of the Vendor certifying that:
  - (i) the Vendor is not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada); and
  - (ii) the representations and warranties contained in Section 3.1 of this Agreement are true and accurate as of the Closing Date;
- (l) Discharges. Discharges in registrable form of all Encumbrances affecting title to the Property except for the Permitted Encumbrances; provided that if such discharges are not available on the Closing Date and are in respect of any charge/mortgage of land held by a chartered bank or trust company, the Purchaser agrees to accept the Vendor's Solicitors' undertaking to obtain, out of the Closing funds, a discharge in registrable form of such charge/mortgage and to register same on title to the Lands within a reasonable period of time following Closing, provided that on or before Closing the Vendor shall provide the Purchaser with a mortgage statement prepared by the mortgagee setting out the amount required to obtain such discharge together with a direction executed by the Vendor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on Closing;
- (m) Estoppel Certificates. Subject to the terms herein, the executed Estoppel Certificates;
- (n) Ground Lease Consents. Subject to the terms herein, the executed Ground Lease Consents;
- (o) Statement of Adjustments. The final statement of adjustments in accordance with Section 2.5(2) of this Agreement;
- (p) Termination of NAFA Sublease. Evidence that the NAFA Sublease has been terminated;
- (q) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor;
- (r) Keys. All keys and entry devices with respect to the Property and the combinations to any locks or vaults, if applicable;
- (s) Rent Cheques. To the extent not adjusted for pursuant to Section 2.5, all post-dated rent cheques for any rental period following Closing received from the tenant under the Montana's Sublease that are in the Vendor's possession or control, endorsed without recourse in favour of the Purchaser; and

- (t) Property Documents. To the extent not previously delivered, originals or, to the extent originals are not available, photocopies of the Property Documents.

**6.3. Documents of the Purchaser.** The Purchaser shall deliver to the Vendor the following documents on the Closing Date or such other date as may be specified:

- (a) Balance of the Purchase Price. A certified cheque, bank draft or wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(c) of this Agreement;
- (b) Assignment of Ground Leases. The Assignment of Ground Leases, duly executed by the Purchaser;
- (c) Assignment of Montana's Sublease. The Assignment of Montana's Sublease, duly executed by the Purchaser;
- (d) Assignment of Contracts. If the Purchaser has elected to assume any Contracts by delivery of Notice to the Vendor on or prior to the Due Diligence Date, the Assignment of Contracts, duly executed by the Purchaser;
- (e) Assignment of Warranties. An assignment of the Warranties from the Vendor to the Purchaser, duly executed by the Purchaser;
- (f) Certificate of the Purchaser. A certificate of the Purchaser certifying that the representations and warranties contained in Section 3.2 of this Agreement are true and accurate as of the Closing Date;
- (g) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and
- (h) HST. The declaration, undertaking and indemnity described in Section 6.5 of this Agreement, duly executed by the Purchaser.

**6.4. Single Transaction.** Subject to Section 6.1 of this Agreement, all documents and cheques shall be delivered in escrow at the place of Closing specified in Section 6.1 of this Agreement on the Closing Date pending registration of the documents referred to in Sections 6.2 and 6.3 of this Agreement as reasonably required by the solicitors for the parties. It is a condition of Closing that all matters of payment, execution and delivery of documents by each party to the other and the acceptance for registration of the appropriate documents in the appropriate offices of public record shall be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the Closing until everything required as a condition precedent at the Closing has been paid, executed and delivered.

**6.5. Taxes and Fees.**



- 24 -

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with its acquisition of the Purchased Assets. The Vendor shall be responsible for registration fees payable in connection with the registration of discharges of any Encumbrances or other claims or interests that are not Permitted Encumbrances. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it shall be purchasing the Purchased Assets on the Closing Date, as principal for its own account and not as an agent, trustee or otherwise on behalf of another person, provided that in the event that the Purchaser is purchasing the Purchased Assets as agent, nominee or trustee on behalf of another person or entity as beneficial owner (the "**Purchaser Beneficial Owner**"), such Purchaser's declaration, undertaking and indemnity shall contain the HST registration number of the Purchaser Beneficial Owner and shall be provided by both such Purchaser and the Purchaser Beneficial Owner;
- (b) the Purchaser (or the Purchaser Beneficial Owner, if applicable) is or will on the Closing Date be registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada) (the "**ETA**") for the collection and remittance of HST;
- (c) the Purchaser (or the Purchaser Beneficial Owner, if applicable) shall be liable, shall self-assess and remit to the appropriate governmental authority all HST that is payable under the ETA in connection with the transfer of the Property made pursuant to this Agreement, all in accordance with the ETA;
- (d) the Vendor shall not collect HST on Closing regarding the Property and shall allow the Purchaser (or the Purchaser Beneficial Owner, if applicable) to self-assess and remit HST to the Receiver General in accordance with the ETA;
- (e) the Purchaser (and the Purchaser Beneficial Owner, if any), shall jointly and severally indemnify and save harmless the Vendors from and against any and all HST, penalties, costs and/or interest that may become payable by or assessed against the Vendor as a result of any inaccuracy, misstatement or misrepresentation made by such Purchaser or the Purchaser Beneficial Owner, if any, on the Closing Date in connection with any matter raised in this Section 6.5 or contained in any declaration referred to herein; and

The representations and warranties contained in this Section 6.5(2) shall survive the Closing and be embodied in a declaration, undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing specifying the Purchaser's (or the Purchaser Beneficial Owner's, as applicable) HST registration number.

**7.**  
**MISCELLANEOUS**

- 7.1. Tender.** Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.
- 7.2. Relationship of the Parties.** Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Lands for any purpose until the Closing Date.
- 7.3. Notices.**

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by facsimile to the parties at the applicable address set forth below:

- (a) in the case of the Vendor addressed to it at:

NAFA Properties Inc.  
65 Skyway Avenue  
Toronto, Ontario  
M9W 6C7

Attention: Douglas Lawson  
Facsimile: (416) 675-6865

with a copy to:

Blaney McMutry LLP  
2 Queen Street East, Suite 1500  
Toronto, Ontario  
M5C 3G5

Attention: Roman Pekaruk  
Facsimile: 416-594-5097

- 26 -

(b) in the case of the Purchaser addressed to it at:

Niche Bakers Properties Inc.  
6680 Finch Avenue West, Suite 7  
Toronto, Ontario M9W 6C2

Attention: Jeff Wood  
Facsimile: (416) 213-0211

with a copy to:

Fogler, Rubinoff LLP  
77 King Street West  
Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, Ontario M5K 1G8

Attention: Larry Winton  
Facsimile: (416) 941-8852

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

- 7.4. Further Assurances.** Each of the parties shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Agreement.
- 7.5. Lawyers as Agents.** Notices, approvals, waivers and other documents permitted, required or contemplated by this Agreement may be given or delivered by the parties or by their respective solicitors on their behalf.
- 7.6. Assignment.** This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be withheld in the sole and absolute discretion of the Vendor. Notwithstanding the foregoing, the Purchaser shall have the right, following delivery by the Purchaser of the Notice of the waiver or satisfaction of the condition contained in Section 4.2(a), without the consent of, but on prior Notice to, the Vendor, to assign its interest in this Agreement to an affiliated or related Person, provided that upon such assignment, the Purchaser provide evidence of such affiliation or relation and that the Purchaser shall not be released from its obligations under this Agreement until Closing has occurred.
- 7.7. Non-Merger.** None of the provisions of this Agreement shall merge in the deeds or transfers of the Lands or any other document delivered on the Closing Date and such provisions shall survive the Closing Date, subject to the provisions of Section 3.3 of this Agreement.

- 7.8. Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding upon the parties, shall be binding upon their respective successors and permitted assigns and shall enure to the benefit of and be enforceable only by such successors and permitted assigns that have succeeded or which have received such assignment in the manner permitted by this Agreement.
- 7.9. No Registration of Agreement.** The Purchaser covenants and agrees not to register this Agreement or any notice of this Agreement on title to the Lands.
- 7.10. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties.

[Signature page follows.]

**IN WITNESS WHEREOF** the parties have executed this Agreement.

**NICHE BAKERS PROPERTIES INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

**NAFA PROPERTIES INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

**SCHEDULE A****LANDS*****Firstly Lands (Main Ground Lease):*****Part of PIN 07424-0195 (LT):**

Part of Lot 21, Concession 3 Fronting the Humber River, Etobicoke, being designated as Part 3 on 64R-8647; Subject to Debts in EB373597; Subject to EB529811; Toronto (Etobicoke); City of Toronto

***Secondly Lands (City Ground Lease):*****Part of PIN 07424-0200 (LT):**

Part of Lot 21, Concession 3 Fronting the Humber River, Etobicoke closed by EB528845 being designated as Parts 1 and 2 on 64R-8647; Subject to EB529811; Toronto (Etobicoke); City of Toronto

## SCHEDULE B

### PERMITTED ENCUMBRANCES

#### *General*

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property, provided same have been complied with.
3. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner provided same have been complied with.
4. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
5. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
6. Title defects or irregularities which do not, in the aggregate, materially impair the use or marketability of any of the Purchased Assets for which it is presently used.
7. Subleases and any notices of such subleases registered on title to any Property, including all easements, rights of way, restrictions, restrictive covenants, servitudes and other similar rights in land contained in the subleases, and any leasehold mortgages or security interests or other liens relating to the subtenants or the subtenants' interest in respect thereof and which do not encumber the interest of the landlord thereunder, in all cases, provided they relate to existing leases and subleases in connection with the Property.
8. Encroachments by the Property over adjoining lands or easements, or rights of way and/or improvements on adjoining lands encroaching on any Property as would be disclosed by an up-to-date plan of survey, which do not, in the aggregate, materially impair the use or marketability of any Property for the purposes for which it is presently used.
9. The provisions of applicable law including, without limitation, zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, municipal or other governmental bodies or regulatory authorities, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of any Property which do not, in the aggregate, materially impair the use or marketability of any Property for the purposes for which it is presently used.



10. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.

***Specific – Main Ground Lease Lands***

1. Instrument No. EB373297, registered August 12, 1970, being a transfer.
2. Instrument No. EB412063, registered January 29, 1973, being a notice.
3. Reference Plan No. 64R-3413, deposited January 23, 1974.
4. Instrument No. EB434528, registered June 5, 1974, being a notice of lease.
5. Reference Plan No. 64R-7996, deposited October 10, 1979.
6. Instrument No. EB521973, registered March 28, 1980, being an assignment of lease.
7. Reference Plan No. 64R-8647, deposited September 12, 1980.
8. Instrument No. EB528844, registered October 2, 1980, being an agreement.
9. Instrument No. EB529811, registered October 30, 1980, being a transfer of easement
10. Instrument No. EB529856, registered October 30, 1980, being a notice of lease.
11. Instrument No. EB530152, registered November 4, 1980, being an agreement.
12. Instrument No. EB530258, registered November 6, 1980, being a lease.
13. Instrument No. EB537697, registered June 8, 1981, being a lease.
14. Instrument No. EB540360, registered August 10, 1981, being an acknowledgment.
15. Instrument No. TB288766, registered December 4, 1985, being an assignment of lease.
16. Instrument No. TB291556, registered December 17, 1985, being a charge.
17. Instrument No. TB296815, registered January 17, 1986, being an assignment of lease.
18. Instrument No. TB366644, registered November 4, 1986, being an agreement.
19. Instrument No. TB375487, registered December 8, 1986, being a lease.
20. Instrument No. TB396460, registered March 13, 1987, being an agreement.
21. Instrument No. TB419322, registered June 5, 1987, being a debenture.
22. Instrument No. TB419504, registered June 5, 1987, being an assignment general.
23. Instrument No. TB464831, registered November 25, 1987, being a notice of lease.

24. Instrument No. TB478920, registered January 28, 1991, being an agreement.
25. Instrument No. TB760211, registered May 31, 1991, being a transfer.
26. Instrument No. TB893345, registered April 5, 1993, being a notice.
27. Instrument No. CA311546, registered October 18, 1994, being a transfer.
28. Instrument No. CA339842, registered April 5, 1995, being a notice.
29. Instrument No. CA342980, registered April 28, 1995, being an agreement.
- 30.** Instrument No. CA387591, registered January 23, 1996, being a notice.
- 31.** Instrument No. CA387592, registered January 23, 1996, being a notice.
- 32.** Instrument No. CA387593, registered January 23, 1996, being a notice.
- 33.** Instrument No. CA387594, registered January 23, 1996, being a notice.
34. Instrument No. CA387596, registered January 23, 1996, being an agreement.
35. Instrument No. CA662395, registered April 28, 2000, being a notice.
36. Reference Plan No. 66R-21954, deposited August 8, 2005.
37. Instrument No. AT1090598, registered March 21, 2006, being a notice.
38. Instrument No. AT1255958, registered September 15, 2006, being a transmission by personal representative.
39. Instrument No. AT2453920, registered July 21, 2010, being a transfer by personal representative – land.
40. Instrument No. AT2472527, registered August 11, 2010, being a transfer by personal representative.
41. Instrument No. AT4174167, registered March 23, 2016, being an Application to Change Name – Instrument.
42. Instrument No. AT4174168, registered March 23, 2016, being an Application to Change Name – Instrument.
- 43.** Instrument No. AT4492753, registered February 22, 2017, being a notice of assignment of lessee interest.
44. Instrument No. AT4492755, registered February 22, 2017, being a notice of assignment of lessee interest.

***Specific – City Ground Lease Lands***

1. Instrument No. EB3755135, registered October 1, 1970, is a department of highways transfer plan.
2. Instrument No. EB412063, registered January 29, 1973, being a notice.
3. Reference Plan 64R-7996, deposited October 10, 1979.
4. Reference Plan 64R-8647, deposited September 12, 1980.
5. Instrument No. EB528845, registered October 2, 1980, being a bylaw.
6. Instrument No. EB529811, registered October 30, 1980, being a transfer of easement.
7. Instrument No. EB529855, registered October 30, 1980, being a lease.
8. Instrument No. EB530152, registered November 4, 1980, being an agreement.
9. Instrument No. EB530258, registered November 6, 1980, being a lease.
10. Instrument No. EB537696, registered June 8, 1981, being a lease.
11. Instrument No. EB540360, registered August 10, 1981, being an acknowledgement.
12. Instrument No. TB288767, registered December 4, 1985, being an assignment of lease.
13. Instrument No. TB296816, registered January 17, 1986, being an assignment of lease.
14. Instrument No. TB419322, registered June 5, 1987, being a debenture
15. Instrument No. TB419504, registered June 5, 1987, being an assignment general.
16. Instrument No. TB464831, registered November 25, 1987, being a notice of lease.
17. Instrument No. TB478544, registered January 27, 1988, being an agreement.
18. Instrument No. T760210, registered May 31, 1991, being a transfer
19. Instrument No. CA339842, registered April 5, 1995, being a notice.
20. Instrument No. CA387591, registered January 23, 1996, being a notice.
21. Instrument No. CA387592, registered January 23, 1996, being a notice.
22. Instrument No. CA387593, registered January 23, 1996, being a notice.
23. Instrument No. CA387594, registered January 23, 1996, being a notice.
24. Instrument No. CA387595, registered January 23, 1996, being an agreement.

25. Instrument No. CA662395, registered April 28, 2000, being a notice.
26. Instrument No. AT1090598, registered March 21, 2006, being a notice.
27. Instrument No. AT4492754, registered February 22, 2017, being a notice of assignment of lessee interest.
28. Instrument No. AT4492755, registered February 22, 2017, being a notice of assignment of lessee interest.

## SCHEDULE B-2

### DETAILS OF GROUND LEASES

#### Main Ground Lease:

- A. By a lease dated July 30, 1973, and registered on June 5, 1974 as Instrument No. EB434528 certain parcels of lands including that part now designated as part of Lot 21, Concession 3 fronting the Humber River, Etobicoke, and being designated as Part 3 on Plan 64R-8647 were leased by Samuel Black, Joseph Black, Norman Black, and Beatrice Wintrob (the "**Blacks and Wintrob**"), as landlords, to Rockford Developments Limited ("**Rockford**") as tenant, for a term expiring February 28, 2073 (the "**Original Head Lease**");
- B. By an assignment of lease dated March 17, 1980, and registered on March 28, 1980 as Instrument No. EB521978, Rockford assigned an undivided one-half interest in the Original Head Lease to Imbrook Properties Limited ("**Imbrook**");
- C. The Original Head Lease permits certain "peel off" leases;
- D. By a peel off lease dated October 1, 1980, a notice of which was registered on October 30, 1980 as Instrument No. EB529856 (the "**Main Lease**"), among the Blacks and Wintrob, as landlord, and Rockford and Imbrook, as tenant, and Louis Frieberg and Gerda Frieberg, as guarantors, Rockford and Imbrook acquired a leasehold interest in Part 3 on Plan 64R-8647 (the "**Main Lease Lands**");
- E. By sublease dated as of October 1, 1980, notice of which was registered on November 6, 1980 as Instrument No. EB530258, Rockford and Imbrook, as sublandlord, subleased the Main Lease Lands to Hudson's Bay Company Developments Limited ("**Hudson's Bay**"), as subtenant, for a term and upon conditions as set forth therein (the "**Sublease**");
- F. Section 17.01 of the Sublease granted to the subtenant thereunder the right to purchase all of the leasehold interest of Rockford and Imbrook in the Main Lease Lands together with any options contained therein, effective March 1, 1999;
- G. Hudson's Bay exercised the option to purchase contained in Section 17.01 of the Sublease and obtained an assignment of the leasehold interest of Rockford and Imbrook in and to the Main Lease Lands, such assignment to be effective March 1, 1999 with the Sublease remaining in full force and effect until such date, and Hudson's Bay obtained an acknowledgement of receipt of consideration for such assignment by Rockford and Imbrook which was registered on August 10, 1981 as Instrument No. EB540360;
- H. Hudson's Bay, as assignor, assigned to Hudson's Bay Company Fur Sales International Limited, as assignee, its leasehold interest in the Main Lease Lands and the Sublease effective as of March 1, 1999 by assignment dated January 16, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387591;
- I. Hudson's Bay Company Fur Sales International Limited, as assignor, assigned to Hudson's Bay Company Fur Sales Canada Limited, as assignee, its leasehold interest in the Main Lease

Lands and the Sublease effective March 1, 1999 by assignment dated February 1, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387592;

J. Hudson's Bay Company Fur Sales Canada Limited changed its name to Hudson's Bay New York Inc. by certificate of amendment dated March 13, 1987, a certified copy of which was deposited on August 25, 1995, as Instrument No. CA362651;

K. Hudson's Bay New York Inc., as assignor, assigned to Markborough Properties Limited, as assignee, its leasehold interest in the Main Lease Lands and the Sublease effective March 1, 1999 by assignment dated April 30, 1988, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387593;

L. Markborough Properties Limited changed its name to Markborough Properties Inc. by certificate of amendment dated March 4, 1989, a certified copy of which was deposited on July 10, 1989 as Instrument No. TB618074;

M. Markborough Properties Inc. thereafter continued into Ontario, and amalgamated with Cambridge Shopping Centres Limited effective June 9, 1997 to become Cambridge Shopping Centres Limited;

N. Imbrook assigned its interest in the Main Lease to EL EF Investments Inc. by assignment dated as of November 25, 1985, notice of which assignment was registered December 4, 1985 as Instrument No. TB288766;

O. Rockford assigned its interest in the Main Lease to 908498 Ontario Limited and Vinca Estates Limited, as trustee for Rockford by an assignment dated December 19, 1990, notice of which assignment was registered May 31, 1991 as Instrument No. TB760211;

P. Pursuant to the option to purchase (detailed in recitals E, F and G above), effective March 1, 1999, Cambridge Shopping Centres Limited acquired the interest of EL EF Investments Inc., the interest of 908498 Ontario Limited and the interest of Vinca Estates Limited as trustee for Rockford including the interest of Rockford in the Main Lease;

Q. Cambridge Shopping Centres Limited amalgamated with Ivanhoe Ontario Inc. effective August 13, 2001 and continued as Ivanhoe Cambridge I Inc.; and

R. Ivanhoe Cambridge I Inc. assigned its beneficial interest in the Main Lease to Ivanhoe Cambridge II Inc. effective August 15, 2001.

T. Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc. assigned its interest in the Main Lease by assignment dated February 22, 2017, notice of which assignment was registered February 22, 2017 as Instrument No. AT4492753.

**City Ground Lease:**

A. By a lease dated October 1, 1980, notice of which was registered on October 30, 1980 as Instrument No. EB529855 (the "**City Lease**"), among The Corporation of the Borough of Etobicoke as landlord and Rockford and Imbrook as tenant, with the Blacks and Wintrob, as

landlords to the Original Head Lease, Rockford and Imbrook acquired a leasehold interest in that part of Lot 21, Concession 3 fronting the Humber River, Etobicoke and being designated as Parts 1 and 2 on Plan 64R-8647 (the "**City Lease Lands**"), upon the terms and conditions contained therein;

B. Pursuant to the City of Toronto Act, 1997 S.O. 197, c.2, The Corporation of the Borough of Etobicoke, together with other municipalities, amalgamated to continue as City of Toronto, on January 1, 1998;

C. By sublease dated as of October 1, 1980, notice of which was registered on November 6, 1980 as Instrument No. EB530258, Rockford and Imbrook, as sublandlord, subleased the City Lease Lands to Hudson's Bay as subtenant for a term and upon conditions as set forth therein (the "**Sublease**");

D. Section 17.01 of the Sublease granted to the subtenant thereunder the right to purchase all of the leasehold interest of Rockford and Imbrook in the City Lease Lands together with any options contained therein, effective March 1, 1999;

E. Hudson's Bay exercised the option to purchase contained in Section 17.01 of the Sublease and obtained an assignment of the leasehold interest of Rockford and Imbrook in and to the City Lease Lands, such assignment to be effective March 1, 1999 with the Sublease remaining in full force and effect until such date. and Hudson's Bay obtained an acknowledgement of receipt of consideration for such assignment by Rockford and Limited which was registered on August 10, 1981 as Instrument No. EB540360;

F. Hudson's Bay, as assignor, assigned to Hudson's Bay Company Fur Sales International Limited, as assignee, its leasehold interest in the City Lease Lands and the Sublease effective as of March 1, 1999 by assignment dated January 16, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387591;

G. Hudson's Bay Company Fur Sales International Limited, as assignor, assigned to Hudson's Bay Company Fur Sales Canada Limited, as assignee, its leasehold interest in the City Lease Lands and the Sublease effective March 1, 1999 by assignment dated February 1, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387592;

H. Hudson's Bay Company Fur Sales Canada Limited changed its name to Hudson's Bay New York Inc. by certificate of amendment dated March 13, 1987, a certified copy of which was deposited on August 25, 1995, as Instrument No. CA362651;

I. Hudson's Bay New York Inc., as assignor, assigned to Markborough Properties Limited, as assignee, its leasehold interest in the City Lease Lands and the Sublease effective March 1, 1999 by assignment dated April 30, 1988, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387593;

J. Markborough Properties Limited changed its name to Markborough Properties Inc. by certificate of amendment dated March 4, 1989, a certified copy of which was deposited on July 10, 1989 as Instrument No. TB618074;

- K. Markborough Properties Inc. thereafter continued into Ontario, and amalgamated with Cambridge Shopping Centres Limited effective June 9, 1997 to become Cambridge Shopping Centres Limited;
- L. Imbrook assigned its interest in the City Lease to EL EF Investments Inc. by assignment dated as of November 25, 1985, notice of which assignment was registered December 4, 1985 as Instrument No. TB288767;
- M. Rockford assigned its interest in the City Lease to 908498 Ontario Limited and Vinca Estates Limited, as trustee for Rockford by an assignment dated December 19, 1990, notice of which assignment was registered May 31, 1991 as Instrument No. TB760210;
- N. Pursuant to the option to purchase (detailed in recitals C, D and E above), effective March 1, 1999, Cambridge Shopping Centres Limited acquired the interest of EL EF Investments Inc., the interest of 908498 Ontario Limited and the interest of Vinca Estates Limited as trustee for Rockford including the interest of Rockford, in the City Lease;
- O. Cambridge Shopping Centres Limited amalgamated with Ivanhoe Ontario Inc. effective August 13, 2001 and continued as Ivanhoe Cambridge I Inc.; and
- P. Ivanhoe Cambridge I Inc. assigned its beneficial interest in the City Lease to Ivanhoe Cambridge II Inc. effective August 15, 2001.
- Q. Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc. assigned its interest in the Main Lease by assignment dated February 22, 2017, notice of which assignment was registered February 22, 2017 as Instrument No. AT4492754.



## Schedule "D"

- All main office furniture – NAFA’s working office – approximately 50 desks and chairs and associated office items
- Computers, screens, keyboard, mouse and phone equipment to support each office in main office which includes box of phones marked #5321 (Paul to label with NICHE)
- Safe in print room, plus items in print room other than what NAFA is removing <sup>5312</sup> *pe*
- All lobby furniture, and items in lobby at time before sale process *pe*
- Switchboard furniture and equipment
- TV’s in main office and lobby (5 including one on mobile stand)
- Board room furniture - 4 auction tables with 8 chairs (chairs are lot # 228 and 229)
- 5 black wall display cases
- 2 computer lifts for desk
- 22 chairs (lot #'s 232, 233, 291 and 291)
- 2 blue coat racks
- All kitchen equipment except lot # 32 (dishes), 17 & 18 (trays), 28 (warmer fuel), 46 (pails), 90 (cash machine), 101 & 102, plate holders, desk in office to be replaced with another desk, 109 to 114 (serveries), 120 (bowls), 119 (chop sticks)
- All cafeteria chairs and tables (approximately 200 chairs and 50 tables)
- Cafeteria projector and screen
- Cafeteria glass artwork
- Cafeteria HBC map
- All plastic serving carts
- Warmer (lot # 128)
- 2 fridges (lot #126 and 125)
- Steamer (lot #122)
- Coffee machine (lot #123)
- All janitorial supplies and equipment
- All cameras for vision system
- All NAFA photo copiers except what NAFA needs going forward
- 8 foot projection screen
- Barracuda firewalls (3)
- All tablets
- TV’s in auction room (5)
- Warehouse projector and screen (Chinese room)
- All building perimeter pallet racking
- Table scale in stringing area
- 6 label printers
- Scissor lift

Oct. 2, 2020

BIL

*pe**PICL*

- ☐ 3 reach trucks with chargers 2 raymond and one Hyster(V20033, V20147, V20224),plus raymond stradle stacker and charger
- ☐ All motorized walkies and chargers
- ☐ All manual pallet trucks
- ☐ Metro racking in blue bin (blue bin included)
- ☐ All warehouse lockers and cabinets
- ☐ Tile carpet in blue bins (bins included)
- ☐ All first aid supplies (to include 2 defibrillators)
- ☐ 40 auction room tables
- ☐ 20 plastic round tables
- ☐ 4 picnic tables
- ☐ Bbq grill
- ☐ Warehouse office by electrical room
- ☐ All electrical cables including generator cables
- ☐ 150 pieces of steel decking for pallet racking
- ☐ Warehouse storage cage
- ☐ 20 blue bins
- ☐ Pallet wrapper and supplies
- ☐ All pallet racking in small storage fridge except BA01 to BA05
- ☐ 6 12 x 12 steel carts from mink packing machine
- ☐ 6 12 x 24 steel carts from wild fur packing machine
- ☐ Pallet racking in main fridge row AK
- ☐ Mobile tool cart
- ☐ All tools and equipment which are currently in maintenance shop
- ☐ Industrial steamer
- ☐ Standing polar bear – NAFA bundle #138232
- ☐ Polar bear rug – NAFA bundle # 121726

Oct. 2, 2020

OK

*[Handwritten signature]*

This is Exhibit "I" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

## Ariyana Botejue

---

**From:** Jack Harvey <Jack.Harvey@toronto.ca>  
**Sent:** Tuesday, October 13, 2020 11:24 AM  
**To:** Stephen Gaudreau  
**Cc:** Roman Pekaruk; David T. Ullmann; Ariyana Botejue  
**Subject:** RE: Sale of 65 Skyway Avenue

**Importance:** High

Good morning Stephen,

I have reached out to the city lawyer regarding your authorization request form and I am awaiting a response. As a property officer I have never been asked to provide such authority. In the event it can be approved, I will confirm back. Consideration regarding your timeline is acknowledged. The city's pre-COVID time requirements regarding assignment of the existing ground lease provided for a 6-8 week completion schedule (the process involves internal review/consultations/approvals). The current climate may impact on the schedule. Every effort will be made to accommodate your request. Please provide the following information?

- Proposed new tenant information (Company name etc.)
- Letters of Incorporation
- Company signing authorities (names/titles)
- Audited financial records
- Business profile that will demonstrate previous experience in operating businesses owned/operated similar to exiting tenant's current operation
- Commercial Credit Report

Thank you,

**Jack Harvey**  
 Property Officer, Real Estate Services  
**Corporate Real Estate Management**  
 Metro Hall, 55 John Street, 2<sup>nd</sup> Floor  
 Toronto, ON M5V 3C6  
 Tel 416-397-7704  
 Cell 647-297-0790  
[Jack.harvey@toronto.ca](mailto:Jack.harvey@toronto.ca)



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---

**From:** Stephen Gaudreau [mailto:SGaudreau@blaney.com]  
**Sent:** October 13, 2020 11:04 AM  
**To:** Jack Harvey <Jack.Harvey@toronto.ca>

**Cc:** Roman Pekaruk <RPekaruk@blaney.com>; David T. Ullmann <DUllmann@blaney.com>; Ariyana Botejue <ABotejue@blaney.com>

**Subject:** RE: Sale of 65 Skyway Avenue

Hello Jack,

I hope you had a good long weekend.

I am following up on the below and the attached. Please kindly confirm receipt of this email and let me know if you can get the attached authorization signed right away. As mentioned below, time is of the essence for us and the Purchaser requires these signed authorizations to conduct its due diligence.

Thanks and happy to discuss,

Stephen

Stephen Gaudreau

Partner

[sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

☎ 416-596-4285 | ☎ 416-594-3594

---

**From:** Stephen Gaudreau

**Sent:** October 8, 2020 4:23 PM

**To:** 'Jack Harvey' <[Jack.Harvey@toronto.ca](mailto:Jack.Harvey@toronto.ca)>

**Cc:** Roman Pekaruk <[RPekaruk@blaney.com](mailto:RPekaruk@blaney.com)>; David T. Ullmann <[dullmann@blaney.com](mailto:dullmann@blaney.com)>; Ariyana Botejue <[abotejue@blaney.com](mailto:abotejue@blaney.com)>

**Subject:** RE: Sale of 65 Skyway Avenue

Hello Jack,

I had reached out to you during the summer with respect to my client, NAFA Properties Inc.'s ("NAFA"), sale of ground leases at 65 Skyway Avenue. Please see below email chain. As a reminder, the City of Toronto (along with a private landowner) are the owners of the land and NAFA's landlord.

I do not believe a City lawyer ever reached out to us, but no matter, as that sale fell through. However, we now have a serious purchaser who has entered into an extensive Agreement of Purchase and Sale ("APS") to obtain the ground leases. As part of the APS, NAFA requires the City of Toronto's consent to the sale. The agreement (entered into on October 7, 2020) requires the Landlord's consent to the transaction before the November 15, 2020 closing date. **Therefore, we would be grateful to know what information the City requires from the Purchaser in order to provide its consent as soon as possible.**

In addition, as part of the Purchaser's due diligence process it will be conducting various off-title searches. In order to obtain the information required for its due diligence (mostly from various City departments itself) it is requesting that the City of Toronto execute the attached consents to obtain the required information. **We ask that the City execute the attached authorizations as soon as possible (and hopefully in the next day or two) so that the Purchaser can obtain its due diligence documents without delay and not cause unnecessary delays to the closing of our client's sale transaction.**

Please kindly confirm receipt of this email and I would be more than happy to provide any clarification and discuss the above at your earliest convenience.

Regards,

Stephen

Stephen Gaudreau

Partner

[sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

☎ 416-596-4285 | ☎ 416-594-3594

**From:** Jack Harvey <[Jack.Harvey@toronto.ca](mailto:Jack.Harvey@toronto.ca)>  
**Sent:** July 27, 2020 12:52 PM  
**To:** Stephen Gaudreau <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>  
**Subject:** FW: Sale of 65 Skyway Avenue  
**Importance:** High

Good afternoon Stephen,

I am a property officer with Corporate Real Estate Management (CREM) and I will assist with your request and will be your primary contact. I will contact the City's Director of legal Real Estate Services and request that a lawyer be assigned to assist with this matter. Prior to COVID19, the usual turn around time for any/all requests of this type was 6-8 weeks. I will get back in touch as soon as possible. In the meantime, the City will want information about the purchaser including financial statements and a profile of their business (to confirm experience related to current operations).

I look forward to working with you to facilitate this request. If you have any questions please let me know.

Regards,

**Jack Harvey**  
Property Officer, Real Estate Services  
**Corporate Real Estate Management**  
Metro Hall, 55 John Street, 2<sup>nd</sup> Floor  
Toronto, ON M5V 3C6  
Tel 416-397-7704  
Cell 647-297-0790  
[Jack.harvey@toronto.ca](mailto:Jack.harvey@toronto.ca)



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---

**From:** Dariusz Motyka  
**Sent:** July 27, 2020 12:33 PM  
**To:** Jack Harvey  
**Cc:** Alex Schuler ; Anthony (Emir) Waddell ; Carmela Chianelli  
**Subject:** FW: Sale of 65 Skyway Avenue

Hello Jack

This is for your new assignment: Skyway Ave 65 (Sale of 65 Skyway Ave). Please see attachment and e-mails below.

Regards,  
Dariusz

---

**From:** Alex Schuler  
**Sent:** July 27, 2020 9:56 AM  
**To:** Anthony (Emir) Waddell <[Anthony.Waddell@toronto.ca](mailto:Anthony.Waddell@toronto.ca)>; Dariusz Motyka <[Dariusz.Motyka@toronto.ca](mailto:Dariusz.Motyka@toronto.ca)>; Carmela Chianelli

<[Carmela.Chianelli@toronto.ca](mailto:Carmela.Chianelli@toronto.ca)>

**Subject:** FW: Sale of 65 Skyway Avenue

For assignment

**Alexander Schuler**  
Manager, Property Management & Lease Administration  
Corporate Real Estate Management  
City of Toronto  
T: 416-392-6284 E: [alex.schuler@toronto.ca](mailto:alex.schuler@toronto.ca)



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---

**From:** Stephen Gaudreau [<mailto:SGaudreau@blaney.com>]  
**Sent:** July 24, 2020 3:18 PM  
**To:** Alex Schuler <[Alex.Schuler@toronto.ca](mailto:Alex.Schuler@toronto.ca)>  
**Cc:** David T. Ullmann <[DUllmann@blaney.com](mailto:DUllmann@blaney.com)>; Roman Pekaruk <[RPekaruk@blaney.com](mailto:RPekaruk@blaney.com)>  
**Subject:** Sale of 65 Skyway Avenue

Good Afternoon,

My name is Stephen Gaudreau, my firm, Blaney McMurtry LLP, is counsel to NAFA Properties Inc. (“NAFA”).

NAFA currently leases the 65 Skyway Avenue, Etobicoke, M9W 6C7 (the “Skyway Property”) from the City of Toronto and a third party (the “Ground Leases”). The Skyway Property consists of two separate PINS one with the City of Toronto as the registered owner and the other with the Black family as the registered owners. I am attaching copies of each of the parcel abstract for your ease of reference.

NAFA has entered into a conditional agreement of purchase and sale to assign the Ground Leases to Hardeep Nagra in Trust. The sale is conditional, among other things, on obtaining NAFA’s landlords’ consent (i.e., the City of Toronto). The purchaser’s due diligence and conditions must be satisfied by August 31, 2020, and we would like to get the City’s position on the assignment by that date as well.

I thought I would reach out to you now in order to get the ball rolling to obtain the City’s consent.

Please kindly advise what (if anything) the City requires in order to obtain its consent.

Lastly, if you are the incorrect individual to contact at the City, please kindly advise whom I should be contacting.

Please confirm receipt of this email.

Thank you and I am happy to discuss at your earliest convenience.

Stephen

Stephen Gaudreau  
Partner

[sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

☎416-596-4285 | ☎416-594-3594

🌐Blaney.com



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This is Exhibit "J" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Step Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

Stephen Gaudreau  
*Partner*  
D: 416-596-4285 F: 416-594-3594  
SGaudreau@blaney.com

October 22, 2020

**VIA EMAIL**

Mr. Jack Harvey  
Property Officer, Real Estate Services  
Corporate Real Estate Management  
Metro Hall, 55 John Street, 2<sup>nd</sup> Floor  
Toronto, ON, M5V 3C6

Dear Mr. Harvey,

**Re: Ground lease between NAFA Properties Inc. (“NAFA”) and the City of Toronto (the “Landlord”) with respect to 65 Skyway Avenue, Toronto, Ontario (the “Skyway Property”)**

We are writing with respect to the pending ground lease assignment sale by our client, NAFA, to Niche Bakers Properties Inc. (the “**Purchaser**”) that is scheduled to close on November 15, 2020.

As you know, NAFA is seeking the Landlord’s consent to the transaction pursuant to the terms of the ground lease.

We understand that on October 20, 2020, the Purchaser delivered a number of financial and corporate documents to you in response to the Landlord’s requests for information in order to evaluate the Purchaser’s ability to fulfill its covenants pursuant to the ground lease. A copy of that email is enclosed with this letter (without attachments) for your ease of reference.

It is our view that Niche Bakers entities are well established companies in a solid financial position with more than sufficient assets to meet the covenants of the ground lease.

In light of the above, we are hopeful that the Landlord will be in a position to provide its consent to the assignment in short order.

NAFA will be attending Court on November 5, 2020, where it will be seeking, among other things, an approval and vesting order for the ground lease assignment sale. You will be served with notice of that hearing. To the extent we have not been able to settle the consent issue, we may be required to seek the assistance of the court to resolve any remaining issues in accordance with the provisions of the *Companies Creditors’ Arrangement Act*. The Monitor has advised that it would support such an approach, if necessary. We also understand that the key stakeholders support taking all necessary steps to see the transaction proceed. We trust that there is more than enough time between now and then to address the Landlord’s legitimate concerns such that the assistance of the Court will not be necessary, but we are writing to advise you of that possibility.

Should you wish, we (including the Monitor) are available to have a call to discuss at your earliest convenience.

Yours very truly,

**Blaney McMurtry LLP**



Stephen Gaudreau  
SG/ab

Encl.: Email to Harvey

cc: Kyla Mahar of Miller Thomson LLP, Counsel to the Court Appointed Monitor  
Jordan Sleeth and Todd Ambachtsheer of Deloitte Restructuring Inc., the Court  
Appointed Monitor  
David Ullmann, Counsel to NAFA

This is Exhibit "K" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

Stephen Gaudreau  
*Partner*  
D: 416-596-4285 F: 416-594-3594  
SGaudreau@blaney.com

October 22, 2020

**VIA EMAIL**

Messers Timothy Dunn and Stephen Posen  
Minden Gross LLP  
145 King Street West  
Suite 2200  
Toronto, ON, M5H 4G2

Dear Mr. Dunn and Mr. Posen:

**Re: Ground lease between NAFA Properties Inc. (“NAFA”) and the Black family (the “Landlord”) with respect to 65 Skyway Avenue, Toronto, Ontario (the “Skyway Property”)**

We are writing with respect to the pending ground lease assignment sale by our client, NAFA, to Niche Bakers Properties Inc. (the “**Purchaser**”) that is scheduled to close on November 15, 2020.

As you know, NAFA is seeking your client, the Landlord’s, consent to the transaction pursuant to the terms of the ground lease.

We understand that on October 21, 2020, the Purchaser delivered a number of financial and corporate documents to you in response to the Landlord’s requests for information in order to evaluate the Purchaser’s ability to fulfill its covenants pursuant to the ground lease. A copy of that email is enclosed with this letter (without attachments) for your ease of reference.

We further understand that you have been in contact with the Purchaser’s lawyer with respect to further requests for information and the Purchaser has been responsive to same. We further understand that you have been in contact with the Purchaser’s lawyer with respect to further requests for information and the Purchaser has been responsive to same.

It is our view that Niche Bakers entities are well established companies in a solid financial position with more than sufficient assets to meet the covenants of the ground lease.

In light of the above, we are hopeful that the Landlord will be in a position to provide its consent to the assignment in short order.

NAFA will be attending Court on November 5, 2020, where it will be seeking, among other things, an approval and vesting order for the ground lease assignment sale. You will be served with notice of that hearing. To the extent we have not been able to settle the consent issue, we may be required to seek the assistance of the court to resolve any remaining issues in accordance with the provisions of the *Companies Creditors’ Arrangement Act*. The Monitor has

advised that it would support such an approach, if necessary. We also understand that the key stakeholders support taking all necessary steps to see the transaction proceed. We trust that there is more than enough time between now and then to address your legitimate concerns such that the assistance of the Court will not be necessary, but we are writing to advise you of that possibility.

Should you wish, we (including the Monitor) are available to have a call to discuss at your earliest convenience.

Yours very truly,

**Blaney McMurtry LLP**



Stephen Gaudreau  
SG/ab

Encl.: Email to Posen

cc: Kyla Mahar of Miller Thomson LLP, Counsel to the Court Appointed Monitor  
Jordan Sleeth and Todd Ambachtsheer of Deloitte Restructuring Inc., the Court  
Appointed Monitor  
David Ullmann, Counsel to NAFA

This is Exhibit "L" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

**RENTAL RATE AGREEMENT**  
**65 SKYWAY DRIVE, ETOBICOKE**

**THIS AGREEMENT** dated as of the 1<sup>st</sup> day of March, 2014.

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

**MEADOWVALE LAND LIMITED and  
REBECCA'S GIFT HOLDINGS LIMITED**

(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

**IVANHOE CAMBRIDGE II INC.**

(hereinafter called "Tenant")

OF THE SECOND PART

**WHEREAS:**

- A. By a lease dated July 30, 1973, certain lands including the Property, (defined below), were leased by Samuel Black, Joseph Black, Norman Black, and Beatrice Wintrob (formerly and now known as Beatrice Minden), as landlords, to Rockford Developments Limited, as tenant, which lease was registered on June 15, 1975 as Instrument No. 434528 (the "Head Lease").
- B. The Head Lease permits certain "peel off" leases.
- C. By a peel off lease (known as and hereinafter referred to as "Peel Off Lease No. 2") made as of October 1, 1980 among Samuel Black, Joseph Black, Norman Black, and Beatrice Wintrob (formerly and now known as Beatrice Minden), as landlord, and Rockford Developments Limited and Imbrook Properties Limited, as tenant, and Louis Frieberg and Gerda Frieberg, as guarantors, notice of which was registered on October 30, 1980 as Instrument No. 529856, Rockford Developments Limited and Imbrook Properties Limited acquired a leasehold interest in the lands legally described as that part of Lot 21, Concession 3 fronting the Humber River, designated as Part 3 on Plan 64R-8647 in the City of Etobicoke, in the Province of Ontario and municipally known as 65 Skyway Drive, Etobicoke (the "Property");
- D. Rebecca's Gift Holdings Limited is the successor in interest to Beatrice Wintrob (formerly and now known as Beatrice Minden) in respect of her interest in the Head Lease and Peel Off Lease No. 2. By Transfer/Deed of Land registered January 26, 1994 as Instrument No. TB939225, Beatrice Minden transferred her interest in the Property to 1018478 Ontario Inc. By Transfer/Deed of Land registered October 18, 1994, as Instrument No. CA311546, 1018478 Ontario Inc. transferred its interest in the Property to Rebecca's Gift Holdings Limited;
- E. The Estate of Samuel Black, is the successor in interest to Samuel Black, now deceased; The Estate of Joseph Black, is the successor in interest to Joseph Black, now deceased; The Estate of Norman Black, is the successor in interest to Norman Black, now deceased.
- F. The interest in the property formerly owned by Samuel Black, Joseph Black and Norman Black, and thereafter their respective estates was transferred in 1999 to Meadowvale Land Limited;



- G. By sublease dated as of October 1, 1980, notice of which was registered on November 6, 1980 as Instrument No. 530258, Rockford Developments Limited and Imbrook Properties Limited, as sublandlord, subleased the Property to Hudson's Bay Company Developments Limited as subtenant for a term and upon conditions as set forth therein (the "Sublease");
- H. Section 17.01 of the Sublease granted to the subtenant thereunder the right to purchase all of the leasehold interest of Rockford Developments Limited and Imbrook Properties Limited in the Peel Off Lease No. 2 and the Property together with any options contained therein, effective March 1, 1999;
- I. Hudson's Bay Company Developments Limited exercised the option to purchase contained in Section 17.01 of the Sublease and obtained an assignment of the leasehold interest of Rockford Developments Limited and Imbrook Properties Limited in and to the Property and the Peel Off Lease No. 2, such assignment to be effective March 1, 1999 with the Sublease remaining in full force and effect until such date and Hudson's Bay Company Developments Limited obtained an Acknowledgement of receipt of consideration for such assignment by Rockford Developments Limited and Imbrook Properties Limited which was registered as Instrument No. 540360 Etobicoke;
- J. Hudson's Bay Company Developments Limited, as assignor assigned to Hudson's Bay Company Fur Sales International Limited, as assignee, its leasehold interest in the Property and the Sublease and its interest effective as of March 1, 1999 in the Peel Off Lease No. 2 by assignment dated January 16, 1984, notice of which assignment was registered on January 23, 1995, as Instrument No. CA387591;
- K. Hudson's Bay Company Fur Sales International Limited, as assignor, assigned to Hudson's Bay Company Fur Sales Canada Limited, as assignee, its leasehold interest in the Property and the Sublease and its interest effective March 1, 1999 in the Peel Off Lease No. 2 by assignment dated February 1, 1984, notice of which assignment was registered on January 23, 1995, as Instrument No. CA387592;
- L. Hudson's Bay Company Fur Sales Canada Limited changed its name to Hudson's Bay New York Inc. by certificate of amendment dated March 13, 1987, a certified copy of which was deposited on August 25, 1995, as Instrument No. CA362651;
- M. Hudson's Bay New York Inc., as assignor, assigned to Markborough Properties Limited, as assignee, its leasehold interest in the Property and the Sublease and its interest effective March 1, 1999 in the Peel Off Lease No. 2 by assignment dated April 30, 1988, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387593;
- N. Markborough Properties Limited changed its name to Markborough Properties Inc. by certificate of amendment dated March 4, 1989, a certified copy of which was deposited on July 10, 1989 as Instrument No. TB618074;
- O. Markborough Properties Inc. and MPI Acquisition Inc. amalgamated by Articles of Amalgamation effective June 9, 1997 to become Markborough Properties Inc.
- P. Markborough Properties Inc. thereafter continued into Ontario, and amalgamated with Cambridge Shopping Centres Limited effective June 9, 1997 to become Cambridge Shopping Centres Limited;
- Q. Imbrook Properties Limited assigned its interest in the Property and the Head Lease to EL EF Investments Inc. by assignment dated as of November 25, 1985, notice of which assignment was registered December 4, 1985 as Instrument No. TB288766;
- R. Rockford Developments Limited assigned its interest in the Property and the Peel Off Lease No. 2 to 908498 Ontario Limited and Vinca Estates Limited, as trustee for Rockford Developments Limited by an assignment dated December 19, 1990, notice of which assignment was registered May 31, 1991 as Instrument No. TB760211;

- S. The parties have agreed to the amount of annual rent payable under the terms of the Peel Off Lease No. 2 for the period commencing March 1, 1999 and ending February 28, 2014;
- T. The Tenant, or its predecessor in interest, exercised the option to renew Peel Off Lease No. 2 with the result that the Term will expire on the 28<sup>th</sup> day of February, 2073;
- U. Pursuant to Section 5.03 of Peel Off Lease No. 2, the parties have agreed that the Property is not yet appropriate for redevelopment and that, accordingly, the application of Definition 2 of Fair Market Rental shall be postponed and subsequently applied to the establishment of Fair Market Rental for the Fourth Rental Period and that Definition 1 of Fair Market Rental will be applied to the Third Rental Period which shall be fifteen (15) years from March 1, 2014 through February 28, 2029;
- V. The parties have agreed to the amount of annual rent payable under the terms of Peel Off Lease No. 2 for the period commencing March 1, 2014 and ending February 28, 2029;
- W. Pursuant to the option to purchase (detailed in recitals G and H above), effective March 1, 1999, the Tenant acquired the interest of ELEF Investments Inc., the interest of 908498 Ontario Limited and the interest of Vinca Estates Limited as trustee for Rockford Developments Limited including, the interest of Rockford Developments Limited, in the Property and the Head Lease;
- X. Cambridge Shopping Centres Limited amalgamated with Ivanhoe Ontario Inc. effective August 13, 2001 and continued as Ivanhoe Cambridge I Inc.;
- Y. Ivanhoe Cambridge I Inc. assigned its interest in Peel Off Lease No. 2 to Ivanhoe Cambridge II Inc. effective August 15, 2001;
- Z. In summary, Landlord is now the landlord and Tenant is now the tenant under the Peel Off Lease No. 2.

**NOW THEREFORE**, in consideration of the sum of Two Dollars (\$2.00) and other good and valuable consideration, the receipt sufficiency which is hereby acknowledged by the parties hereto, the parties hereto agree as follows:

- 1. For clarification, it is agreed that:
  - (a) (i) The Third Rental Period shall be March 1, 2014 through February 28, 2029.
  - (ii) The Fourth Rental Period shall be twenty-five (25) years commencing March 1, 2029 through February 28, 2054;
  - (iii) The Fifth Rental Period (being the final rental period) means a period of nineteen (19) years commencing March 1, 2054 and ending February 28, 2073.
  - (b) The definition of Fair Market Rental, as set out in Section 1.01(h) of Peel Off Lease No. 2 to be applied for the determination of rent for the rental periods shall be:
    - Third Rental Period – Definition 1
    - Fourth Rental Period – Definition 2
    - Fifth Rental Period – Definition 1
- 2. The annual rental payable under Section 4.02 of Peel Off Lease No. 2 for the Third Rental Period commencing March 1, 2014 and ending February 28, 2029 shall be Four Hundred and Fifty-Nine Thousand, Three Hundred and Seventy-Five Dollars (\$459,375.00) per year payable in twelve (12) equal consecutive monthly instalments of Thirty-Eight Thousand, Two Hundred and Eighty-One Dollars and Twenty-Five Cents (\$38,281.25), payable in advance on the first day of each month.

- 3. All payments of rent shall be divided equally between Rebecca's Gift Holdings Limited as to one half and Meadowvale Land Limited as to the other half. The share of Rebecca's Gift Holdings Limited of the rent shall be payable as follows:

1018478 Ontario Limited  
 c/o Jo-Ann Minden  
 76 Walker Avenue  
 Toronto, Ontario M4G 1G2

and the share of Meadowvale Land Limited shall be paid as follows:

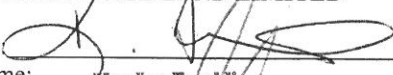
c/o Ron Berkis  
 Abrahamse, Berkis, Pinto LLP  
 2 St. Clair Avenue West  
 Suite 901  
 Toronto, Ontario M4V 1L5

or to such other address or party as any Landlord may advise Tenant in writing from time to time regarding such Landlord's respective share of rent.

- 4. All terms of the Peel Off Lease No. 2 shall remain in full force and effect unamended, except as herein expressly set forth.
- 5. This Agreement shall be governed by, construed and interpreted in accordance with the Laws of the Province of Ontario;
- 6. This Agreement shall enure to the benefit and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

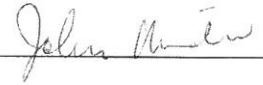
IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**MEADOWVALE LAND LIMITED**

Per:   
 Name: **Kay-Lee Franklin**  
 Title: **Vice-President**  
 Per: \_\_\_\_\_  
 Name: **Leslie T. Black**  
 Title: **Secretary**

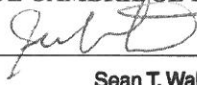
I/We have authority to bind the Corporation.

**REBECCA'S GIFT HOLDINGS LIMITED**

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

I/We have authority to bind the Corporation.

**IVANHOE CAMBRIDGE II INC.**

Per:   
Name: **Sean T. Walters**  
Title: **Senior Vice President, National & Mills Lending**

Per:   
Name: **Sunita V. Mahant**  
Title: **Director, Legal Affairs**

I/We have authority to bind the Corporation.

This is Exhibit "M" referred to in the Affidavit of Douglas Lawson  
sworn this 30<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Steph Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

**Ariyana Botejue**

---

**From:** Stephen Posen <SPosen@mindengross.com>  
**Sent:** Wednesday, October 28, 2020 1:46 PM  
**To:** Stephen Gaudreau; Ariyana Botejue; Timothy Dunn; Catherine Francis  
**Cc:** David T. Ullmann; 'Mahar, Kyla'; 'Sleeth, Jordan'; 'tambachtsheer@deloitte.ca'  
**Subject:** RE: Ground lease between NAFA Properties Inc. ("NAFA") and the Black Family (the "Landlord") with respect to 65 Skyway Avenue, Toronto, Ontario (the "Skyway Property")

Dear All

I am following up from our conference call on Monday October 26

At that time I advised that based on my understanding

- 1 the proposed assignee is a new corporation which will receive from shareholders or its affiliate \$8,000,000 which it will use to pay to the NAFA estate or Monitor or trustee to acquire the ground lease following which it will have no other assets
- 2 the assignee will sublease the property to its affiliate which is the Niche Bakers operating corporation(s) for a term of approximately 8 years to coincide with the period that the ground lease rent has been determined
- 3 under the ground lease the rent is to be reset in approximately 8 years
- 4 on our request the assignee's affiliate being the Niche Bakers operating corporation(s) have agreed to provide to the ground lessors an indemnity agreement relating to the lessee's obligations under the ground lease for the same period of approximately 8 years but not longer
- 5 the assignee's only source of revenue will be from its subtenant which is its affiliate – the Niche Bakers operating corporation(s) – to fund the rent payable under the ground lease and so the assignee will have a nil covenant after the term of the sublease or earlier if the assignee and the operating corporation(s) agree to terminate the sublease earlier; and then the only covenant to the lessors would be the 8 year indemnity leaving the lessors with no reliable covenant to pay the rent under the ground lease for the remaining period of approximately 45 years of the term of the ground lease
- 6 in summary it seems fair to conclude that the operating companies would have an obligation to pay the rent for 8 years and an option to maintain the lease for an additional period of approximately 65 years or such portion thereof that the operating companies choose to continue to sublease the property. Said another way the operating corporations will be obliged to pay rent for 8 years but the option to control the property for approximately 53 years – that strikes us as patently unreasonable

Based on that understanding I said that the lessors consider the request for consent to be unreasonable and that they would be reasonable in withholding consent to the assignment of the ground lease. I also suggested that if – between you and Niche Bakers have any reasonable proposal to suggest we would be happy to take it up with our clients.

The matter was left at the end of our conference call that you would consider our position and get back to me. I have heard nothing further from you.

You also advised that you have a Court date of November 5 to seek the Court's approval of your proposed assignment of the ground lease and presumably to compel the consent of the lessors. Please provide to my partners, Catherine Francis and Tim Dunn and copy me, forthwith your materials in support of your November 5 application. BTW I do not know the required time of notice of your application so I do not know if you have sufficient time to provide notice to us of the November 5 application

I look forward to hearing from you asap

Kind regards to all

Thanks

Steve

**STEPHEN POSEN\***

T: [416.369.4103](tel:416.369.4103) F: [416.864.9223](tel:416.864.9223) C: [416.453.4103](tel:416.453.4103) [www.mindengross.com](http://www.mindengross.com)

145 King St. West, Suite 2200, Toronto, ON M5H 4G2

Save contact details: [Stephen Posen](#)

\*Partner through Professional Corporation

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**From:** Stephen Posen

**Sent:** Friday, October 23, 2020 3:39 PM

**To:** 'Stephen Gaudreau' <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>; Ariyana Botejue <[ABotejue@blaney.com](mailto:ABotejue@blaney.com)>; Timothy Dunn <[TDunn@mindengross.com](mailto:TDunn@mindengross.com)>

**Cc:** David T. Ullmann <[DUllmann@blaney.com](mailto:DUllmann@blaney.com)>; 'Mahar, Kyla' <[kmahar@millertomson.com](mailto:kmahar@millertomson.com)>; 'Sleeth, Jordan' <[jsleeth@deloitte.ca](mailto:jsleeth@deloitte.ca)>; 'tambachtsheer@deloitte.ca' <[tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)>

**Subject:** RE: Ground lease between NAFA Properties Inc. ("NAFA") and the Black Family (the "Landlord") with respect to 65 Skyway Avenue, Toronto, Ontario (the "Skyway Property")

All

I am available Monday 2:15 – 2:45 and after 4

Please let me know what time is agreeable

Best to all

Steve

**Stephen Posen\***

T: [416.369.4103](tel:416.369.4103) F: [416.864.9223](tel:416.864.9223) C: [416.453.4103](tel:416.453.4103) [www.mindengross.com](http://www.mindengross.com)

145 King St. West, Suite 2200, Toronto, ON M5H 4G2

Save contact details: [Stephen Posen](#)

\*Partner through Professional Corporation

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---

**From:** Stephen Gaudreau [<mailto:SGaudreau@blaney.com>]

**Sent:** Friday, October 23, 2020 11:56 AM

**To:** Stephen Posen ; Ariyana Botejue ; Timothy Dunn

**Cc:** David T. Ullmann ; 'Mahar, Kyla' ; 'Sleeth, Jordan' ; 'tambachtsheer@deloitte.ca'

**Subject:** RE: Ground lease between NAFA Properties Inc. (“NAFA”) and the Black Family (the “Landlord”) with respect to 65 Skyway Avenue, Toronto, Ontario (the “Skyway Property”)

Hi Stephen/Tim,

Are you available to discuss on Monday afternoon? We are all generally available after 1PM. What time works for you?

Thanks,

Stephen

Stephen Gaudreau

Partner

[sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

☎416-596-4285 | ☎416-594-3594

**From:** Stephen Posen <[SPosen@mindengross.com](mailto:SPosen@mindengross.com)>

**Sent:** October 22, 2020 3:46 PM

**To:** Ariyana Botejue <[ABotejue@blaney.com](mailto:ABotejue@blaney.com)>; Timothy Dunn <[TDunn@mindengross.com](mailto:TDunn@mindengross.com)>

**Cc:** Stephen Gaudreau <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>; David T. Ullmann <[DUllmann@blaney.com](mailto:DUllmann@blaney.com)>; 'Mahar, Kyla' <[kmahar@millერთhompson.com](mailto:kmahar@millერთhompson.com)>; 'Sleeth, Jordan' <[jsleeth@deloitte.ca](mailto:jsleeth@deloitte.ca)>; 'tambachtsheer@deloitte.ca' <[tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)>

**Subject:** RE: Ground lease between NAFA Properties Inc. (“NAFA”) and the Black Family (the “Landlord”) with respect to 65 Skyway Avenue, Toronto, Ontario (the “Skyway Property”)

All

We have been advised that the proposed assignee is a corporation which was incorporated last month

If I understand the materials received from Roman Pekaruk correctly that corporation will be funded by approximately \$8,000,000 which we understand will be used to acquire the lease. Their intent then is to sublease the property to the corporation which operates the business. The financial statements for the operating corporations are satisfactory to our clients. I asked for an indemnity from the operating corporations and they agreed to provide such indemnity for the period of the sublease which is apparently 8-9 years. The remaining term of the ground lease is – as I recall – a little over 50 years. I requested the indemnity to apply for the term of the ground lease and that was declined.

So in summary the landlord is being asked to consent to an assignment of a 50 year lease with a substantial covenant for only 8 or 9 years. That seems unreasonable to the landlord and to us.

May we please have your views. I would be pleased to have a call as suggested by you – please propose some times – fyi as of now I am available for the balance of today

Regards to all

Steve





**Stephen Posen\***

T: [416.369.4103](tel:416.369.4103) F: [416.864.9223](tel:416.864.9223) C: [416.453.4103](tel:416.453.4103) [www.mindengross.com](http://www.mindengross.com)

145 King St. West, Suite 2200, Toronto, ON M5H 4G2

Save contact details: [Stephen Posen](#)

\*Partner through Professional Corporation

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---

**From:** Ariyana Botejue [<mailto:ABotejue@blaney.com>]

**Sent:** Thursday, October 22, 2020 2:40 PM

**To:** Stephen Posen <[SPosen@mindengross.com](mailto:SPosen@mindengross.com)>; Timothy Dunn <[TDunn@mindengross.com](mailto:TDunn@mindengross.com)>

**Cc:** Stephen Gaudreau <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>; David T. Ullmann <[DUllmann@blaney.com](mailto:DUllmann@blaney.com)>; 'Mahar, Kyla' <[kmahar@millერთhompson.com](mailto:kmahar@millერთhompson.com)>; 'Sleeth, Jordan' <[jsleeth@deloitte.ca](mailto:jsleeth@deloitte.ca)>; 'tambachtsheer@deloitte.ca' <[tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)>

**Subject:** Ground lease between NAFA Properties Inc. ("NAFA") and the Black Family (the "Landlord") with respect to 65 Skyway Avenue, Toronto, Ontario (the "Skyway Property")

Good day Messers Dunn and Posen,

Attached, please find correspondence from Mr. Gaudreau.

Thank you,



Ariyana Botejue  
Legal Assistant to Stephen Gaudreau & David Ullmann

[abotejue@blaney.com](mailto:abotejue@blaney.com)

☎ 416-593-1221 ext. 4777

🌐 [Blaney.com](http://Blaney.com)



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Court File No. CV-19-00630241-00CL

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "**Applicants**")

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**AFFIDAVIT OF DOUGLAS LAWSON**  
**(Motion Returnable November 5, 2020)**

---

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**David T. Ullmann (LSO # 42357I)**  
Tel: (416) 596-4289  
Fax: (416) 594-2437  
Email: [DUllmann@blaney.com](mailto:DUllmann@blaney.com)

**Stephen Gaudreau (LSO #65895M)**  
Tel: (416) 596-4285  
Fax: (416) 594-3594  
Email: [SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)

Counsel for the Applicants

**TAB 3**

Court File No. CV-19-00630241-00CL

**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 A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC.,  
3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS  
INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC,  
NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN  
LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU  
SP.Z OO and NAFA POLSKA SP. Z OO

(the “Applicants”)

**AFFIDAVIT OF JEFFREY WOOD**

I, **JEFFREY WOOD**, of the City of Toronto, in the Province of Ontario, **AFFIRM AND**

**SAY:**

1. I am a Director and Officer of Niche Bakers Properties Inc. (“**Niche Bakers Properties**”) the proposed purchaser of the 65 Skyway Avenue, Toronto, Ontario (“**65 Skyway**”) ground leases from NAFA Properties Inc., and as such have knowledge as to the matters which I hereinafter depose. To the extent I am recounting information provided to me by others, I have stated the source of that information and verily believe it to be true.
2. I am writing this affidavit to provide further information with respect to Niche Bakers Properties intended plans for the 65 Skyway and its wherewithal to meet the covenants of the ground leases.

**Niche Bakers Properties Inc.**

3. Upon or before closing of the transaction, Niche Bakers Properties will be fully funded with \$ [REDACTED] of equity to purchase the ground leases.

4. Upon or before closing of the transaction, Niche Bakers Properties will enter into a sublease with Niche Bakers Corp. for the remaining present rental rate term of the ground lease on the same terms and conditions as Niche Bakers Properties (including the additional rent). Attached to this Affidavit and marked as **Exhibit "A"** is a copy of the proposed form of sublease.

5. Niche Bakers Corp. and Niche Bakers (U.S.A.) Corp. (collectively "**Niche Bakers**") are Niche Bakers Properties operating companies. Niche Bakers have had strong revenue and financial performance. I am also a Director and Officer of Niche Bakers.

6. Niche Bakers has agreed to guarantee the present rental rate term of the lease being to February 28, 2029. It is expected that over the present rental rate term of the lease Niche Bakers Properties Inc. will pay approximately \$9,000,000 in rent to the Private Landlord (as defined in the affidavit of Doug Lawson filed on this motion).

**Niche Bakers Corp.**

7. Niche Bakers Corp. currently operates in a 90,000 square foot plant, and a 40,000 square foot plant. It specializes in the manufacturing of cakes, cookies, squares and pancakes. The products sell under the brand names Niche and Charlottes and its customers own brand labels. Its Canadian customers include Loblaws, Metro, Sobeys, and Costco. Its US customers include Wal-Mart, Kroger, Albertsons, Ahold Delhaize, Meijer and others.

**Niche Bakers (U.S.A.) Corp.**

8. Niche Bakers (U.S.A.) Corp. is the US sales arm of Niche Bakers Corp. and handles all US sales.

9. The combined Audited Financial Statements of Niche Bakers that have been provided to the Private Landlord are made up of the two companies Niche Bakers Corp. and Niche Bakers (U.S.A.) Corp. Attached to the Confidential Exhibits Brief and marked as **Confidential Exhibit “B”** is a copy of Niche Bakers audited financial statements. Niche Bakers are private companies, and therefore, there is a strong need to keep these exhibits confidential as they contain confidential business information. Therefore, I am of the view audited financial statements should be sealed.

10. In my view, the combined Audited Financial Statements support that both Niche Bakers Corp. and Niche Bakers (U.S.A.) Corp are in an exceptional financial position to guarantee the covenants of the present rental rate term of the lease.

**Planned use for 65 Skyway**

11. Niche Bakers is excited to build state of the art, peanut free cake, icing and frozen breakfast plant.

12. We estimate hiring between 75-100 new employees, in addition to the 100 – 125 employees we will transfer from existing operations.

13. Niche Bakers has experienced high levels of growth and requires additional space to meet the demand of our customers. Niche Bakers develops a deep relationship with our retail partners

to develop profitable solutions for both Niche Bakers and its grocery partners. Niche Bakers sales have increased substantially during Covid-19, as our grocery partners continue to outsource labour intensive products, providing opportunities for Niche Bakers.

14. We focus on making bakery products like Mom made, with real 2% milk and eggs, without the ingredients you cannot pronounce, at reasonable prices.

15. Niche Bakers will make a substantial investment to set up the plant, including a 30,000 plus square foot freezer, bulk flour, sugar, icing sugar, cake flour, and various oils distribution and silos. Installation of production and packaging lines, storage racking systems and ovens. New employee facilities will be constructed as well.

16. Initial capital expenditures at 65 Skyway are expected to be between \$4-5,000,000 prior to opening.

17. Niche Bakers will relocate its cake operations to 65 Skyway, including five existing lines in addition to installing 1-2 new cake lines, expected to arrive mid-February.

18. Niche Bakers will have its brand new icing manufacturing equipment installed in the spring, coordinating timing of installation with its Italian manufacturer.

19. Niche Bakers just received a new pancake line, this month which will be installed, in addition to moving the existing pancake sandwich line.

### **Conclusion**


20. To summarize, Niche Bakers Properties and Niche Bakers will be making a substantial investment in the 65 Skyway property, including job creation. Moreover, Niche Bakers will be a

strong guarantor on the covenant of the ground lease. I believe they will make excellent tenants for many years to come.

AFFIRMED remotely by Jeffrey Wood, before me at )  
the City of Toronto in the Province of Ontario, on the )  
28th day of October, 2020, in accordance with O.Reg. )  
431/20, Administering Oath or Declaration Remotely. )



\_\_\_\_\_  
Stephen Gaudreau - A commissioner for  
taking affidavits

  
\_\_\_\_\_  
JEFFREY WOOD  
\_\_\_\_\_



This is Exhibit "A" referred to in the Affidavit of Jeff Wood sworn  
this 28<sup>th</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is written in a cursive style with a long horizontal flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**Stephen Gaudreau**

THIS SUBLEASE dated as of the ► day of November, 2020.

B E T W E E N :

**NICHE BAKERS PROPERTIES INC.**

(hereinafter called the "Sublandlord")

OF THE FIRST PART;

- and -

**NICHE BAKERS CORP.**

(hereinafter called the "Subtenant")

OF THE SECOND PART;

**WHEREAS:**

- A. By a lease dated July 30, 1973, certain lands including the Property (defined below), were leased by Samuel Black, Joseph Black, Norman Black, and Beatrice Wintrob (formerly and now known as Beatrice Minden), as landlords, to Rockford Developments Limited, as tenant, which lease was registered on June 5, 1974 as Instrument No. EB434528 (the "**Head Lease**").
- B. By an assignment of lease dated March 17, 1980, and registered on March 28, 1980 as Instrument No. EB521973, Rockford Developments Limited assigned an undivided one-half interest in the Head Lease to Imbrook Properties Limited.
- C. The Head Lease permits certain "peel off" leases.
- D. By a peel off lease (the "**Lease**") made as of October 1, 1980 among Samuel Black, Joseph Black, Norman Black, and Beatrice Wintrob (formerly and now known as Beatrice Minden), as landlord, and Rockford Developments Limited and Imbrook Properties Limited, as tenant, and Louis Frieberg and Gerda Frieberg, as guarantors, notice of which was registered on October 30, 1980 as Instrument No. EB529856, Rockford Developments Limited and Imbrook Properties Limited acquired a leasehold interest in the lands legally described as that part of Lot 21, Concession 3 fronting the Humber River, designated as Part 3 on Plan 64R-8647 in the City of Etobicoke (now the City of Toronto), in the Province of Ontario and municipally known as 65 Skyway Drive, Etobicoke (the "**Property**");
- E. Rebecca's Gift Holdings Limited is the successor in interest to Beatrice Wintrob (formerly and now known as Beatrice Minden) in respect of her interest in the Head Lease and Lease. By Transfer/Deed of Land registered January 26, 1994 as Instrument No. TB939225, Beatrice Minden transferred her interest in the Property to 1018478 Ontario Limited. By Transfer/Deed of Land registered October 18, 1994, as Instrument No. CA311546, 1018478 Ontario Limited transferred its one-half interest in the Property to Rebecca's Gift Holdings Limited;
- F. The Estate of Samuel Black, is the successor in interest to Samuel Black, deceased as of November 24, 1991; The Estate of Joseph Black, is the successor in interest to Joseph Black, deceased as of February 1, 1989; The Estate of Norman Black, is the successor in interest to Norman Black, deceased as of February 22, 1996;
- G. The beneficial interest in the property formerly owned by Samuel Black, Joseph Black and Norman Black, and thereafter their respective estates was transferred in 1999 to Meadowvale Land Limited;

- 2 -

- H. 1350793 Ontario Limited is the successor in the registered interest of Samuel Black, deceased and his Estate. By Transfer by Personal Representative, registered on July 21, 2010 as Instrument No. AT2453920, Herbert Jack Greenstein and Harvey Geist as Estate Trustees with a Will, transferred the one sixth interest in the Property to 1350793 Ontario Limited;
- I. 1350793 Ontario Limited is also the successor in the registered interest of Norman Black, deceased and his Estate. By Transfer by Personal Representative, registered on August 11, 2010 as Instrument No. AT2472527, Thomy Sue Black, Kay Lee Franklin, Herbert Jack Greenstein and Elizabeth Ann Black Meiteen as Estate Trustees with a Will, transferred the one sixth interest in the Property to 1350793 Ontario Limited;
- J. The Estate of Joseph Black, is the successor in the registered interest of Joseph Black, deceased. By Transmission by Personal Representative-Land registered on September 15, 2006 as Instrument No. AT1255958, Anne Black, Lorne Gary Black, Stephen Howard Black and Ian Neil Black were named as Estate Trustees with a Will;
- K. By sublease dated as of October 1, 1980, notice of which was registered on November 6, 1980 as Instrument No. EB530258, Rockford Developments Limited and Imbrook Properties Limited, as sublandlord, subleased the Property to Hudson's Bay Company Developments Limited as subtenant for a term and upon conditions as set forth therein (the "**Sublease**");
- L. Section 17.01 of the Sublease granted to the subtenant thereunder the right to purchase all of the leasehold interest of Rockford Developments Limited and Imbrook Properties Limited in the Lease and the Property together with any options contained therein, effective March 1, 1999;
- M. Hudson's Bay Company Developments Limited exercised the option to purchase contained in Section 17.01 of the Sublease and obtained an assignment of the leasehold interest of Rockford Developments Limited and Imbrook Properties Limited in and to the Property and the Lease, such assignment to be effective March 1, 1999 with the Sublease remaining in full force and effect until such date, and Hudson's Bay Company Developments Limited obtained an Acknowledgement of receipt of consideration for such assignment by Rockford Developments Limited and Imbrook Properties Limited which was registered on August 10, 1981 as Instrument No. EB540360;
- N. Hudson's Bay Company Developments Limited, as assignor, assigned to Hudson's Bay Company Fur Sales International Limited, as assignee, its leasehold interest in the Property and the Sublease and its interest effective as of March 1, 1999 in the Lease by assignment dated January 16, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387591'
- O. Hudson's Bay Company Fur Sales International Limited, as assignor, assigned to Hudson's Bay Company Fur Sales Canada Limited (described in error in the registered document as Hudson's Bay Fur Sales Canada Limited), as assignee, its leasehold interest in the Property and the Sublease and its interest effective March 1, 1999 in the Lease by assignment dated February 1, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387592;
- P. Hudson's Bay Company Fur Sales Canada Limited changed its name to Hudson's Bay New York Inc. by certificate of amendment dated March 13, 1987, a certified copy of which was deposited on August 25, 1995, as Instrument No. CA362651;
- Q. Hudson's Bay New York Inc., as assignor, assigned to Markborough Properties Limited, as assignee, its leasehold interest in the Property and the Sublease and its interest effective March 1, 1999 in the Lease by assignment dated April 30, 1988, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387593;

- 3 -

- R. Markborough Properties Limited changed its name to Markborough Properties Inc. by certificate of amendment dated March 4, 1989, a certified copy of which was deposited on July 10, 1989 as Instrument No. TB618074;
- S. Markborough Properties Inc. and MPI Acquisition Inc. amalgamated by Articles of Amalgamation effective June 9, 1997 to become Markborough Properties Inc., a notarial copy of which was registered on April 30, 1988 as Instrument No. CA535890;
- T. Markborough Properties Inc. thereafter continued into Ontario, and amalgamated with Cambridge Shopping Centres Limited effective June 9, 1997 to become Cambridge Shopping Centres Limited, notice of which was registered on April 30, 1998 as Instrument No. CA535892;
- U. Imbrook Properties Limited assigned its interest in the Property and the Lease to EL EF Investments Inc. by assignment dated as of November 25, 1985, notice of which assignment was registered December 4, 1985 as Instrument No. TB288766;
- V. Rockford Developments Limited transferred its interest in the Property and the Lease to 908498 Ontario Limited and Vinca Estates Limited, as trustee for Rockford Developments Limited by a Transfer/Deed of Land dated December 19, 1990, and registered May 31, 1991 as Instrument No. TB760211;
- W. The option to renew the Lease was exercised with the result that the Term will expire on the 28<sup>th</sup> day of February, 2073;
- X. Pursuant to the option to purchase (detailed in recitals L through N above), effective March 1, 1999, Cambridge Shopping Centres Limited acquired the interest of EL EF Investments Inc., the interest of 908498 Ontario Limited and the interest of Vinca Estates Limited as trustee for Rockford Developments Limited including, the interest of Rockford Developments Limited, in the Property and the Lease;
- Y. Cambridge Shopping Centres Limited amalgamated with Ivanhoe Ontario Inc. effective August 13, 2001 and continued as Ivanhoe Cambridge I Inc., notice of which was registered on November 22, 2001 as Instrument No. CA750125;
- Z. Ivanhoe Cambridge I Inc. assigned its beneficial interest in the Lease to Ivanhoe Cambridge II Inc. effective August 15, 2001;
- AA. In summary, Meadowvale Land Limited, Rebecca's Gift Holdings Limited, 1350793 Ontario Limited and The Estate of Joseph Black (collectively, the "**Landlord**") are now the landlord under the Lease;
- BB. Ivanhoe Cambridge II Inc. entered into a lease dated May 9, 2005 with Kelsey's Holdings Inc., for a portion of the Property (the "**Montana's Premises**"), as such lease has been amended and renewed and is hereinafter referred to as the "**Montana's Lease**";
- CC. By an assignment of leasehold interest dated January, 2017, Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc., as assignor, assigned their interest in the Lease to Nafa Properties Inc.;
- DD. By an assignment and assumption of Montana's lease dated February 22, 2017, Ivanhoe Cambridge II Inc. assigned its interest in the Montana's Lease to Nafa Properties Inc.;
- EE. By an assignment of leasehold interest dated ►, Nafa Properties Inc., as assignor, assigned its interest in the Lease and the Montana's Lease to the Sublandlord, with the consent of the Landlord;
- FF. The Landlord has granted its consent in writing to the sublease of the Property (save and except for the Montana's Premises and hereinafter referred to as the "**Leased**

**Premises**") to the Subtenant by way of consent to sublease dated ►, made between the Landlord, the Sublandlord and the Subtenant;

**NOW THEREFORE THIS SUBLEASE WITNESSETH** that in consideration of the sum of Two (\$2.00) Dollars now paid by each of the parties to the other, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Grant**

The Sublandlord hereby subleases the Leased Premises to the Subtenant TO HAVE AND TO HOLD the Leased Premises for the term commencing on ► (the "**Commencement Date**") and expiring on February 27, 2029 (the "**Sublease Term**") in accordance with and subject to the terms, covenants and conditions contained in this Sublease.

2. **Rent**

The Subtenant agrees to pay to the Sublandlord or to such other party as it may otherwise direct in writing, from and after the Commencement Date and throughout the Sublease Term, without any prior demand therefore and without any deduction, abatement or set-off whatsoever, monthly and every month during the Sublease Term all Rent due and payable by the Sublandlord, as tenant to the Landlord, as landlord pursuant to the Lease after deducting the applicable portion of any rent paid to the Sublandlord as landlord pursuant to the Montana's Lease.

The Subtenant shall present to the Sublandlord at the beginning of each year of the Sublease Term a series of monthly postdated cheques for such year for the aggregate of the monthly payments of Rent or the Subtenant may remit payments of Rent by way of electronic funds transfer directly to the Sublandlord's bank account.

3. **Subtenant's General Covenants**

The Subtenant covenants with the Sublandlord:

- (a) to pay the Rent as set forth herein;
- (b) to keep the Leased Premises clean and in a good and tenantable condition;
- (c) to perform or cause to be performed with respect to the Leased Premises all of the covenants of the Sublandlord as tenant under the Lease, including, without limitation, the performance of the Sublandlord's maintenance, repair and replacement obligations;
- (d) not to do or omit to do any act or thing upon the Leased Premises which would cause a breach of any of the Sublandlord's obligations under the Lease;
- (e) to indemnify and save harmless the Sublandlord from and against all loss, claims, actions, damages, costs, liabilities and expenses, including all legal fees and disbursements, in connection with loss of life, personal injury, damage to property or any other loss or injury arising from or out of this Sublease, or any occurrence in or on the Leased Premises or any part thereof, or the Subtenant's occupancy of the Leased Premises, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be in the Leased Premises by the Subtenant, or in any way relating to the presence of hazardous substances in or on the Leased Premises by reason of the action of the Subtenant or those for whom the Subtenant is responsible at law. If the Sublandlord, without fault on its part, is made party to any litigation commenced by or against the Subtenant, then the Subtenant will indemnify and save harmless the Sublandlord from, and pay all expenses and legal fees incurred by the Sublandlord in connection with the litigation. The Subtenant will also pay all expenses and legal fees incurred by the

Sublandlord in enforcing any of the terms, covenants and conditions in this Sublease. The indemnity contained in this subclause (e) shall survive the expiration or earlier termination of the Sublease Term;

- (f) to observe and perform all covenants and obligations of the Subtenant under this Sublease;
- (g) to pay the Sublandlord an amount equal to any and all harmonized sales taxes, goods and services taxes, sales taxes, business transfer taxes, multi-stage sales taxes, use taxes, consumption taxes, value added taxes or any other similar taxes imposed on the Sublandlord or the Subtenant with respect to Rent, , or in respect of the rental of the Leased Premises pursuant to this Sublease, whether characterized as a harmonized sales tax, goods and services tax, sales tax, business transfer tax, multi-stage sales tax, use tax, consumption tax, value added tax or otherwise (hereinafter collectively called "Sales Taxes"). The amount of such Sales Taxes so payable by the Subtenant shall be calculated in accordance with the applicable legislation and shall be paid to the Sublandlord at the same time as the amounts to which such Sales Taxes apply are payable to the Sublandlord under the terms of this Sublease or earlier if required by the applicable legislation.

#### 4. **Insurance**

The Subtenant covenants with the Sublandlord during the Sublease Term to take out and keep in force in the name of the Subtenant, the Sublandlord and the Landlord such insurance in respect of the Leased Premises as shall comply with the obligations of the Sublandlord as tenant under Section 6.06 of the Lease. All such insurance shall be subject to the same obligations and same limitations of liability with respect to damage, loss or injury as are set out in the Lease. The Subtenant shall provide certificates of such insurance evidencing such coverage to the Sublandlord upon request, but in any event on or before the Commencement Date.

#### 5. **Business Taxes**

The Subtenant will pay to the lawful taxing authorities or to the Sublandlord, as the Sublandlord directs, before delinquency, all business taxes imposed in respect of the Subtenant's business and assets in, or use, enjoyment or occupancy of, or improvements to, the Leased Premises or any portion thereof. The Subtenant shall promptly deliver to the Sublandlord receipts evidencing payment of all such business taxes and such other information in connection therewith as the Sublandlord reasonably requires.

#### 6. **Covenants of the Sublandlord**

Subject to the due performance by the Subtenant of its obligations and agreements continued in this Sublease, the Sublandlord covenants with the Subtenant:

- (a) for quiet enjoyment;
- (b) upon notice from the Subtenant to use reasonable commercial efforts to enforce the obligations of the Landlord under the Lease to the extent that the failure to do so will materially adversely affect the Subtenant or the operation of its business;
- (c) to pay all Rent reserved under the Lease and to duly perform and observe all of the obligations of the Sublandlord as tenant under the Lease insofar as such obligations are not required to be performed or observed by the Subtenant under this Sublease. For greater certainty, the Sublandlord shall have no liability to the Subtenant for any breach of the Lease or any consequence thereof resulting from the Subtenant's act or neglect or the act, fault, default or neglect of those for whom the Subtenant is in law responsible.

## 7. **Improvements**

The rights and obligations of the Subtenant with respect to installing or making any alterations, additions or changes to any existing buildings or buildings (individually and collectively, the "**Changes**") shall be governed by the applicable provisions of the Lease, including, without limitation, the provisions of Sections 6.05, 6.10 and 6.12 of the Lease, it being agreed that all Changes shall be deemed to comply with all of the provisions of this Sublease, if either in compliance with the provisions of the Lease or the approval of the Landlord and the Sublandlord thereto has been obtained.

Upon the expiry or earlier termination of the Sublease Term, the Subtenant shall have the same obligations as the Sublandlord with respect to the condition in which the Leased Premises are to be surrendered.

## 8. **Assignment and Subletting**

The Subtenant covenants not to assign, sublet, mortgage, pledge or encumber this Sublease or the Leased Premises without the prior written consent of the Landlord (to the extent required under the Lease) and the Sublandlord, which consent of the Sublandlord shall not be unreasonably withheld or unduly delayed. Notwithstanding any such assignment, sublease, mortgage, pledge or encumbrance, the Subtenant shall remain fully liable under this Sublease and shall not be released from performing any of its terms, covenants and conditions.

## 9. **Default**

The provisions of Article IX and Article XI of the Lease are hereby incorporated in this Sublease, the appropriate changes of references being deemed to have been made with the intent that such Sections shall govern the relationship in respect of such matters between the Sublandlord and the Subtenant.

## 10. **Termination**

This Sublease shall terminate:

- (a) in the event of breach by the Subtenant, if the Sublandlord shall avail itself of its rights of re-entry and termination hereunder; or
- (b) if the Lease shall terminate pursuant to any condition of termination provided for in the Lease or by re-entry and termination by the Landlord for breach of the Lease and in any such event the Subtenant shall have no claim, recourse or damages against the Sublandlord (save only if the Lease is terminated for breach caused by the Sublandlord and not by the Subtenant or those for whom the Subtenant is in law responsible);

and in the event of such termination, the Subtenant shall surrender and deliver up vacant possession of the Leased Premises to the Sublandlord in compliance with all the provisions hereof and (without prejudicing the Sublandlord's claim for damages or expenses in the event of default by the Subtenant) pay all Rent due to the date of such termination.

## 11. **Notice**

The provisions of Article XXI of the Lease shall govern the giving of notice herein. The address of the Sublandlord and the Subtenant for the purposes of such notice shall be the Leased Premises.

## 12. **Confirmation**

The Subtenant acknowledges that it has received a true copy of the Lease and that it is familiar with the terms and provisions thereof.

### 13. **Sublandlord's Work**

The Subtenant acknowledges and agrees that it has seen the Leased Premises and agrees to accept same in its "as is/where is" condition and shall not call upon the Sublandlord to perform any work or improvements thereto.

### 14. **Access**

Subject to force majeure, the Subtenant shall have entry and access to the Leased Premises on a twenty-four (24) hours a day, seven (7) days a week and three hundred and sixty-five (365) days a year basis, in accordance with the provisions of the Lease respecting same.

### 15. **Capitalized Terms**

All capitalized terms referred to herein shall have the meanings ascribed to them in the Lease, unless otherwise defined herein.

### 16. **Entire Agreement**

This Sublease constitutes the entire agreement between the parties with respect to the subject matter of this Sublease. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to the Sublease shall be binding upon the Sublandlord or the Subtenant, unless in writing and signed by each of them. Except as otherwise expressly provided herein and except for those provisions of the Lease which are clearly inapplicable including, without limitation, the provisions of Article XV (Rights of First Refusal) and XIX (Guarantee) of the Lease, all terms, conditions, covenants, and agreements contained in the Lease shall apply to and be binding upon the parties hereto with the appropriate changes of reference being deemed to have been made with the intent that such provisions shall govern the relationship in respect of such matters as between the Sublandlord and Subtenant, provided that the covenants on the part of the Landlord contained in the Lease shall be deemed not to be contained herein as covenants on the part of the Sublandlord, but the Sublandlord agrees upon notice from the Subtenant to use reasonable commercial efforts to enforce the obligations of the Landlord under the Lease to the extent and as contemplated in Section 6(b) of this Sublease. For greater certainty, if there is any conflict between the provisions of this Sublease and the provisions of the Lease that permits the Subtenant to do or cause to be done or suffer or permit any act or thing to be done that is prohibited under the Lease, the provisions of the Lease shall prevail in such instance. Further, the Sublandlord shall not be responsible or liable to the Subtenant for any default, failure or delay on the part of the Landlord in the performance of any of its obligations under the Lease.

### 17. **Options to Extend**

If the Subtenant duly and regularly pays the Rent and performs all of the provisos and agreements contained herein on the part of the Subtenant to be performed, then the Sublandlord shall have two (2) options to extend the Sublease for further and consecutive periods of five (5) years each, upon the same terms and conditions as contained herein, save as to any further right of extension or renewal. Provided always that the Subtenant shall have given to the Sublandlord not less than six (6) months' notice in writing before the expiration of the Sublease Term or the first extended term, as the case may be, of its desire to exercise an option to extend the Sublease Term. The base rent for each extended term shall be at the then market rates for similar use in the area at the time of the exercise of the option, as mutually agreed between the Sublandlord and the Subtenant. In the event that the Sublandlord and the Subtenant are unable to agree upon the base rent for an extended term within three (3) months of the expiry of the current Sublease Term or first extended term, as the case may be, then the matter shall be submitted to arbitration pursuant to the *Arbitration Act* (Ontario) by notice given by either party to the other. In no event shall the annual base rent payable for the extended term, whether determined by mutual agreement or by arbitration as aforesaid, be less than the annual base rent payable pursuant to the Lease. Additional rent shall also be payable pursuant to the terms of the Lease, the appropriate changes of references being deemed to have been made with the intent that that the Subtenant is to pay the additional rent payable pursuant to the Lease by the Sublandlord, including but not limited to, real estate taxes.



**18. Enurement**

This Sublease and everything herein contained shall extend to, bind and enure to the benefit of the Sublandlord and its successors and assigns and the Subtenant and its permitted successors and assigns. Whenever in this Sublease reference is made to the Landlord, the reference is deemed to apply also to the heirs, executors, administrators, successors and assigns of the Landlord.

**19. Counterparts and Electronic Transmission**

The parties hereby acknowledge and agree that this Sublease, when executed, and the execution hereof, may be communicated by electronic transmission and that such agreement shall be deemed to be an original hereof, and shall be legal and binding upon the parties hereto; and if this Sublease is executed by way of an electronic signature, they will each accept electronic signatures in accordance with the Electronic Commerce Act (Ontario). This Sublease may be executed by counterparts each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Sublease.

**NICHE BAKERS PROPERTIES INC.**

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

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

*I/We have authority to bind the Corporation*

**NICHE BAKERS CORP.**

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

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

*I/We have authority to bind the Corporation.*

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "**Applicants**")

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**AFFIDAVIT OF JEFFREY WOOD**  
**(Motion Returnable November 5, 2020)**

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Counsel for the Applicants

**TAB 4**

Court File No. CV-19-00630241-00CL

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

THE HONOURABLE	)	THURSDAY, THE 5 <sup>th</sup>
	)	
MR. JUSTICE McEWEN	)	DAY OF NOVEMBER, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,  
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH  
AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,  
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR  
AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA  
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z  
OO and NAFA POLSKA SP. Z OO

(the “**Applicants**”)

**ORDER**

**(Re: Stay Extension, Ancillary Matters and Sealing of Confidential Appendices)**

**THIS MOTION**, made by the Applicants for an Order for the relief set out in the Notice of Motion of the Applicants dated October 30, 2020, was heard by teleconference due to the COVID-19 pandemic.

**ON READING** the Motion Record of the Applicants, the Fifth Report of the Monitor dated [•] (the “**Fifth Report**”) and related Confidential Appendices, and upon hearing the submissions of counsel for the Applicants, counsel to the Monitor, counsel to the Canadian Imperial Bank of Commerce, as agent for the lenders party to the Fourth and Restated Credit

– 2 –

Agreement dated as of September 27, 2019, as may be amended or amended and restated from time to time (in such capacity, the “**Agent**”) and counsel for Business Development Bank of Canada, no one appearing for any other person on the Service List, although properly served as appears on the Affidavit of Service of [•], sworn [•], [filed]:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that terms not otherwise defined in this Order shall have the meaning set out in the Initial Order of the Honourable Justice McEwen, dated October 31, 2019 (as amended and restated) (the “**Initial Order**”).

### **EXTENSION OF THE STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period is hereby extended from November 9, 2020 to and including April 9, 2021.

### **AMENDMENT TO SAFE HARBOUR ORDER**

4. **THIS COURT ORDERS** that paragraph 6 of the Safe Harbour Order of Justice McEwen dated January 13, 2020 (the “**Safe Harbour Order**”) in this proceeding, is hereby deleted and restated as follows:

THIS COURT ORDERS THAT notwithstanding anything else contained in the Safe Harbour Order or any other Order in this proceeding, the Applicants may arrange for or broker the purchase and sale of fur skins or pelts from and to third parties provided that the Applicants shall not accept physical delivery to a premises controlled, operated, leased or licensed to NAFA or otherwise take physical possession of fur skins or pelts of any kind where NAFA has any obligation to store such fur pelts, without the prior written approval of the Monitor or further Order of this Court.

## MONITOR'S POWERS

5. **THIS COURT ORDERS** that the Monitor, in addition to the powers and duties set out in the Initial Order or any other Order of this Court in these proceedings, is hereby directed and exclusively authorized and empowered, in consultation with the Applicants and the Agent and on behalf of and in the name of the Applicants but without requiring their consent, to make decisions, take any and all actions and steps, and execute any and all documents in each case in respect of the following matters:

- (a) any claims by the Applicants under or in respect of any insurance policies;
- (b) any claims by the Applicants in respect of any Rollover Loans (as defined in the Affidavit of Doug Lawson sworn October 30, 2020, the "**Lawson Affidavit**");
- (c) any existing or future litigation or proceeding involving the Applicants as a plaintiff or claimant (other than these proceedings), whether in Canada or otherwise;
- (d) the incurring of any material expense related to the "Brokerage Business" as defined in the Lawson Affidavit and as contemplated in paragraph 4 of this Order;
- (e) retention or termination of the Applicants' employees, on such terms and conditions as the Monitor may deem appropriate; and
- (f) the right, title or interest of the Applicants in respect of any real property.

6. **THIS COURT ORDERS** that (i) the Monitor shall be entitled to seek advice and direction from the Court regarding the powers set out in foregoing paragraph 5; and (ii) notwithstanding paragraph 5, in the event that either the Applicants or the Agent have any objections to any of the Monitor's proposed decisions, actions or steps that are authorized by foregoing paragraph 5, they may seek advice and directions from the Court.

7. **THIS COURT ORDERS** that notwithstanding anything contained in this Order or the exercise by the Monitor of any of the powers set out in foregoing paragraph 5:

- (a) the Monitor shall not (i) be deemed to be a successor employer or related employer of the employees of the Applicants, (ii) be deemed to be a director, officer or

– 4 –

employee of the applicants, or (iii) have any liability whatsoever, save and except for any gross negligence or wilful misconduct on the Monitor’s part; and

- (b) the Monitor shall continue to have the benefit of any of the protections in favour of the Monitor under the CCAA, the Initial Order and otherwise.

### **SEALING OF CONFIDENTIAL EXHIBITS**

8. **THIS COURT ORDERS** that Confidential Appendices [“•”] of the Fifth Report, confidential exhibit “B” of the Affidavit of Jeffrey Wood, and confidential exhibit “A” and “B” to the Affidavit of Douglas Lawson, shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **INTERNATIONAL RECOGNITION**

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

### **EFFECTIVENESS OF ORDER**

10. **THIS COURT ORDERS** that, due to the COVID-19 pandemic, this Order is immediately effective and enforceable without the need for entry and filing until further direction from this Court.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "**Applicants**")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**ORDER**  
**(Re: Stay Extension, Ancillary Matter and Sealing of**  
**Confidential Appendices)**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

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Counsel for the Applicants

TAB 5

Court File No. CV-19-00630241-00CL

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

THE HONOURABLE MR.	)	THURSDAY, THE 5th
	)	
JUSTICE McEWEN	)	DAY OF NOVEMBER, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,  
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH  
AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,  
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR  
AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA  
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z  
OO and NAFA POLSKA SP. Z OO

(the “**Applicants**”)

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by the Applicants for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between NAFA Properties Inc., as vendor (the “**Vendor**”), and Niche Bakers Properties Inc. (“**Purchaser**”), dated October 1, 2020 (and as may be further amended from time to time in accordance with the Order, the “**Sale Agreement**”), and vesting in the Purchaser the Vendor’s right, title, and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”) was heard this day at 330 University Avenue, Toronto, Ontario, by way of Zoom Video Conference in accordance with the procedural rules due to the COVID-19 Pandemic.

ON READING the Affidavit of Doug Lawson, sworn October 30, 2020, the Affidavit of Jeffrey Wood sworn October 28, 2020, and the Exhibits thereto, the Fifth Report of Deloitte Restructuring Inc., in its capacity as monitor for the Applicants (in such capacity, “**Monitor**”) (the “**Fifth Report**”), to be filed, and on hearing the submissions of counsel for the Applicants, counsel to the Monitor, counsel to the Canadian Imperial Bank of Commerce, as agent (in such capacity, the “**Agent**”) for the lenders party to the Fourth and Restated Credit Agreement dated as of September 27, 2019 (as may be amended or amended and restated, the “**Credit Agreement**”) from time to time (the “**Lenders**”), counsel to the Business Development Bank of Canada, and all other counsel listed on the counsel slip, no one appearing for any other person on the Service List, although properly served as appears on the Affidavit of Service of ●, sworn ● filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL OF THE TRANSACTION**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Sale Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor (with the consent of the Monitor) and the Purchaser may agree to in writing. The Vendor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that the Applicants may return to the court to seek the assistance of the court, including any further order which may be necessary to address any issue preventing the closing of the Transaction, including, without limitation, any necessary consents which are being withheld.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “Monitor’s Certificate”), all of the Vendor's right, title and interest in and to the Purchased

Assets described in the Sale Agreement [and listed on Schedule B hereto] shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Amended and Restated Initial Order of the Honourable Mr. Justice McEwen dated October 31, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

- 4 -

7. **THIS COURT ORDERS** that the Applicants are hereby authorized to pay the Net Proceeds from the Transaction (being the proceeds net of all outstanding professional fees, commissions and transaction costs related to the Transaction) to Business Development Bank of Canada to the full amount of the debt owed to them from the Applicants, with the balance, if any, to be paid to the Agent.

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

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Applicants' past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicants.

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

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

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**Schedule A – Form of Monitor’s Certificate**

Court File No. CV-19-00630241-00CL

**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 A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,  
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH  
AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,  
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR  
AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA  
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z  
OO and NAFA POLSKA SP. Z OO

(the “**Applicants**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) October 31, 2019 (as amended and restated, and as may be further amended and restated from time to time, the “**Initial Order**”), Deloitte Restructuring Inc. was appointed as monitor of the Applicants (in such capacity, the “**Monitor**”), including NAFA Properties Inc. (the “**Vendor**”).

B. Pursuant to an Order of the Court dated November 5, 2020, (the “**Sale Approval Order**”), the Court approved the agreement of purchase and sale made as of October 1, 2020 (the “**Sale Agreement**”) between the Vendor and Niche Bakers Properties Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser, of the Vendor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate (the



- 2 -

“**Certificate**”) confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

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

**Deloitte Restructuring Inc. in its capacity as  
the Court Appointed Monitor to the  
Applicants, and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule "A"**  
**Purchased Assets**

The leasehold interest in the Real Property granted pursuant to the ground leases which consist of the:

**MAIN GROUND LEASE**

The lease dated October 1, 1980 between the Samuel Black, Joseph Black, Norman Black and Beatrice Wintrob, as landlord, and the Rockford Developments Limited and Imbrook Properties Limited, as tenant, with respect to a portion of the Property, as same has been assigned through a series of assignments and has been amended and/or supplemented from time to time, as more particularly described as:.

- A. By a lease dated July 30, 1973, and registered on June 5, 1974 as Instrument No. EB434528 certain parcels of lands including that part now designated as part of Lot 21, Concession 3 fronting the Humber River, Etobicoke, and being designated as Part 3 on Plan 64R-8647 were leased by Samuel Black, Joseph Black, Norman Black, and Beatrice Wintrob (the "**Blacks and Wintrob**"), as landlords, to Rockford Developments Limited ("**Rockford**") as tenant, for a term expiring February 28, 2073 (the "**Original Head Lease**");
- B. By an assignment of lease dated March 17, 1980, and registered on March 28, 1980 as Instrument No. EB521978, Rockford assigned an undivided one-half interest in the Original Head Lease to Imbrook Properties Limited ("**Imbrook**");
- C. The Original Head Lease permits certain "peel off" leases;
- D. By a peel off lease dated October 1, 1980, a notice of which was registered on October 30, 1980 as Instrument No. EB529856 (the "**Main Lease**"), among the Blacks and Wintrob, as landlord, and Rockford and Imbrook, as tenant, and Louis Frieberg and Gerda Frieberg, as guarantors, Rockford and Imbrook acquired a leasehold interest in Part 3 on Plan 64R-8647 (the "**Main Lease Lands**");
- E. By sublease dated as of October 1, 1980, notice of which was registered on November 6, 1980 as Instrument No. EB530258, Rockford and Imbrook, as sublandlord, subleased the Main Lease Lands to Hudson's Bay Company Developments Limited ("**Hudson's Bay**"), as subtenant, for a term and upon conditions as set forth therein (the "**Sublease**");
- F. Section 17.01 of the Sublease granted to the subtenant thereunder the right to purchase all of the leasehold interest of Rockford and Imbrook in the Main Lease Lands together with any options contained therein, effective March 1, 1999;
- G. Hudson's Bay exercised the option to purchase contained in Section 17.01 of the Sublease and obtained an assignment of the leasehold interest of Rockford and Imbrook in and to

the Main Lease Lands, such assignment to be effective March 1, 1999 with the Sublease remaining in full force and effect until such date, and Hudson's Bay obtained an acknowledgement of receipt of consideration for such assignment by Rockford and Imbrook which was registered on August 10, 1981 as Instrument No. EB540360;

- H. Hudson's Bay, as assignor, assigned to Hudson's Bay Company Fur Sales International Limited, as assignee, its leasehold interest in the Main Lease Lands and the Sublease effective as of March 1, 1999 by assignment dated January 16, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387591;
- I. Hudson's Bay Company Fur Sales International Limited, as assignor, assigned to Hudson's Bay Company Fur Sales Canada Limited, as assignee, its leasehold interest in the Main Lease Lands and the Sublease effective March 1, 1999 by assignment dated February 1, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387592;
- J. Hudson's Bay Company Fur Sales Canada Limited changed its name to Hudson's Bay New York Inc. by certificate of amendment dated March 13, 1987, a certified copy of which was deposited on August 25, 1995, as Instrument No. CA362651;
- K. Hudson's Bay New York Inc., as assignor, assigned to Markborough Properties Limited, as assignee, its leasehold interest in the Main Lease Lands and the Sublease effective March 1, 1999 by assignment dated April 30, 1988, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387593;
- L. Markborough Properties Limited changed its name to Markborough Properties Inc. by certificate of amendment dated March 4, 1989, a certified copy of which was deposited on July 10, 1989 as Instrument No. TB618074;
- M. Markborough Properties Inc. thereafter continued into Ontario, and amalgamated with Cambridge Shopping Centres Limited effective June 9, 1997 to become Cambridge Shopping Centres Limited;
- N. Imbrook assigned its interest in the Main Lease to EL EF Investments Inc. by assignment dated as of November 25, 1985, notice of which assignment was registered December 4, 1985 as Instrument No. TB288766;
- O. Rockford assigned its interest in the Main Lease to 908498 Ontario Limited and Vinca Estates Limited, as trustee for Rockford by an assignment dated December 19, 1990, notice of which assignment was registered May 31, 1991 as Instrument No. TB760211;
- P. Pursuant to the option to purchase (detailed in recitals E, F and G above), effective March 1, 1999, Cambridge Shopping Centres Limited acquired the interest of EL EF Investments Inc., the interest of 908498 Ontario Limited and the interest of Vinca Estates Limited as trustee for Rockford including the interest of Rockford in the Main Lease;
- Q. Cambridge Shopping Centres Limited amalgamated with Ivanhoe Ontario Inc. effective August 13, 2001 and continued as Ivanhoe Cambridge I Inc.;

- R. Ivanhoe Cambridge I Inc. assigned its beneficial interest in the Main Lease to Ivanhoe Cambridge II Inc. effective August 15, 2001;
- T. Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc. assigned its interest in the Main Lease by assignment dated February 22, 2017, notice of which assignment was registered February 22, 2017 as Instrument No. AT4492753; and
- U. Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc. assigned its interest in the Sublease by assignment dated February 22, 2017, notice of which assignment was registered February 22, 2017 as Instrument No. AT4492755.

***Main Ground Lease Legal Description:***

**Part of PIN 07424-0195 (LT):** PT LT 21 FTH ETOBICOKE; PT 3, 64R8647; TORONTO (ETOBICOKE); CITY OF TORONTO

**CITY GROUND LEASE**

The lease dated October 1, 1980 between the The Corporation of the Borough of Etobicoke, as landlord, and Rockford Developments Limited and Imbrook Properties Limited, as tenant, with respect to a portion of the Property, as same has been assigned through a series of assignments and has been amended and/or supplemented from time to time, as more particularly described as:

- A. By a lease dated October 1, 1980, notice of which was registered on October 30, 1980 as Instrument No. EB529855 (the "**City Lease**"), among The Corporation of the Borough of Etobicoke as landlord and Rockford and Imbrook as tenant, with the Blacks and Wintrob, as landlords to the Original Head Lease, Rockford and Imbrook acquired a leasehold interest in that part of Lot 21, Concession 3 fronting the Humber River, Etobicoke and being designated as Parts 1 and 2 on Plan 64R-8647 (the "**City Lease Lands**"), upon the terms and conditions contained therein;
- B. Pursuant to the City of Toronto Act, 1997 S.O. 197, c.2, The Corporation of the Borough of Etobicoke, together with other municipalities, amalgamated to continue as City of Toronto, on January 1, 1998;
- C. By sublease dated as of October 1, 1980, notice of which was registered on November 6, 1980 as Instrument No. EB530258, Rockford and Imbrook, as sublandlord, subleased the City Lease Lands to Hudson's Bay as subtenant for a term and upon conditions as set forth therein (the "**Sublease**");
- D. Section 17.01 of the Sublease granted to the subtenant thereunder the right to purchase all of the leasehold interest of Rockford and Imbrook in the City Lease Lands together with any options contained therein, effective March 1, 1999;
- E. Hudson's Bay exercised the option to purchase contained in Section 17.01 of the Sublease and obtained an assignment of the leasehold interest of Rockford and Imbrook in and to

the City Lease Lands, such assignment to be effective March 1, 1999 with the Sublease remaining in full force and effect until such date. and Hudson's Bay obtained an acknowledgement of receipt of consideration for such assignment by Rockford and Limited which was registered on August 10, 1981 as Instrument No. EB540360;

- F. Hudson's Bay, as assignor, assigned to Hudson's Bay Company Fur Sales International Limited, as assignee, its leasehold interest in the City Lease Lands and the Sublease effective as of March 1, 1999 by assignment dated January 16, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387591;
- G. Hudson's Bay Company Fur Sales International Limited, as assignor, assigned to Hudson's Bay Company Fur Sales Canada Limited, as assignee, its leasehold interest in the City Lease Lands and the Sublease effective March 1, 1999 by assignment dated February 1, 1984, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387592;
- H. Hudson's Bay Company Fur Sales Canada Limited changed its name to Hudson's Bay New York Inc. by certificate of amendment dated March 13, 1987, a certified copy of which was deposited on August 25, 1995, as Instrument No. CA362651;
- I. Hudson's Bay New York Inc., as assignor, assigned to Markborough Properties Limited, as assignee, its leasehold interest in the City Lease Lands and the Sublease effective March 1, 1999 by assignment dated April 30, 1988, notice of which assignment was registered on January 23, 1996, as Instrument No. CA387593;
- J. Markborough Properties Limited changed its name to Markborough Properties Inc. by certificate of amendment dated March 4, 1989, a certified copy of which was deposited on July 10, 1989 as Instrument No. TB618074;
- K. Markborough Properties Inc. thereafter continued into Ontario, and amalgamated with Cambridge Shopping Centres Limited effective June 9, 1997 to become Cambridge Shopping Centres Limited;
- L. Imbrook assigned its interest in the City Lease to EL EF Investments Inc. by assignment dated as of November 25, 1985, notice of which assignment was registered December 4, 1985 as Instrument No. TB288767;
- M. Rockford assigned its interest in the City Lease to 908498 Ontario Limited and Vinca Estates Limited, as trustee for Rockford by an assignment dated December 19, 1990, notice of which assignment was registered May 31, 1991 as Instrument No. TB760210;
- N. Pursuant to the option to purchase (detailed in recitals C, D and E above), effective March 1, 1999, Cambridge Shopping Centres Limited acquired the interest of EL EF Investments Inc., the interest of 908498 Ontario Limited and the interest of Vinca Estates Limited as trustee for Rockford including the interest of Rockford, in the City Lease;
- O. Cambridge Shopping Centres Limited amalgamated with Ivanhoe Ontario Inc. effective August 13, 2001 and continued as Ivanhoe Cambridge I Inc.; and

- P. Ivanhoe Cambridge I Inc. assigned its beneficial interest in the City Lease to Ivanhoe Cambridge II Inc. effective August 15, 2001.
- Q. Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc. assigned its interest in the Main Lease by assignment dated February 22, 2017, notice of which assignment was registered February 22, 2017 as Instrument No. AT4492754.
- R. Ivanhoe Cambridge I Inc. and Ivanhoe Cambridge II Inc. assigned its interest in the Sublease by assignment dated February 22, 2017, notice of which assignment was registered February 22, 2017 as Instrument No. AT4492755.

***City Ground Lease Legal Description:***

**Part of PIN 07424-0195 (LT): PT LT 21 CON 3 FTH ETOBICOKE CLOSED BY 528845, PT 1 AND 2, 64R8647; S/T EB529811; TORONTO (ETOBICOKE); CITY OF TORONTO**

**Schedule “B” – Claims to be deleted and expunged from title to the Real Property****PIN 07424-0195(LT)**

1. Instrument No. AT4492756 registered February 22, 2017, being a Notice of Charge of Lease in favour of Business Development Bank of Canada for the original principal amount of \$7,240,000.00.
2. Instrument No. AT4492757 registered February 22, 2017, being a Notice of Assignment of Rents – General in favour of Business Development Bank of Canada.
3. Instrument No. AT5261368 registered October 11, 2019, being a Notice of Charge of Lease in favour of Canadian Imperial Bank of Commerce for the original principal amount of \$100,000,000.00.

**PIN 07424-0200(LT)**

1. Instrument No. AT4492758 registered February 22, 2017, being a Notice of Charge of Lease in favour of Business Development Bank of Canada for the original principal amount of \$7,240,000.00.
2. Instrument No. AT4492759 registered February 22, 2017, being a Notice of Assignment of Rents – General in favour of Business Development Bank of Canada.
3. Instrument No. AT5261369 registered October 11, 2019, being a Notice of Charge of Lease in favour of Canadian Imperial Bank of Commerce for the original principal amount of \$100,000,000.00.

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

**(Unaffected by the Vesting Order)**

**PIN 07424-0195(LT)**

1. Instrument No. EB373297, registered August 12, 1970, being a transfer.
2. Instrument No. EB412063, registered January 29, 1973, being a notice.
3. Plan 64R3413 deposited January 23, 1974.
4. Instrument No. EB434528, registered June 5, 1974, being a notice of lease.
5. Plan 64R7996 deposited October 10, 1979.
6. Instrument No. EB521973, registered March 28, 1980, being an assignment of lease.
7. Plan 64R8647 deposited September 12, 1980.
8. Instrument No. EB528844, registered October 2, 1980, being an agreement.
9. Instrument No. EB529811, registered October 30, 1980, being a transfer of easement
10. Instrument No. EB529856, registered October 30, 1980, being a notice of lease.
11. Instrument No. EB530152, registered November 4, 1980, being an agreement.
12. Instrument No. EB530258, registered November 6, 1980, being a lease.
13. Instrument No. EB540360, registered August 10, 1981, being an acknowledgment.
14. Instrument No. TB288766, registered December 4, 1985, being an assignment of lease.
15. Instrument No. TB291556, registered December 17, 1985, being a charge.
16. Instrument No. TB296815, registered January 17, 1986, being an assignment of lease.
17. Instrument No. TB366644, registered November 4, 1986, being an agreement.
18. Instrument No. TB375487, registered December 8, 1986, being a lease.
19. Instrument No. TB396460, registered March 13, 1987, being an agreement.
20. Instrument No. TB419322, registered June 5, 1987, being a debenture.
21. Instrument No. TB419504, registered June 5, 1987, being an assignment general.
22. Instrument No. TB464831, registered November 25, 1987, being a notice of lease.
23. Instrument No. TB478920, registered January 28, 1991, being an agreement.
24. Instrument No. TB760211, registered May 31, 1991, being a transfer.



25. Instrument No. TB893345, registered April 5, 1993, being a notice.
26. Instrument No. EB537697, registered June 8, 1981, being a lease.
27. Instrument No. CA311546, registered October 18, 1994, being a transfer.
28. Instrument No. CA339842, registered April 5, 1995, being a notice.
29. Instrument No. CA342980, registered April 28, 1995, being an agreement.
30. Instrument No. CA387591, registered January 23, 1996, being a notice.
31. Instrument No. CA387592, registered January 23, 1996, being a notice.
32. Instrument No. CA387593, registered January 23, 1996, being a notice.
33. Instrument No. CA387594, registered January 23, 1996, being a notice.
34. Instrument No. CA387596, registered January 23, 1996, being an agreement.
35. Instrument No. CA662395, registered April 28, 2000, being a notice.
36. Plan 66R21954 deposited August 8, 2005.
37. Instrument No. AT1090598, registered March 21, 2006, being a notice.
38. Instrument No. AT1255958, registered September 15, 2006, being a transmission by personal representative – land.
39. Instrument No. AT2453920, registered July 21, 2010, being a transfer by personal representative.
40. Instrument No. AT2472527, registered August 11, 2010, being a transfer by personal representative.
41. Instrument No. AT4174167, registered March 23, 2016, being an application to change name – instrument.
42. Instrument No. AT4174168, registered March 23, 2016, being an application to change name – instrument.

**PIN 07424-0200(LT)**

1. Instrument No. EB375135, registered October 1, 1970, being a miscellaneous plan.
2. Instrument No. EB412063, registered January 29, 1973, being a notice.
3. Plan 64R7996 deposited October 10, 1979.
4. Plan 64R8647 deposited September 12, 1980.
5. Instrument No. EB528845, registered October 2, 1980, being a bylaw.
6. Instrument No. EB529811, registered October 30, 1980, being a transfer of easement.
7. Instrument No. EB529855, registered October 30, 1980, being a lease.

8. Instrument No. EB530152, registered November 4, 1980, being an agreement.
9. Instrument No. EB530258, registered November 6, 1980, being a lease.
10. Instrument No. EB537696, registered June 8, 1981, being a lease.
11. Instrument No. EB540360, registered August 10, 1981, being an acknowledgement.
12. Instrument No. TB288767, registered December 4, 1985, being an assignment of lease.
13. Instrument No. TB296816, registered January 17, 1986, being an assignment of lease.
14. Instrument No. TB419322, registered June 5, 1987, being a debenture
15. Instrument No. TB419504, registered June 5, 1987, being an assignment general.
16. Instrument No. TB464831, registered November 25, 1987, being a notice of lease.
17. Instrument No. TB478544, registered January 27, 1988, being an agreement.
18. Instrument No. TB760210, registered May 31, 1991, being a transfer.
19. Instrument No. CA339842, registered April 5, 1995, being a notice.
20. Instrument No. CA387591, registered January 23, 1996, being a notice.
21. Instrument No. CA387592, registered January 23, 1996, being a notice.
22. Instrument No. CA387593, registered January 23, 1996, being a notice.
23. Instrument No. CA387594, registered January 23, 1996, being a notice.
24. Instrument No. CA387595, registered January 23, 1996, being an agreement.
25. Instrument No. CA662395, registered April 28, 2000, being a notice.
26. Instrument No. AT1090598, registered March 21, 2006, being a notice.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "**Applicants**")

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**ORDER**  
**(Re: Approval and Vesting Order)**

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "**Applicants**")

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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**MOTION RECORD**  
**(Re: Stay Extension Returnable November 5, 2020)**

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