

**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 RESPONDENTS,
MEADOWVALE LAND LIMITED, REBECCA'S GIFT HOLDINGS LIMITED,
1350739 ONTARIO LIMITED AND THE ESTATE OF JOSEPH BLACK**
(hearing November 5, 2020)

November 3, 2020

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AND TO: THE SERVICE LIST

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

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SP.Z OO and NAFA POLSKA SP. Z OO

(the "Applicants")

**AFFIDAVIT OF STEPHEN POSEN
(sworn November 3, 2020)**

I, Stephen Posen, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am the lawyer for Meadowvale Land Limited, Rebecca's Gift Holdings Limited, 1350739 Ontario Limited and The Estate of Joseph Black (collectively, the "**Landlord**"), the owners of the real property at 65 Skyway Ave, Toronto bearing PIN #07424-0195 (LT) (the "**Skyway Property**"), and as such I have knowledge of the matters hereinafter deposed to. Where I have obtained information from others I believe the information is true.

2. Minden Gross LLP has been acting for the Landlord and its predecessors in respect of the Skyway Property for decades. I personally have acted in this capacity

for over 30 years, and accordingly I have detailed background information about the Skyway Property and the main ground lease which is the subject matter of the Applicants' motion herein (referred to herein as the "**Ground Lease**").

3. There is a second "ground lease" in favour of the City of Toronto (referred to herein as the "**City Ground Lease**"), which I understand relates to parking at the Skyway Property.

4. The Applicants are seeking an Order approving the sale and assignment of the Ground Lease and the City Ground Lease to Niche Bakers Properties Inc. ("**Niche Bakers Properties**"), a company which was incorporated on September 23, 2020 under the Ontario *Business Corporations Act* for the purpose of the proposed transaction.

5. I have read the affidavits of Douglas Lawson sworn October 30, 2020 and Jeffrey Wood sworn October 28, 2020 in support of the assignment.

6. The Landlord objects to the assignment of the Ground Lease to Niche Bakers Properties on the terms proposed by the Applicants. Niche Bakers Properties is not intended to be the actual tenant and occupant of the Skyway Property. Rather, the proposed tenants/occupants of the Skyway Property are Niche Bakers Corp. ("**Niche Bakers**") and Niche Bakers (USA) Corp. ("**Niche Bakers (USA)**") (referred to herein collectively as the "**Niche Bakers Operating Entities**").

7. The term of the Ground Lease runs to 2073. However, the proposed transaction has been structured so that the Niche Bakers Operating Entities will obtain

the benefit of the rental rate set under the Ground Lease until the end of the current rental period, February 28, 2029, with no covenant or commitment by them for the remaining 44 years of the Ground Lease. If the Niche Bakers Operating Entities are not satisfied with the rent determined under the Ground Lease for the balance of the term, they can walk away with no recourse by the Landlord.

8. In essence, the Niche Bakers Operating Entities are seeking to control the Skyway Property until 2073 without accepting the responsibilities under the Ground Lease after February 28, 2029.

9. The Landlord, the Applicants and the proposed assignee have been involved in without prejudice discussions to renegotiate the Ground Lease on terms that are more favourable to the Tenant, on proper consideration to the Landlord, but thus far the discussions have not resulted in an agreement.

Background/The Ground Lease

10. By a lease dated July 30, 1973, certain lands including the Skyway Property 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 (the "**Head Lease**"). In 1980, Rockford Developments Limited ("**Rockford**") assigned an undivided one half interest in the Head Lease to Imbrook Properties Limited ("**Imbrook**").

11. By a "peel off" lease made as of October 1, 1980, the above-noted parties entered into the Ground Lease in respect of the Skyway Property.

12. By a sublease dated as of October 1, 1980, Rockford and Imbrook subleased the Skyway Property to Hudson's Bay Company Developments Limited ("**Hudson's Bay**") with the right to purchase all of the leasehold interest of Rockford and Imbrook, effective March 1, 1999.

13. Hudson's Bay exercised the option to purchase and obtained an assignment of the leasehold interest of Rockford and Imbrook in the Ground Lease.

14. Hudson's Bay thereafter assigned its interests to Hudson's Bay Company Fur Sales International Limited, which assigned its interests to Hudson's Bay Company Fur Sales Canada Limited, which changed its name to Hudson's Bay New York Inc. on March 13, 1987.

15. In 1995, Hudson's Bay New York Inc. assigned its interests to Markborough Properties Limited, which changed its name to Markborough Properties Inc., which amalgamated with Cambridge Shopping Centres Limited in June 9, 1997 to become Cambridge Shopping Centres Limited. Through a series of other corporate transactions, Ivanhoe Cambridge II Inc. ("**Ivanhoe**") became the Tenant under the Ground Lease effective August 15, 2001.

16. The persons and entities currently comprising the Landlord are the successors in interest of the original owners.

17. A copy of the Ground Lease is attached as Exhibit "C" to the Affidavit of Douglas Lawson sworn October 30, 2020. The Ground Lease (initially as part of the Head Lease) was for a term of 100 years, expiring on February 28, 2073.

18. As set out in the Ground Lease, there are six rental periods as follows:

- (a) Initial Rental Period to February 18, 1999
- (b) Second Rental Period to February 28, 2014
- (c) Third Rental Period to February 28, 2029
- (d) Fourth Rental Period to February 28, 2044
- (e) Fifth Rental Period to February 28, 2059
- (f) Sixth Rental Period to February 28, 2073

19. Prior to the end of each rental period, the rent is set for the next rental period at "Fair Market Rental". Section 1.01 (h) of the Ground Lease contains two distinct definitions of "Fair Market Rental", Definition 1 and Definition 2. Definition 2 applies where the lands are available for redevelopment and allows for a potential significant increase in rent.

20. Pursuant to Section 5.02 of the Ground Lease, the rent was to be reset for all rental periods except Rental Period 3 using Definition 1. However, if the conditions for Definition 2 did not yet apply in Rental Period 3, then Definition 2 would be deferred and used for a later rental period.

21. Pursuant to Section 5.03 of the Ground Lease, the Landlord and the then-Tenant agreed that the Skyway Property was not yet appropriate for redevelopment when the rent was reset for the Third Rental Period. Accordingly, the application of Definition 2 of Fair Market Rental was postponed, to be applied to the establishment of Fair Market Rental for the Fourth Rental Period.

22. Pursuant to a Rental Rate Agreement dated as of March 1, 2014, the Landlord and Tenant agreed that the rent for the Third Rental Period commencing March 1, 2014 and ending February 28, 2029 would be \$459,375 per annum, payable in instalments of \$38,281.25 per month. The Landlord and Tenant also agreed to amend the Ground Lease such that Definition 2 would apply to the Fourth Rental Period, subject to the same proviso as in the original Ground Lease. A copy of the Rental Rate Agreement is attached as Exhibit "L" to the Affidavit of Douglas Lawson sworn October 30, 2020.

23. In or about 2016, Ivanhoe entered into an agreement to sell its interest in the Ground Lease to NAFA Properties Inc. ("**NAFA Properties**") and sought the Landlord's consent to the assignment. The Landlord was prepared to consent to the assignment, but only on the strict condition that the ultimate tenant of the Skyway Property, North American Fur Auctions Inc. ("**NAFA**") provided an unlimited and unconditional indemnity in respect of the obligations of NAFA Properties as Tenant under the Ground Lease.

24. NAFA accepted that this was a reasonable requirement and agreed to provide the indemnity. Attached hereto and marked as Exhibit "A" to this my affidavit is a copy of the Indemnity Agreement executed by NAFA dated February 22, 2017.

25. In addition to NAFA, as well as NAFA Properties, assuming the obligations of the Tenant under the Ground Lease, Ivanhoe recognized that it was exposed on its covenant under the Ground Lease. Accordingly, Ivanhoe provided direct consideration to the Landlord for the release of its covenant.

Proposed Assignment to Niche Bakers Properties

26. As set out in Mr. Lawson's affidavit, NAFA/NAFA Properties entered into an agreement for the assignment of the Ground Lease for the Skyway Property to another entity. However, this transaction was terminated as the proposed assignee failed to obtain the required zoning and did not waive the conditions.

27. I have no knowledge of other potential offers for the Ground Lease or whether there are any other potentially viable offers, besides the offer currently being presented.

28. On October 8, 2020, I was advised that NAFA had entered into a new agreement, which was firm, subject to due diligence, with an anticipated closing date of November 15, 2020.

29. Attached hereto and marked as Exhibit "B" to this my affidavit is a copy of an email sent by Stephen Goudreau of Blaney McMurtry LLP ("**Blaney**"), the lawyers for NAFA, to me on October 8, 2020, advising as follows:

Hi Tim and Stephen,

I believe David has reached out to you (or at least Tim) to advise that NAFA has entered into a new APS for the Skyway property as of yesterday evening. The deal is set to close on **November 15, 2020**. As I am sure you are aware, we are seeking your clients' consent to assign the lease.

The proposed purchaser is Niche Bakeries Properties Inc. (<https://www.nichebakers.com>). A well established commercial baker in Toronto. We have forwarded the following request for information (based on the last round) to the Purchaser in order to obtain the consent. Please let us know if you would like to revise/adjust anything.

1. Financial Statement: The Purchaser's current financial statements for its two most recent fiscal years.

2. Purchaser's History: A history of the business of the Purchaser or guarantor to establish the viability of its business.
3. *Organizational structure and guarantee: A document setting out the Purchaser's organizational structure, including whether the Purchaser is a single purpose holding entity. A guarantee from the ultimate parent company. The purpose of the guarantee of the ultimate parent will be in part to satisfy the landlord of the financial strength of its tenant and in part to forestall any prospect that the parent could strip assets from the purchaser and potentially reorganize the Purchaser for the parent's benefit and to the disadvantage of the landlord.*
4. APS: The terms of the Agreement of Purchase and Sale.
5. Permitted use: A description of the Purchaser's intended use for the property.
6. Professional Fees: The Landlord requires to be completely indemnified for its professional fees (including legal fees) incurred with respect to the contemplated assignment.

Secondly, as part of the Purchaser's due diligence they will be performing a number of off-title searches. Can you please have your clients execute (or execute on behalf of your clients) the attached authorization? The authorization is to give the Purchaser access to information for their various off-title searches. I believe this is a fairly standard request, but have cc'ed Roman Pekaruk, our real estate solicitor, on this email should you wish to discuss. We would be grateful to get the attached sign in the next day or two in order to give the Purchase time to obtain the documents considering the relatively quick closing date. [emphasis added]

30. In his email, Mr. Gaudreau expressly recognized the importance of the proposed purchaser's (tenant's) covenant and, if the purchaser was a single purpose holding company, the importance of a guarantee from the operating business, as per the paragraph emphasized above.

31. On October 15, 2020, Minden Gross LLP on behalf of the Landlord provided the requested authorization for the proposed purchaser to conduct its due

diligence. Attached hereto and marked as Exhibit "C" to this my affidavit is a copy of the Authorization signed by me.

32. On the morning of October 21, 2020, Roman Pekaruk of Blaney sent me an email stating as follows:

Hello Stephen - we just received the attached ZIP folder from the proposed Purchaser which contains the various information your clients require in order to obtain the necessary consent for the assignment of the lease. The attached folder includes:

1. Articles of incorporation for Niche Bakers Properties Inc.
2. Financial statements for Niche Bakers Corp. (audited) and Niche Bakers Properties Inc. (unaudited)
3. Business profile for Niche Bakers Properties Inc. and Niche Bakers Corp.
4. Commercial credit report for Niche Bakers Corp.
5. Proposed sublease from Niche Bakers Properties Inc. to Niche Bakers Corp.

In respect of the additional information you requested, we have been advised as follows:

- A. Proposed new tenant information: Niche Bakers Properties Inc.
- B. Company signing authorities (names/titles): Steve Martin: President and Director; Jeffrey Wood: Secretary, Treasurer and Director
- C. Niche Bakers Properties Inc. will be the tenant under the existing lease, and Niche Bakers Corp. will be a subtenant of Niche Bakers Properties Inc.

We trust you will find all in order. Please let us know if you require anything further.

33. As stated by Mr. Pekaruk in his email, the proposed assignee was not the Niche Bakers Operating Entities, but Niche Bakers Properties, a newly incorporated entity.

34. Included in the package was a document entitled: Niche Bakers Properties Inc. Plan, which stated as follows:

Niche Bakers Properties Inc. ("Properties") was incorporated in September 2020, to purchase the leasehold interest in two ground leases located on the property municipally known as 75 Skyway Avenue, Toronto.

Upon closing of the transaction, the two leases shall be assigned to Properties from the current tenant and the company will enter into subleases with Niche Bakers Corp. ("Bakers") on essentially the same terms and conditions as are contained in the ground leases.

Bakers has been in business for over eleven years and its principals have been in the business of the preparation of baked goods, desserts, snacks and confectionaries since the early 1980's. Bakers, by way of remitting rent to Properties, will effectively be responsible for the rent and operating expenses set out in the ground leases. Bakers currently has two bases of operation.

Given that Properties is newly incorporated, audited financial records and commercial credit reports have not been provided for Properties, however such records and reports have been provided for Bakers. An unaudited Financial Statement Forecast has been provided for Properties. The audited financial statements were for the Niche Bakers Operating Entities, Niche Bakers and Niche Bakers (USA).

35. The proposed sublease (the "**Niche Sublease**") is between Niche Bakers Properties and Niche Bakers (not Niche Bakers (USA)). The only rent payable by the Niche Bakers Operating Entities under the proposed Sublease is the rent payable to the Landlord under the Ground Lease, together with other operating expenses, which are the Tenant's responsibility.

36. Contrary to what was suggested in the "Plan", the proposed Sublease is not, however, on substantially the same terms as the Ground Lease and the City Ground Lease. Rather, the proposed Sublease is not for the term of the Ground Lease

(expiring February 28, 2073) but for a term which expires at the end of the Third Rental Period on February 28, 2029.

37. Put another way, under the Sublease, Niche Bakers is only committing to pay the rent due under the Ground Lease for approximately eight years, until February 28, 2029, leaving 44 years remaining on the Ground Lease, from February 28, 2029 to February 28, 2073. In addition, without a direct indemnity in favour of the Landlord, nothing would prevent Niche Bakers Properties and Niche Bakers (under common ownership) from renegotiating or terminating the Sublease.

38. Section 17 of the proposed Sublease purports to provide the Sublandlord (Niche Bakers Properties) the option to extend for two further terms of five years each. However, on reviewing this section the intention is clearly that the Subtenant (Niche Bakers), not the Sublandlord, is provided with two options to extend the Sublease for two terms of five years each.

39. In any event, these are only options to extend for two further five-year terms, which Niche Bakers could choose not to exercise. Further, the options would only extend the term to two-thirds of the Fourth Rental Period under the Ground Lease, let alone for the Fifth and Sixth Rental Periods under the Ground Lease.

40. Attached hereto and marked as Exhibits "D" and "E" to this my affidavit are copies of:

- (a) The Niche Bakers Properties Inc. Plan

- (b) The proposed sublease between Niche Bakers Properties and Niche Bakers

41. After reviewing this information, I responded to Mr. Pekaruk on the morning of October 21, 2020, as follows:

I have now had a quick look at the materials and forwarded them to our client for review

Please advise who is the intended assignee and confirm that the other entity will agree to be the indemnifier

Also could you please provide an org chart for the Niche Bakers organization - if you wish to put us in direct contact with counsel for Niche that might facilitate the process

42. Attached hereto and marked as Exhibit "F" to this my affidavit is a copy of Mr. Pekaruk's email to me, together with my response.

43. Later that day, on October 21, 2020, I had discussions with representatives of Fogler Rubinoff LLP ("**Fogler**"), the lawyers for the proposed purchaser, with respect to the indemnity to be provided by the Niche Bakers Operating Entities. They told me that the Niche Bakers Operating Entities were not prepared to provide an indemnity beyond the term of the proposed Sublease, i.e. beyond February 28, 2029. As I stated above, this would leave 44 years remaining on the Ground Lease with no covenant or indemnity from the Niche Bakers Operating Entities.

44. Fogler confirmed this position to me in an email sent on October 21, 2020.

45. On October 22, 2020, Mr. Gaudreau sent me a letter following up on whether the Landlord would consent to the proposed assignment. In his letter, Mr. Gaudreau stated, among other things, as follows:

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. ...

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. [emphasis added]

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.

46. A copy of Mr. Gaudreau's October 22, 2020 letter is attached as Exhibit "K" to Mr. Lawson's October 30, 2020 affidavit.

47. Mr. Gaudreau's position would have been reasonable if, as he appears to have assumed, the Niche Bakers Operating Entities were either being proposed as the Tenant or were prepared to provide a guarantee or indemnity in respect of the obligations of the Tenant under the Ground Lease. However, they have said that they are not prepared to do so beyond February 28, 2029.

48. As indicated above, I have had many without prejudice discussions with the lawyers for Niche Bakers and NAFA in an effort to negotiate a satisfactory covenant, but thus far no agreement has been reached.

49. In paragraph 94 of his affidavit in support of a court order seeking to force the assignment without the Landlord's consent, Mr. Lawson states:

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).

50. This is not correct. Mr. Lawson omits the fact that NAFA provided an indemnity covering the entire term of the Ground Lease.

51. In his affidavit, Mr. Lawson states that the proposed purchaser's operating companies are "established businesses with strong balance sheets", but he then takes the position that it is "unreasonable" for the Landlord to require that the Niche Bakers Operating Entities indemnify the Landlord under the Ground Lease because there is uncertainty as to the rental rate for the Fourth Rental Period.

52. As indicated above, NAFA itself provided such an indemnity, notwithstanding that the same terms applied at the time. In addition, the possibility of a significant future rent increase is the reason why the Landlord requires either that the Ground Lease is assigned to the Niche Bakers Operating Entities or that the Niche Bakers Operating Entities provide a guarantee or indemnity in respect of the obligations under the Ground Lease for the balance of the term.

53. Without such a covenant, the Landlord will be bound by the terms of the Ground Lease for the entire term and will be bound by the new rental rates under the Fourth Rental Term if the rates are favourable to the Tenant, but the Niche Bakers Operating Entities can simply choose not to renew the Sublease and walk away from the Ground Lease if the new rental rates are unfavourable to the Tenant, leaving Niche Bakers Properties with no means to make the rental payments under the Ground Lease.

54. Accordingly, without a guarantee or indemnity from the Niche Bakers Operating Entities, there will be no meaningful covenant for most of the remaining term of the Ground Lease.

55. At paragraph 103 of his affidavit, Mr. Lawson suggests that the Ground Lease does not contain an express provision for an indemnity. This misses the point. It is standard practice in the leasing industry for landlords to require a tenant or assignee of a tenant to provide a reasonable covenant to meet the obligations of the tenant. In the event that the proposed assignee is a single purpose company incorporated for the express purpose of taking the assignment, then it is standard for the landlord to require a covenant from the operating entities or another substantial entity.

56. I have also reviewed Mr. Wood's affidavit. Mr. Wood addresses the history and operations of the Niche Bakers Operating Entities and their plans for the Skyway Property. The Landlord has no objection to the Niche Bakers Operating Entities as the Tenant under the Ground Lease. The Landlord's objection is that the Niche Bakers Operating Entities are not being proposed as the Tenant under the Ground Lease, and have not agreed to provide a guarantee or indemnity for all of the obligations of the Tenant under the Ground Lease for the remainder of the term.

57. The Tenant will also require the Landlord's consent for the proposed investments in the Skyway Property. In his affidavit, Mr. Wood describes the nature of the proposed investments, including setting up the plant, including a 30,000 square foot freezer, and installing production and packaging lines, storage rack systems and ovens. Subject to approval of sufficiently detailed renderings, the Landlord has no foreseeable


objection to consenting to such alterations, subject to obtaining a satisfactory covenant from the Niche Bakers Operating Entities.

58. The kinds of investments proposed by Mr. Wood will not necessarily or even likely enhance the value of the Skyway Property to the Landlord. To the contrary, the installation of special purpose equipment and machinery for the business of Niche Bakers Operating Entities may very well not be of any value to the Landlord or other prospective tenants and would be very costly to remove in the event that Niche Bakers Operating Entities chose not to remain at the Skyway Property beyond February 28, 2029.

59. Consequently, the Landlord is not prepared to consent to the plans of the Niche Bakers Operating Entities without an enhanced commitment to the Ground Lease by way of a guarantee or indemnity.

60. I understand that Niche Bakers Properties has not yet completed its due diligence and has not yet committed to purchase the Ground Lease and the City Ground Lease.

SWORN before me at the City of Toronto,)
in the Province of Ontario, by)
videoconference this 3rd day of November,)
2020.)


CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)
A Commissioner, etc.
Commissioned by Video Conference
Catherine Francis LSO#26900N
#4424184

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Stephen Posen (Nov 3, 2020 14:32 EST)

STEPHEN POSEN

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

Court file no. CV-19-00630241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF STEPHEN POSEN
SWORN NOVEMBER 3, 2020**

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Lawyers for Meadowvale Land Limited, Rebecca's Gift Holdings Limited, 1350739 Ontario Limited and The Estate of Joseph Black

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT dated as of the 22nd day of February, 2017.

B E T W E E N:

NORTH AMERICAN FUR AUCTIONS INC.

This is Exhibit " A " referred to in the ("Indemnifier")

affidavit of STEPHEN POSEN

OF THE FIRST PART

sworn before me, this 3RD - and -

day of NOVEMBER 20 20


CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)

**MEADOWVALE LAND LIMITED and
REBECCA'S GIFT HOLDINGS LIMITED**

A COMMISSIONER FOR TAKING AFFIDAVITS (collectively, "Landlord")
COMMISSIONED BY VIDEO CONFERENCE
CATHERINE FRANCIS / LSO # 26900N

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. 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 (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. 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 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 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;
- H. 1350739 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 1350739 Ontario Limited.
- I. 1350739 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 1350739 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 Peel Off Lease No. 2 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 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 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 Peel Off Lease No. 2 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 Peel Off Lease No. 2 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 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;

- 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, 1998 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 Peel Off Lease No. 2 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 Peel Off Lease No. 2 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 parties 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;
- X. The Tenant (as hereinafter defined), 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 28th day of February, 2073;
- Y. Pursuant to the option to purchase (detailed in recitals K through M 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 Peel Off Lease No. 2;
- Z. 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;
- AA. Ivanhoe Cambridge I Inc. assigned its beneficial interest in Peel Off Lease No. 2 to Ivanhoe Cambridge II Inc. (collectively, "Tenant") effective August 15, 2001;
- BB. 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;
- CC. Pursuant to a rental rate agreement dated as of March 1, 2014, Landlord and Tenant 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, all as more particularly set out therein;
- DD. In summary, Landlord is now the landlord and Tenant is now the tenant under the Peel Off Lease No. 2 (hereinafter called the "Lease");
- EE. NAFA Properties Inc. ("Assignee") has entered into an agreement respecting an assignment by Tenant to Assignee of the Lease ("Assignment");
- FF. Landlord has agreed to grant its consent to the Assignment and Landlord, Tenant, Assignee and Indemnifier have entered into a consent agreement of even date evidencing the terms upon which Landlord has granted its consent ("Consent"); and

GG. To induce Landlord to enter into the Consent, Indemnifier has agreed to enter into this agreement with Landlord.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by Indemnifier, Indemnifier makes the following indemnity and agreement (“Indemnity”) with Landlord:

1. Indemnifier hereby agrees with Landlord that it will: (i) make the due and punctual payment of all Rent, including all loan repayments, monies, charges and other amounts of any kind whatsoever payable under the Lease by Assignee whether to Landlord or otherwise and whether or not the Lease has been surrendered, disclaimed, repudiated or terminated; and (ii) indemnify and save Landlord harmless from any losses, costs or damages arising out of any failure by Assignee to pay the Rent including all loan repayments, monies, charges or other amounts due under the Lease. For certainty, this Indemnity shall apply solely to obligations and liabilities of Assignee under or arising in connection with or related to the Lease arising from and after the closing date of the assignment of the Lease to the Assignee (“Assignment Date”). Indemnifier’s liability hereunder shall apply to all obligations of Assignee under the Lease during the Term, which for clarity, includes all renewals and extensions thereof.
2. Save as otherwise provided herein, this Indemnity is absolute and unconditional and the obligations of Indemnifier shall not be released, discharged, mitigated, impaired, or affected by: (i) any extension of time, indulgences or modifications which Landlord extends to or makes with Assignee in respect of the performance of any of the obligations of Assignee under the Lease; (ii) any waiver by or failure of Landlord to enforce any of the terms, covenants and conditions contained in the Lease; (iii) any assignment, sublease, mortgage, pledge or other encumbrance (collectively, a “Transfer”) of the Lease or Property, as the case may be, by Assignee or by any trustee, receiver or liquidator, or any further Transfer of all or any part of the Property; (iv) any consent which Landlord gives to any such Transfer; (v) any amendment to the Lease or any waiver by Assignee of any of its rights under the Lease; (vi) the expiration of the Term or any Disclaimer (as defined in Section 5 below) of the Lease; (vii) any renewal or extension of the Lease pursuant to any option in the Lease or otherwise, Indemnifier hereby agreeing that its obligations under this Indemnity shall extend throughout the Term, as renewed or extended.
3. Indemnifier hereby expressly waives notice of the acceptance of this Indemnity and all notice of non-performance, non-payment or non-observance on the part of Assignee of the terms, covenants and conditions contained in the Lease.
4. In the event of a default under the Lease and/or the Consent, Indemnifier waives any right to require Landlord to: (i) proceed against Assignee or any other indemnifier or pursue any rights or remedies against Assignee or any other indemnifier with respect to the Lease; (ii) proceed against or exhaust any security held by Landlord from Assignee or any other person, or (iii) pursue any other remedy whatsoever in Landlord’s power. Landlord has the right to enforce this Indemnity regardless of the acceptance of additional security from Assignee or any other person and regardless of any release or discharge of Assignee by Landlord or by others or by operation of any law.
5. Without limiting the generality of the foregoing, the liability of Indemnifier under this Indemnity shall continue in full force and effect and shall not be or be deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of Assignee in any receivership, bankruptcy, insolvency, winding-up or other creditors’ proceedings, including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies’ Creditors Arrangement Act* (Canada) or otherwise, or the surrender (whether or not accepted by Landlord), disclaimer, repudiation or termination of the Lease in any such proceedings or otherwise (collectively hereinafter called “Disclaimer”) and shall continue with respect to the periods prior thereto and thereafter, for and with respect to the Term as if there had been no Disclaimer of the Lease. Further, if there is a Disclaimer of the Lease, Indemnifier shall pay to Landlord: (i) all Rent, including loan repayments under the Lease, and all such amounts that would have been payable under the Lease for the period to what would have been the date of expiry of the Lease but for such Disclaimer. The liability of Indemnifier shall not be affected by any repossession of the Property by Landlord.

6. No action or proceeding brought or instituted under this Indemnity and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Indemnity by reason of any further default hereunder or in the performance and observance of the terms, covenants and conditions contained in the Lease.
7. No modification of this Indemnity shall be effective unless the same is in writing and is executed by both Indemnifier and Landlord.
8. Notwithstanding any performance in whole or in part by Indemnifier of its obligations hereunder or of Assignee under the Consent, Indemnifier shall not have any entitlement to occupy the Property or otherwise enjoy any of the benefits to which Assignee is entitled under the Lease, and Indemnifier shall not be entitled to be subrogated to any rights of Landlord whatsoever. Notwithstanding the foregoing, Landlord will agree to an assignment of the Lease from Assignee to Indemnifier, provided Indemnifier enters into an agreement in writing with Landlord agreeing to be bound by all of the terms and conditions contained in the Lease.
9. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) execute this Indemnity as Indemnifier, the liability of each such individual, corporation, partnership or other business association hereunder is joint and several. If Indemnifier is a partnership ("Partnership"), each person who is presently a member of the Partnership and each person who becomes a member of the Partnership or any successor Partnership hereafter, shall be and shall continue to be subject to the terms, covenants and conditions of this Indemnity and the Consent, whether or not such person ceases to be a member of such Partnership or successor Partnership and shall be jointly and severally liable as Indemnifier, under the Lease.
10. All of the terms, covenants and conditions of this Indemnity extend to and are binding upon Indemnifier, his or its heirs, executors, administrators, successors and assigns, as the case may be, and enure to the benefit of and may be enforced by Landlord and any mortgagee, chargee, trustee under a deed of trust or other encumbrancer of all or any part of the Property and each of their successors and assigns. The obligations of Indemnifier shall not be affected by the death or incapacity of Indemnifier.
11. This Indemnity constitutes the complete agreement between Indemnifier and Landlord and none of the parties hereto shall be bound by any representations or agreements made by any person which would in any way reduce or impair the obligations of Indemnifier other than any which are expressly set out herein.
12. This Indemnity is a continuing indemnity and is irrevocable by Indemnifier and will continue in full force and effect from and after the Assignment Date and as long as there exists or may exist any obligations or any unsatisfied consequences thereof, whether prior to, during or after the expiration of the Term of the Lease and each extension or renewal term, including without limitation, such as may result from Assignee remaining in occupation of the Property contemplated in the Lease after the expiration of the Term (as same may be extended), without the consent of Landlord.
13. This Indemnity will remain in full force and effect notwithstanding any change of name, amalgamation, merger or change of status of Landlord, Assignee and Indemnifier and notwithstanding any juridical acts or facts as a result of which the entity which is the creditor of any of the obligations is or becomes someone other than Landlord and/or Landlord is replaced by any other entity as a party to the Lease and/or any party other than Assignee becomes tenant of any of the obligations under the Lease. Moreover, if Landlord is replaced by any other entity as a party to the Lease, this Indemnity will remain in full force and effect as regards obligations arising both before and after such replacement.
14. This Indemnity has been freely negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Indemnity.

15. Indemnifier agrees to do, make and execute all such further documents, agreements, assurances, acts, matters and things and take such further action as may be reasonably required by Landlord in order to more effectively carry out the true intent of this Indemnity.
16. The obligations of Indemnifier hereunder shall be assignable by Landlord and an assignment of the Lease shall constitute an assignment of the obligations of Indemnifier unless the said obligations of Indemnifier are specifically excepted from such assignment of the Lease.
17. In the event of the termination of the Lease for any reason whatever or in the event of Disclaimer of the Lease, then, at the option of Landlord and without derogating from Indemnifier's obligations under this Indemnity, Indemnifier shall enter into a written lease of the Property between Landlord as landlord and Indemnifier as tenant for a term commencing at the date of such termination or Disclaimer, as the case may be, and expiring on the date on which the Lease would have expired if it had run its full term without default by Assignee and without such termination or Disclaimer, as the case may be. Such lease shall contain the same terms and conditions as are contained in the Lease to which Assignee was bound under the Consent which would apply to and be in force for that portion of the Term which by the original terms of the Lease would have remained unexpired at the date of such termination or Disclaimer, as the case may be.
18. Intentionally Deleted.
19. Intentionally Deleted.
20. In the event that the Lease is terminated, surrendered, disclaimed or repudiated, the provisions of this Indemnity shall remain in full force and effect in accordance with its terms to the same extent as if this Indemnity had been a separate agreement entered into between Landlord and Indemnifier for due consideration and under seal.
21. Notwithstanding any amendments of the Lease made after the Assignment Date, Indemnifier shall continue to be bound by all of its obligations pursuant hereto to the extent of what would have been its obligations pursuant hereto had such amendments not been made.
22. Indemnifier acknowledges receiving a copy of the Lease. The expressions "Landlord", "Tenant", "Rent", "Term", "Property" and other terms or expressions where used in this Indemnity, respectively, have the same meanings as they have pursuant to the Lease to the extent to which the context permits.
23. This Indemnity shall be binding upon Indemnifier and its successors and assigns and shall enure to the benefit of and be binding upon Landlord and its successors and assigns.
24. Indemnifier acknowledges the suggestion of Landlord that, before executing this Indemnity, Indemnifier should obtain independent legal advice.
25. Intentionally Deleted.
26. If Indemnifier intends to sell or transfer all or substantially all of its properties and assets to another Person (a "Transaction"), Indemnifier shall, prior to effecting the Transaction, cause such other Person (the "Purchaser") to execute and deliver to Landlord an agreement, in form and in substance satisfactory to Landlord, acting reasonably (an "Assumption Agreement") pursuant to which the Purchaser agrees to assume, without novation, all of the obligations and liabilities of Indemnifier hereunder. In no event shall Indemnifier be released from its obligations and liabilities hereunder as a result of the Transaction.
27. Should Landlord be obligated by any bankruptcy or other law to repay to Tenant, Assignee or Indemnifier or to any trustee, receiver or other representative of any of them, any amounts previously paid by any of them, then this Indemnity shall apply to the amount of such repayment. Landlord shall not be required to litigate or otherwise dispute its obligation to make such repayments if it in good faith and on the advice of counsel believes that such obligation exists.

28. All remedies afforded to Landlord by reason of this Indemnity are separate and cumulative remedies and it is agreed that no one of such remedies, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other remedy available to Landlord and shall not limit or prejudice any other legal or equitable remedy which Landlord may have.
29. Indemnifier agrees to pay Landlord, upon demand, all out-of-pocket costs and expenses (including, without limitation, legal fees on a full indemnity basis) incurred by or on behalf of Landlord in connection with enforcing any of its rights against Indemnifier under this Indemnity.
30. If any provision of this Indemnity or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Indemnity or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby and each provision of this Indemnity shall be valid and enforced to the fullest extent permitted by law.
31. Indemnifier acknowledges and agrees that the laws of the Province of Ontario, Canada applicable to contracts made and to be performed wholly within the Province of Ontario, Canada shall govern and control the validity, interpretation, performance and enforcement of this Indemnity and all disputes arising, directly or indirectly, out of or relating to this Indemnity shall be dealt with and adjudicated in the courts of the Province of Ontario, Canada or the Federal courts of Canada; and hereby expressly and irrevocably attorns to and submits the person of Indemnifier to the jurisdiction of such courts in any suit, action or proceeding arising, directly or indirectly out of or relating to this Indemnity. So far as is permitted under the applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Indemnity, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon the person of Indemnifier in any such court. Indemnifier irrevocably consents to the service of any and all process in any such suit, action or proceeding by service of process to Indemnifier in accordance with applicable law at the address of Indemnifier as hereinafter provided (or if such address is subsequently changed, at such last known address), whether within or without the jurisdiction of any such courts of Ontario, Canada or the Federal courts of Canada.
32. Indemnifier agrees to execute, deliver and file all such further instruments as may be necessary under the laws of the Province of Ontario, Canada in order to make effective (a) the consent of Indemnifier to jurisdiction of the courts of Ontario, Canada and the Federal courts of Canada and (b) the other provisions of this Indemnity.
33. If Landlord obtains an order or judgment of an Ontario court for the enforcement of this Indemnity with all applicable appeal periods having expired, Indemnifier shall consent to the enforcement of such order against Indemnifier in the United States of America and any other jurisdiction as may be appropriate in the circumstances and Indemnifier hereby waives any right to contest the enforcement of such order of an Ontario court in such jurisdiction.
34. Indemnifier represents and warrants for the benefit of Landlord that: (i) Indemnifier was duly incorporated and organized under the laws of the province of Ontario and is a valid existing corporation with no limitation under its governing statute or its certificate or instrument of incorporation on the duration of its corporate existence; (ii) Indemnifier has corporate power, authority, legal right and capacity to enter into, execute, deliver and perform its obligations under the Consent and the Indemnity; and (iii) the Consent and the Indemnity have been properly authorized by all necessary corporate action of Indemnifier and have been duly executed and delivered by the corporation. Indemnifier hereby consents to the jurisdiction of the Province of Ontario and attorns to the jurisdiction of Ontario courts in all matters regarding the Lease, the Consent and the Indemnity. Indemnifier waives any right to, at any time, claim that the Indemnity is not enforceable against it.
35. Any notice, request or demand provided for or given under this Indemnity shall be in writing and shall be served in the manner and to the address specified in the Consent.

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36. The obligations and liabilities of Indemnifier under this Indemnity shall not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Assignee or any partner thereof or by any change in the constitution of such partnership and where Indemnifier hereunder is a partnership, the obligations and liabilities of Indemnifier under this Indemnity shall likewise not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Indemnifier or any partner thereof or by any change in the constitution of such partnership.
37. Within ten (10) days after written request, Indemnifier shall deliver to Landlord a certificate in such form as requested stating (if such is the case or stating the manner in which such may not be the case): (a) that the Lease and the Indemnity are unmodified and in full force and effect or, if amended, the nature of such amendment; (b) Commencement Date and Expiry Date of the Term or any renewal or extension term, as the case may be, and the dates to which Rent has been paid; (c) the amount of rent payable under the Lease; (d) any default known to Indemnifier under the Lease; (e) the amount and status of any Rent Deposit(s) and whether any options have been exercised under the Lease and (f) any other statements reasonably requested by Landlord or its mortgagee from time to time.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

NORTH AMERICAN FUR AUCTIONS INC.

Per: _____
Name:
Title:

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

MEADOWVALE LAND LIMITED

Per: _____
Name:
Title:

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

REBECCA'S GIET HOLDINGS LIMITED

Per: JoAnn Minden
Name:
Title: Director

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

- 8 -

36. The obligations and liabilities of Indemnifier under this Indemnity shall not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Assignee or any partner thereof or by any change in the constitution of such partnership and where Indemnifier hereunder is a partnership, the obligations and liabilities of Indemnifier under this Indemnity shall likewise not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Indemnifier or any partner thereof or by any change in the constitution of such partnership.
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IN WITNESS WHEREOF the parties hereto have executed this Agreement.


NORTH AMERICAN FUR AUCTIONS INC.

Per: _____
Name:
Title:

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

MEADOWVALE LAND LIMITED

Per: 
Name: Kaylee Franklin
Title: Authorized Signing officer

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

REBECCA'S GIFT HOLDINGS LIMITED

Per: _____
Name:
Title:

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

- 8 -

36. The obligations and liabilities of Indemnifier under this Indemnity shall not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Assignee or any partner thereof or by any change in the constitution of such partnership and where Indemnifier hereunder is a partnership, the obligations and liabilities of Indemnifier under this Indemnity shall likewise not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Indemnifier or any partner thereof or by any change in the constitution of such partnership.
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IN WITNESS WHEREOF the parties hereto have executed this Agreement.

NORTH AMERICAN FUR AUCTIONS INC.

Per: _____
Name:
Title:

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

MEADOWVALE LAND LIMITED

Per: _____
Name: *Lorne Black*
Title: *Authorized Signing Officer*

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

REBECCA'S GIFT HOLDINGS LIMITED

Per: _____
Name:
Title:

Per: _____ c/s
Name:
Title:

I/We have authority to bind the Corporation.

- 36. The obligations and liabilities of Indemnifier under this Indemnity shall not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Assignee or any partner thereof or by any change in the constitution of such partnership and where Indemnifier hereunder is a partnership, the obligations and liabilities of Indemnifier under this Indemnity shall likewise not be released, discharged or otherwise affected by the bankruptcy, winding up, liquidation, dissolution or insolvency of any partnership constituting Indemnifier or any partner thereof or by any change in the constitution of such partnership.
- 37. Within ten (10) days after written request, Indemnifier shall deliver to Landlord a certificate in such form as requested stating (if such is the case or stating the manner in which such may not be the case): (a) that the Lease and the Indemnity are unmodified and in full force and effect or, if amended, the nature of such amendment; (b) Commencement Date and Expiry Date of the Term or any renewal or extension term, as the case may be, and the dates to which Rent has been paid; (c) the amount of rent payable under the Lease; (d) any default known to Indemnifier under the Lease; (e) the amount and status of any Rent Deposit(s) and whether any options have been exercised under the Lease and (f) any other statements reasonably requested by Landlord or its mortgagee from time to time.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

NORTH AMERICAN FUR AUCTIONS INC.

Per: [Signature]
 Name: DOUG LAWSON
 Title: PRESIDENT / CFO

Per: [Signature] c/s
 Name: MICHAEL MENGAR
 Title: PRESIDENT

I/We have authority to bind the Corporation.

MEADOWVALE LAND LIMITED

Per: _____
 Name:
 Title:

Per: _____ c/s
 Name:
 Title:

I/We have authority to bind the Corporation.

REBECCA'S GIFT HOLDINGS LIMITED

Per: _____
 Name:
 Title:

Per: _____ c/s
 Name:
 Title:

I/We have authority to bind the Corporation.

From: Stephen Gaudreau [<mailto:SGaudreau@blaney.com>]

Sent: Thursday, October 08, 2020 5:02 PM

To: Timothy Dunn ; Stephen Posen

Cc: David T. Ullmann ; Roman Pekaruk ; Ariyana Botejue

Subject: RE: In the Matter of North American Fur Producers Inc. et al. CV-19-00630241-00CL -

Hi Tim and Stephen,

I believe David has reached out to you (or at least Tim) to advise that NAFA has entered into a new APS for the Skyway property as of yesterday evening. The deal is set to close on **November 15, 2020**. As I am sure you are aware, we are seeking your clients' consent to assign the lease.

The proposed purchaser is Niche Bakeries Properties Inc. (<https://www.nichebakers.com>). A well established commercial baker in Toronto. We have forwarded the following request for information (based on the last round) to the Purchaser in order to obtain the consent. Please let us know if you would like to revise/adjust anything.

1. Financial Statement: The Purchaser's current financial statements for its two most recent fiscal years.
2. Purchaser's History: A history of the business of the Purchaser or guarantor to establish the viability of its business.
3. Organizational structure and guarantee: A document setting out the Purchaser's organizational structure, including whether the Purchaser is a single purpose holding entity. A guarantee from the ultimate parent company. The purpose of the guarantee of the ultimate parent will be in part to satisfy the landlord of the financial strength of its tenant and in part to forestall any prospect that the parent could strip assets from the purchaser and potentially reorganize the Purchaser for the parent's benefit and to the disadvantage of the landlord.
4. APS: The terms of the Agreement of Purchase and Sale.
5. Permitted use: A description of the Purchaser's intended use for the property.
6. Professional Fees: The Landlord requires to be completely indemnified for its professional fees (including legal fees) incurred with respect to the contemplated assignment.

Secondly, as part of the Purchaser's due diligence they will be performing a number of off-title searches. Can you please have your clients execute (or execute on behalf of your clients) the attached authorization? The authorization is to give the Purchaser access to information for their various off-title searches. I believe this is a fairly standard request, but have cc'ed Roman Pekaruk, our real estate solicitor, on this email should you wish to discuss. We would be grateful to get the attached sign in the next day or two in order to give the Purchase time to obtain the documents considering the relatively quick closing date.

Thanks and we look forward to hearing from you,

Stephen

Stephen Gaudreau

Partner

sgaudreau@blaney.com

416-596-4285 | 416-594-3594

This is Exhibit _____ "B" referred to in the
affidavit of STEPHEN POSEN
sworn before me, this 3RD
day of NOVEMBER 20 20


CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)

A COMMISSIONER FOR TAKING AFFIDAVITS
COMMISSIONED BY VIDEO CONFERENCE
CATHERINE FRANCIS / LSO # 26900N

AUTHORIZATION

TO: CITY OF TORONTO
 TAX DEPARTMENT
 UTILITY DEPARTMENT
 BUILDING DEPARTMENT
 FIRE DEPARTMENT
 HEALTH DEPARTMENT
 HERITAGE DEPARTMENT
 PUBLIC HEALTH DEPARTMENT
 TORONTO HYDRO

PROVINCE OF ONTARIO
 MINISTRY OF THE ENVIRONMENT
 TECHNICAL STANDARDS & SAFETY AUTHORITY
 LANDLORD & TENANT BOARD
 ELECTRICAL SAFETY AUTHORITY
 MINISTRY OF CONSUMER AND BUSINESS SERVICES
 HYDRO ONE NETWORKS
 ENBRIDGE GAS

AND ANY OTHER GOVERNMENTAL AUTHORITY HAVING JURISDICTION

Re: Niche Bakers Properties Inc. purchase from NAFA Properties Inc. leasehold interests in the property municipally known as 65 Skyway Avenue, Etobicoke, Ontario, being parts of the land legally described by PIN 07424-0195

The undersigned, the owner of the above noted property, hereby authorize and direct you to release and give to the firm of **FOGLER, RUBINOFF LLP**, solicitors for the Purchaser above noted, any and all information and records with respect to the above noted Property, and this shall be your full, sufficient and irrevocable authority for so doing. This authorization is not a request for and does not authorize inspections of the property.

The execution and delivery of this Authorization by facsimile transmission or electronic mail shall be as effective and binding on the parties hereto as if this Authorization was executed and delivering in the original.

[SIGNATURE(S) ON FOLLOWING PAGE]

This is Exhibit _____ "C" referred to in the
 affidavit of **STEPHEN POSEN**
 sworn before me, this **3RD**
 day of **NOVEMBER** 20 **20**


 CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)

**A COMMISSIONER FOR TAKING AFFIDAVITS
 COMMISSIONED BY VIDEO CONFERENCE
 CATHERINE FRANCIS / LSO # 26900N**

DATED this 15th day of October, 2020.

**REBECCA'S GIFT HOLDINGS LIMITED, ANNE
BLACK, LORNE GARY BLACK, STEPHEN
HOWARD BLACK, IAN NEIL BLACK, THE
ESTATE OF JOSEPH BLACK and 1350739
ONTARIO LIMITED**

by their solicitors,
MINDEN GROSS LLP



Per: _____

Name: Stephen Posen

Niche Bakers Properties Inc. ("Properties") was incorporated in September 2020, to purchase the leasehold interest in two ground leases located on the property municipally known as 75 Skyway Avenue, Toronto.

Upon closing of the transaction, the two leases shall be assigned to Properties from the current tenant and the company will enter into subleases with Niche Bakers Corp. ("Bakers") on essentially the same terms and conditions as are contained in the ground leases.

Bakers has been in business for over eleven years and its principals have been in the business of the preparation of baked goods, desserts, snacks and confectionaries since the early 1980's. Bakers, by way of remitting rent to Properties, will effectively be responsible for the rent and operating expenses set out in the ground leases. Bakers currently has two bases of operation.

Given that Properties is newly incorporated, audited financial records and commercial credit reports have not been provided for Properties, however such records and reports have been provided for Bakers. An unaudited Financial Statement Forecast has been provided for Properties.

This is Exhibit **"D"** referred to in the
 affidavit of **STEPHEN POSEN**
 sworn before me, this **3RD**
 day of **NOVEMBER** 20 **20**


CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)

**A COMMISSIONER FOR TAKING AFFIDAVITS
 COMMISSIONED BY VIDEO CONFERENCE
 CATHERINE FRANCIS / LSO # 26900N**

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")

This is Exhibit "E" referred to in the

OF THE FIRST PART;

affidavit of **STEPHEN POSEN** - and -

sworn before me, this 3RD

day of NOVEMBER 20 20


CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)

NICHE BAKERS CORP.

A COMMISSIONER FOR TAKING AFFIDAVITS (hereinafter called the "Subtenant")
COMMISSIONED BY VIDEO CONFERENCE
CATHERINE FRANCIS / LSO # 26900N

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;

- 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;

- 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 28th 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.

From: Stephen Posen
Sent: Wednesday, October 21, 2020 10:45 AM
To: Roman Pekaruk <RPEkaruk@blaney.com>
Cc: Timothy Dunn <TDunn@mindengross.com>; Stephen Gaudreau <SGaudreau@blaney.com>; Steven Birken <SBirken@mindengross.com>
Subject: Re: In the Matter of North American Fur Producers Inc. et al. CV-19-00630241-00CL

I have now had a quick look at the materials and forwarded them to our client for review

Please advise who is the intended assignee and confirm that the other entity will agree to be the indemnifier

Also could you please provide an org chart for the Niche Bakers organization - if you wish to put us in direct contact with counsel for Niche that might facilitate the process

Thanks

Steve

STEPHEN POSEN*

T: 416.369.4103 F: [416.864.9223](tel:416.864.9223) C: [416.453.4103](tel:416.453.4103) www.mindengross.com
[145 King St. West, Suite 2200, Toronto, ON M5H 4G2](http://www.mindengross.com)

*on behalf of Stephen Posen Professional Corporation
 MERITAS LAW FIRMS WORLDWIDE

This is Exhibit "F" referred to in the
 affidavit of STEPHEN POSEN
 sworn before me, this 3RD
 day of NOVEMBER 20 20


 CATHERINE LOUISE FRANCIS (Nov 3, 2020 14:33 EST)

**A COMMISSIONER FOR TAKING AFFIDAVITS
 COMMISSIONED BY VIDEO CONFERENCE
 CATHERINE FRANCIS / LSO # 26900N**

On Oct 21, 2020, at 9:58 AM, Roman Pekaruk wrote:

Hello Stephen - we just received the attached ZIP folder from the proposed Purchaser which contains the various information your clients require in order to obtain the necessary consent for the assignment of the lease. The attached folder includes:

1. Articles of incorporation for Niche Bakers Properties Inc.
2. Financial statements for Niche Bakers Corp. (audited) and Niche Bakers Properties Inc. (unaudited)
3. Business profile for Niche Bakers Properties Inc. and Niche Bakers Corp.
4. Commercial credit report for Niche Bakers Corp.
5. Proposed sublease from Niche Bakers Properties Inc. to Niche Bakers Corp.

In respect of the additional information you requested, we have been advised as follows:

1. Proposed new tenant information: Niche Bakers Properties Inc.
2. Company signing authorities (names/titles): Steve Martin: President and Director; Jeffrey Wood: Secretary, Treasurer and Director
3. Niche Bakers Properties Inc. will be the tenant under the existing lease, and Niche Bakers

Corp. will be a subtenant of Niche Bakers Properties Inc.

We trust you will find all in order. Please let us know if you require anything further.

Regards,
Roman

Roman Pekaruk

rpekaruk@blaney.com

[\[cid:image002.png@01D6A78F.D5E6C140\]](#) 416-597-4896 |

[\[cid:image003.png@01D6A78F.D5E6C140\]](#) 416-594-5097

From: Stephen Posen [<mailto:SPosen@mindengross.com>]

Sent: October 15, 2020 6:27 PM

To: Roman Pekaruk

Cc: Timothy Dunn ; Stephen Gaudreau

Subject: RE: In the Matter of North American Fur Producers Inc. et al. CV-19-00630241-00CL

Thanks Roman

Steve

[Minden Gross LLP]

Stephen Posen*

T: 416.369.4103 F: 416.864.9223 C: 416.453.4103 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: Roman Pekaruk [<mailto:RPekaruk@blaney.com>]

Sent: Thursday, October 15, 2020 11:33 AM

To: Stephen Posen <SPosen@mindengross.com>

Cc: Timothy Dunn <TDunn@mindengross.com>; Stephen Gaudreau <SGaudreau@blaney.com>

Subject: RE: In the Matter of North American Fur Producers Inc. et al. CV-19-00630241-00CL

Thanks Stephen – the Purchaser’s due diligence currently runs until October 31 (with a right to

extend until November 4). Closing is currently set to take place approximately 15 days thereafter. The Agreement currently allows for the extension of the Closing Date up to 45 days in the aggregate to work with the landlords to obtain their consents.

We have provided the list of requirements to the Purchaser's solicitor and are awaiting his response. We will follow up again shortly.

Regards,
Roman

Roman Pekaruk

rpekaruk@blaney.com

[cid:image002.png@01D6A78F.D5E6C140] 416-597-4896 |

[cid:image003.png@01D6A78F.D5E6C140] 416-594-5097

From: Allison Phillipott [<mailto:APhillpott@mindengross.com>] On Behalf Of Stephen Posen

Sent: October 15, 2020 10:52 AM

To: Roman Pekaruk <RPekaruk@blaney.com>; Stephen Gaudreau <SGaudreau@blaney.com>

Cc: Timothy Dunn <TDunn@mindengross.com>; jomin@sympatico.ca; Ron Berkis
(rberkis@berkisllp.com) <rberkis@berkisllp.com>

Subject: In the Matter of North American Fur Producers Inc. et al. CV-19-00630241-00CL

Attached please find the Authorization duly signed as requested.

When may we expect to receive the requested information on the proposed purchaser? Please also advise as to the proposed closing date.

Best regards.

[Minden Gross LLP]

Stephen Posen*

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145 King St. West, Suite 2200, Toronto, ON M5H 4G2

Save contact details: Stephen Posen

*on behalf of Stephen Posen Professional Corporation

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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")

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(Updated as of October 30, 2020)

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AND TO:	<p>FARM CREDIT CANADA 4-5 Lower Malpeque Rd. Charlottetown, PE C1E 1R4</p> <p>Jason Inman Tel: 902.393.4543 Fax: 613.271.1352 Email: jason.inman@fcc-fac.ca</p> <p>First mortgagee (on the Mink Farm Properties owned by 3306319 Nova Scotia Ltd)</p>
AND TO:	<p>DEPARTMENT OF JUSTICE Ontario Regional Office 130 King Street West Suite 3400, P.O. Box 36 Toronto, Ontario M5x 1k6</p> <p>Diane Winters Tel: 416-973-3172 Fax: 416-973-0810 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
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AND TO:	<p>RECIPE UNLIMITED CORPORATION General Counsel c/o Tyler Lane 199 Four Valley Drive Vaughan, Ontario Canada L4K 0B8 Email: tlane@recipeunlimited.com</p> <p>Subtenant to Skyway Property, Montana's BBQ and Bar</p>

AND TO:	<p>CORPORATE REAL ESTATE MANAGEMENT c/o Jack Harvey, Property Officer, Real Estate Services Metro Hall, 55 John Street, 2nd Floor Toronto, ON M5V 3C6 Email: Jack.harvey@toronto.ca</p> <p>City of Toronto, Landlord to the Skyway Property</p>
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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., NAFPRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

Court file no. CV-19-00630241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF MEADOWVALE
LAND LIMITED, REBECCA'S GIFT HOLDINGS
LIMITED, 1350739 ONTARIO LIMITED AND THE
ESTATE OF JOSEPH BLACK**

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSO# 26900N)
Email: cfrancis@mindengross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for Meadowvale Land Limited, Rebecca's Gift Holdings Limited, 1350739 Ontario Limited and The Estate of Joseph Black









DOCS1-#4427124-v1-Respondents__Motion_Record_dated_November_3__2020_-_unsworn

Final Audit Report

2020-11-03

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