

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as  
amended*

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

**HSBC BANK CANADA**

Applicant

- and -

**BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS**

Respondent

**MOTION RECORD  
Returnable December 21, 2017**

December 19, 2017

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
100 Wellington Street West  
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Lawyers for the Applicant

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and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as  
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# **TAB 1**

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

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

**HSBC BANK CANADA**

Applicant

**- and -**

**BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS**

Respondent

**NOTICE OF MOTION  
(Returnable December 21, 2017)**

**HSBC BANK CANADA** (the “**Bank**”), as Applicant in these proceedings, will make a motion to a Judge presiding over the Commercial List for an Order appointing Deloitte Restructuring Inc. (“**Deloitte**”) as the receiver (the “**Receiver**”) of the property, assets and undertaking of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the “**Borrower**”) pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the “**CJA**”) on December 21, 2017, at 9:00 a.m. or as soon after that time as the motion can be heard at the Courthouse located at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard orally.

**THIS MOTION IS FOR:**

1. An Order, *inter alia*:
  - (a) abridging the time for service of this Notice of Motion and the materials filed in support of the motion and dispensing with further service thereof;
  - (b) appointing Deloitte as the Receiver of the property, assets and undertaking of the Borrower pursuant to Section 243(1) of the BIA and Section 101 of the *CJA*;
  - (c) replacing the Interim Receivership Order appointing Deloitte as the Interim Receiver (the “**Interim Receiver**”) of the Borrower granted by the Court on December 14, 2017 (the “**Interim Receivership Order**”), with the Order requested in this Motion; and
  - (d) granting such other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

2. Deloitte was appointed as the Interim Receiver pursuant to the Interim Receivership Order;
3. the Borrower operates a poultry, processing, packaging and de-boning facility at its leased premises at 4480 Paletta Court, Burlington, Ontario, L7L 5R2 (collectively, the “**Premises**”) where they cut, de-bone and process chicken and poultry;
4. the Premises are leased from, and shared with, Paletta Bros. Four Limited (the “**Landlord**”) pursuant to a lease (the “**Lease**”) between the Landlord and 2519459

- Ontario Inc. dated October 17, 2016, which was assigned to the Borrower on the same date pursuant to a Consent to Assignment of Lease;
5. by letter dated December 7, 2017, the Bank demanded repayment from the Borrower of all amounts then outstanding (the “**Demand**”) and together therewith delivered a Notice of Intention to Enforce Security pursuant to Section 244 of the BIA (the “**BIA Notice**”). The 10-day notice period thereunder has now expired;
  6. on December 6, 2017, there was a fire at the Premises which caused significant damage. The Premises are hazardous due to unlit areas and frozen water on the floors. There has been no heat, power, water or lighting at the Premises since the fire;
  7. the Borrower’s frozen inventory located at the Premises is unsaleable and will need to be destroyed;
  8. the Interim Receiver was appointed to begin overseeing the processing of the insurance claims, pursuant to which the Bank is a first loss payee;
  9. since the date of the Interim Receivership Order, the Interim Receiver has contacted the Borrower’s insurers to inform them of the Interim Receivership Order, has attended at the Premises to inspect the damage caused by the fire, and has notified the Landlord of its appointment;
  10. the Receiver intends to only access the Premises to secure any movable assets that can be recovered and to obtain copies of the Borrower’s books and records and does not intend to occupy, take possession or control of the Premises;



11. the Borrower does not have sufficient cash flow to support the Borrower's operations or the continued employment of its employees;
12. the Bank's immediate need for the appointment of the Receiver is apparent based on the current circumstances, including the following facts:
  - (a) the Borrower's inventory located at the Premises has been declared a write-off by the insurance adjuster appointed by the Borrower's insurer (Ivan Brosbell of ClaimsPro) due to the fire damage and resulting loss of power for more than one week;
  - (b) the Bank is listed as the first loss payee on the Borrower's insurance policies;
  - (c) the Bank requires a Receiver to oversee the processing of the insurance claims;  
and
  - (d) the Bank has issued the Demand and BIA Notice and the notice period has expired.
13. without the appointment of the Receiver, the Bank's security position will continue to deteriorate and it is just and convenient in the circumstances to appoint the Receiver and is necessary to protect the Bank's interest in the insurance policies;
14. Deloitte has consented to act as the Receiver;
15. Rules 2.03, 3.02, 14.05(2), 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, Section 243(1) of the BIA and Sections 101 and 142 of the CJA; and

16. such other grounds as counsel may advise and this Honourable Court may deem just.

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

1. the Affidavit of John Borch, sworn December 19, 2017;
2. Consent of Deloitte Restructuring Inc.; and
3. such further and other evidence as counsel may advise and this Honourable Court may permit.

December 19, 2017

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**SERVICE LIST**  
**as at December 19, 2017**

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Rjaipargas@blg.com; forte@gsnh.com

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA and  
Applicant

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS

Respondent

Court File No. CV-17-588349-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Applicant

## **TAB 2**

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

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

**HSBC BANK CANADA**

Applicant

**- and -**

**BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS**

Respondent

**AFFIDAVIT OF JOHN BORCH  
(Sworn December 19, 2017)**

I, **JOHN BORCH**, of the City of Markham, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am an Assistant Vice President of the Loan Management Unit with HSBC Bank Canada (the “**Bank**”) having management for this account within the Bank and, as such, I have personal knowledge of the matters to which I depose herein. Unless I indicate otherwise, the facts herein are within my own personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the sources and I believe those facts to be true.



2. This affidavit is sworn in support of an application by the Bank for an order appointing Deloitte Restructuring Inc. (“**Deloitte**”) as the receiver (the “**Receiver**”), of the property, assets and undertaking (the “**Property**”) of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the “**Borrower**”) pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

### **Background**

3. Deloitte was appointed as Interim Receiver of the property, assets and undertaking of the Borrower pursuant to an Order dated December 14, 2017 (the “**Interim Receivership Order**”). A copy of the Interim Receivership Order is attached hereto as **Exhibit “A”**.
4. My affidavit sworn on December 13, 2017 (the “**Borch Affidavit**”) set out the background and business operations of the Borrower, the discussions between the Borrower and the Bank, the major industrial fire that occurred at the Borrower’s Premises on December 6, 2017, and the facts in support of the Interim Receivership Order. For ease of reference, a copy of the Borch Affidavit (without exhibits) is attached hereto as **Exhibit “B”**. All capitalized terms not otherwise defined herein have the meanings attributed to them in the Borch Affidavit.
5. The Premises are leased from Paletta Bros. Four Limited (the “**Landlord**”) pursuant to a lease (the “**Lease**”) between the Landlord and 2519459 Ontario Inc. dated October 17, 2016, which was assigned to the Borrower on the same date pursuant to a Consent to Assignment of Lease (the “**Consent**”). The Premises are shared between the Borrower

and the Landlord and, pursuant to the Lease, the Borrower occupies and rents a portion of the Premises. The Lease and the Consent are attached hereto as **Exhibit "C"**.

6. As set out in the Borch Affidavit, by letter dated December 7, 2017, the Bank demanded repayment from the Borrower of all amounts then outstanding (the "**Demand**") and together therewith delivered a Notice of Intention to Enforce Security (the "**BIA Notice**") pursuant to Section 244 of the BIA. The 10-day notice period thereunder has now expired.
7. As set out in the Borch Affidavit, pursuant to the GSA granted by the Borrower to the Bank, the Bank has the right to appoint a Receiver upon the occurrence of an Event of Default (as defined in the Credit Agreement).

#### **Interim Receivership Order**

8. The fire at the Premises has caused significant damage to the Premises. An image of the fire is attached hereto as **Exhibit "D"**. I am advised by Paul Casey of the Interim Receiver and do verily believe that the adjuster appointed by the Borrower's insurer (Ivan Brosbell of ClaimsPro) has advised that:

- (i) the inventory located in the freezers at the Premises is a complete write-off and will need to be disposed of; and
- (ii) the insurer will assume responsibility for disposing of the inventory.

Had it not been for the cold weather at this time of year, in view of the type of inventory utilized by the Borrower, there would be likely a tremendous stench from rotting poultry and related food products at the Premises.

9. I am further advised by Paul Casey and do verily believe that certain of the equipment secured in favour of the Bank and located at the Premises at the time of the fire may have sustained severe water and smoke damage. The Bank required the immediate appointment of an Interim Receiver to begin overseeing the processing of the insurance claims, pursuant to which the Bank is a first loss payee.
10. As set out in the Borch Affidavit, the Bank had previously terminated all Commitments (as such term is defined in the Credit Agreement) and no further credit had been available to the Borrower without the Bank's prior consent. The Borrower does not have sufficient cash flow to support the Borrower's operations or the continued employment of its employees.
11. At the time that the Interim Receiver was appointed, the 10-day notice period under the Demand and BIA Notice had not yet expired and the Borrower did not waive the notice period to permit the Bank to seek the appointment of a Receiver. The Borrower did, however, consent to the appointment of the Interim Receiver.
12. Pursuant to the Interim Receivership Order, the Interim Receiver was granted the power to process any and all claims for insurance under the Borrower's insurance policies, and receive and collect all monies that may become payable under such policies, subject to the interest of the Bank as first loss payee. The Interim Receiver was also granted the power (should it choose to do so) to sell perishable inventory, or inventory that would depreciate rapidly in value.
13. Since the date of the Interim Receivership Order, the Interim Receiver has contacted the Borrower's insurers to inform them of the Interim Receivership Order, has attended at the

Premises to inspect the damage caused by the fire, has met with and had discussions with the insurance adjuster and has notified the Borrower's Landlord of its appointment and arranged for access.

14. The Interim Receivership Order expires on the earlier of: (a) the appointment of a receiver or trustee in bankruptcy; (b) the date on which the court issues an order discharging the Interim Receiver; and (c) January 14, 2018.
15. I am advised by Paul Casey and do verily believe that the Interim Receiver's duties with respect to, among other things, processing the insurance claims, will not be completed by January 14, 2018. Accordingly, the Bank requests the appointment of the Receiver which will allow the Interim Receiver to carry on such duties beyond the expiration date of the Interim Receivership Order, and fully implement the steps that may be deemed necessary or advisable in the circumstances.

#### **Appointment of Receiver**

16. As the 10-day notice period under the Demand and BIA Notice has expired, the Bank is now seeking the appointment of Deloitte as Receiver to have the full powers and authority to take possession and control of the Property and process the insurance claims.
17. Due to the fire, and as described below, the Premises are not currently in a position to be operated from as there is no heat, power, water or lighting and they are in a hazardous condition due to unlit areas and frozen water on the floors. There is serious danger due to potential slip and fall accidents in view of the amount of ice in the affected areas. A

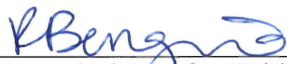
photo taken by the Interim Receiver inside the Premises adjacent to the loading docks which demonstrates the amount of frozen ice is attached hereto as **Exhibit "E"**.

18. The Receiver only intends to access the Premises to secure any movable assets that can be recovered and to complete the Interim Receiver's efforts to obtain copies of the Borrower's books and records. The Receiver does not intend to occupy or take possession or control of the Premises, and does not intend to assume the Lease.
19. The Receiver intends to employ a few designated employees to assist with the insurance claims or assist in carrying out its powers under the proposed Receivership Order. The Receiver will make specific arrangements with those employees, including where they will be located. The Receiver does not intend to employ the remaining employees as there is insufficient funding available to support payroll, the Premises are not in a condition to operate from, and there is no ability to carry on business in the ordinary course at this time. The Receiver will continue to review and assess the situation.
20. The Bank's need for the appointment of a Receiver is apparent based on the current circumstances, including the following facts:
  - (a) the Borrower's inventory located at the Premises has been declared a write-off by the insurance adjuster appointed by the Borrower's insurer (Ivan Brosbell of ClaimsPro) due to the fire damage and resulting loss of power for more than one week;
  - (b) the Bank is listed as the first loss payee on the Borrower's insurance policies;
  - (c) the Bank requires a Receiver to oversee the processing of the insurance claims;and

(d) the Bank has issued the Demand and BIA Notice and the notice period has expired.

21. The Bank requests that the Receiver be appointed, as it is just and convenient in the circumstances and is necessary to protect the Bank's collateral.
22. The Bank expects to suffer a significant shortfall in the recovery on its loans.
23. As a matter of cost efficiency, and as the Receiver will assist in advancing the insurance claims for the benefit of the Bank as first loss payee and in view of the loss under its security that the Bank expects to incur, the Bank requests that the proposed Receiver, at its option, be entitled to use the same counsel as the Bank unless and until such time as a conflict or potential conflict arises.
24. I am advised by Paul Casey and do verily believe the following. The Interim Receiver (and intended Receiver) has retained Mario Forte of Goldman, Sloan Nash & Haber LLP as its independent counsel in connection with this proceeding (the "**Independent Counsel**"). The Independent Counsel has received and reviewed copies of the security held by the Bank from the Borrower, a certified PPSA search, the insurance policy and designation of the Bank as first loss payee. Based on its preliminary review, the Independent Counsel has raised no issues with respect to the validity or enforceability of the security held by the Bank as first loss payee under the Borrower's insurance policies.
25. I swear this affidavit in support of an application by the Bank for the appointment of the Receiver and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 19<sup>th</sup> day of  
December, 2017.



Commissioner for Taking Affidavits

Rachel A. Bengino



---

**JOHN BORCH**

**EXHIBIT "A"**



Court File No. CV-17-588349-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE *ME* )  
JUSTICE *T. McEwen* )

THURSDAY, THE 14<sup>th</sup>  
DAY OF DECEMBER, 2017

IN THE MATTER OF Section 47(1) of the *Bankruptcy and  
Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and  
Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43, as amended

BETWEEN:

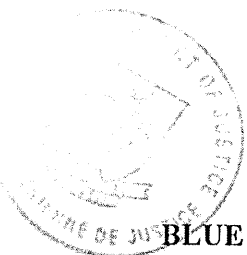
HSBC BANK CANADA

Applicant

- and -

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS

Respondent



**ORDER**  
(Appointing Interim Receiver)

THIS APPLICATION made by HSBC Bank Canada (the "Applicant") for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte Restructuring Inc. ("Deloitte") as Interim Receiver (in such capacity, the "Interim Receiver") without security, of all of the assets, undertaking and properties of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, wherever located, whether leased or

owned, including the leased premises at 4470-4500, 4800 & 5000 Paletta Court, Burlington, Ontario, L7L 5R2 (collectively, the "Premises") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of John Borch sworn December 13, 2017 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for the Respondent and no one else appearing for any other person on the service list although duly served as appears from the affidavit of service of ~~Rachel Bengino~~ <sup>IM Maria Magni IM</sup> sworn December 13, 2017, filed, and on reading the Consent of Deloitte to act as the Interim Receiver,

#### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### APPOINTMENT

2. THIS COURT ORDERS that, pursuant to section 47(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed as Interim Receiver, without security, of all of the assets, undertaking and properties of the Debtor, including the Debtor's interest in the Premises, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, including insurance proceeds, (the "Property") until the earlier of:

- (a) the taking of possession by a receiver or a trustee in bankruptcy of the Property;
- (b) the date on which the court issues an order discharging the Interim Receiver; and
- (c) January 14, 2018.

**INTERIM RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without limiting in any way the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable, with all of the same rights as the Debtor:

- (a) to take possession of and exercise control over the Property to the extent that the Interim Receiver deems necessary for the preservation and protection of the Property and to summarily dispose of any Property, including Property that is perishable or likely to depreciate rapidly in value, and any and all proceeds, receipts and disbursements arising out of or from the Property, including insurance proceeds;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, arranging for the provision of utilities and insurance, the relocation of the Property to safeguard it, the engagement of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to attend at the business premises of the Debtor as the Interim Receiver deems appropriate or necessary to carry out its duties and powers hereunder;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim

Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to process any and all claims for insurance under the Debtor's insurance policies and receive and collect all monies that may become payable under such policies, subject to the interest of the Applicant as first loss payee;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor to the extent that the Interim Receiver deems necessary and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to receive any and all mail sent to the Debtor in any form whether via regular mail, courier or registered mail;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the Interim Receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (j) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (k) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtor;
- (l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. **THIS COURT ORDERS** that, except in accordance with this Order, and without limiting the Interim Receiver's powers in paragraph 3 herein, the Debtor shall, subject to ~~compliance with a cash-flow forecast satisfactory to the Interim Receiver and with the consent of~~ <sup>obtaining the prior</sup> the Interim Receiver, be entitled to continue to:

- a) remain in possession of the Property, subject to the Interim Receiver exercising its powers over such Property pursuant to paragraph 3(a) herein;
- b) conduct, manage and carry on its business only in the ordinary course, including in relation to the compensation of any director, officer or employee;
- c) manage the Property in a commercially reasonable manner;
- d) deposit all monies received by it in solely in the bank account or accounts currently maintained by the Debtor with the Bank;

- e) maintain in full force and effect all policies and contracts of insurance, although the Interim Receiver will have the exclusive power and authority to process any and all claims for insurance and collect any proceeds arising therefrom;
- f) maintain relations with suppliers and customers of the Debtor and pay all amounts due and owing to such parties in the ordinary course, subject in all cases to the prior approval of the Interim Receiver;
- g) pay all taxes from and after the date of this Order as and when they become due and payable by the Debtor;
- h) not cause or contribute to any material adverse change in or to the Property or the Debtor's business;
- i) sell inventory, subject to the prior written consent of the Interim Receiver;
- j) not sell, assign, transfer, mortgage, pledge or otherwise encumber any of the Property;
- k) not declare any dividend or cause or permit any other form of distribution or payment on any shares or any other securities of the Debtor;
- l) not make any payments or repayments, whether on account of loans or otherwise, to parties who are related to or affiliated with the Debtor, without the prior written consent of the Interim Receiver; and

m) not default in the performance of any material term or condition of any lease, equipment lease, material contract, license or permit of the Debtor, without the prior written consent of the Interim Receiver.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, authorized signing officers, employees, agents, accountants, legal counsel (subject to solicitor and client privilege) and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, insurance agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Persons' possession or control, shall grant to the Interim Receiver immediate and continued access to the Property, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, bank account information and any other papers, insurance policies and related information, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in such Persons' possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall

require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that, if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require, including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.



**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently underway against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE INTERIM RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Interim Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

### **INTERIM RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, may be deposited into one or more new accounts to be opened by the Interim Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## EMPLOYEES

14. **THIS COURT ORDERS** that nothing in this Order requires that the Interim Receiver be the successor employer of the employees of the Debtor and that the Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, or in respect of any obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

**LIMITATION ON THE INTERIM RECEIVER'S LIABILITY**

16. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part as may be determined by this Court. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

**INTERIM RECEIVER'S ACCOUNTS**

17. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at

the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE INTERIM RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Interim Receiver’s Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Interim Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

#### **RETENTION OF LAWYERS**

24. **THIS COURT ORDERS** that the Interim Receiver may retain solicitors to represent and advise the Interim Receiver in connection with the exercise of the Interim Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include the solicitors for the Applicant herein, in respect of any aspect where the Interim Receiver is satisfied that there is no actual or potential conflict of interest.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or email transmission to the Debtor' creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery, facsimile or email transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

27. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that the Interim Receiver shall not be or be deemed to be a receiver within the meaning of subsection 243(2) of the BIA.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver and manager or trustee in bankruptcy of the Debtor.

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

31. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body,

wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor' estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT REGISTRE A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 14 2017

PER / PAR:





**SCHEDULE "A"**

**INTERIM RECEIVER'S CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the Interim Receiver (the "**Interim Receiver**") of the assets, undertaking and properties of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2017 (the "**Order**") made in an application having Court file number CV-15-\_\_\_\_\_, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate *per annum* equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of the Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the

Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2017.

DELOITTE RESTRUCTURING INC., solely in its capacity as Court-appointed Interim Receiver of the Property, and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name:

Title:

IN THE MATTER OF Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43, as amended

HSBC BANK CANADA

- and -

BLUE GOOSE PURE FOODS LTD. O/A TENDER  
CHOICE FOODS

Applicant

Respondent

Court File No. CV-17-588349-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER APPOINTING INTERIM RECEIVER

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Lawyers for the Applicant

**EXHIBIT “B”**

Court File No. CV-17-588349-00CL

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

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

**HSBC BANK CANADA**

Applicant

- and -

**BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS**

Respondent

**AFFIDAVIT OF JOHN BORCH  
(Sworn December 13, 2017)**

I, **JOHN BORCH**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am an Assistant Vice President of the Loan Management Unit with HSBC Bank Canada (the "**Bank**") having management for this account within the Bank and, as such, I have personal knowledge of the matters to which I depose herein. Unless I indicate otherwise, the facts herein are within my own personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the sources and I believe those facts to be true.

2. This affidavit is sworn in support of an application by the Bank for an order appointing Deloitte Restructuring Inc. ("**Deloitte**") as the interim receiver (the "**Interim Receiver**"), of the property, assets and undertaking of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the "**Borrower**") pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

### **The Borrower**

3. According to the records maintained by Industry Canada, the Borrower was amalgamated pursuant to the laws of Canada on October 12, 2016. The registered head office of the Borrower is listed as 1 Adelaide Street East, Toronto, Ontario, M5C 2V9. As confirmed by the Borrower on November 27, 2017, there are no acting officers and directors of the Borrower and its sole authorized signing officer is Richard McIntyre. Attached as **Exhibit "A"** is a true copy of the Corporation Profile Report with respect to the Borrower.
4. The Borrower operates a processing, packaging and poultry de-boning facility at its leased premises at 4470-4500, 4800 & 5000 Paletta Court, Burlington, Ontario, L7L 5R2 (collectively, the "**Premises**") where they cut, de-bone and process chicken and poultry. The Borrower sells its inventory (fresh and frozen) to suppliers located in Canada and internationally. The Borrower stores its frozen inventory at the Premises and at other third party warehouses located in Ontario and in Quebec.
5. The Borrower leases the Premises from the family related to the former owner of the Borrower's assets, which were acquired by the Borrower approximately one year ago.

### **Indebtedness of the Borrower to the Bank**

6. Pursuant to a credit agreement dated October 17, 2016 (as amended, the “**Credit Agreement**”), the Bank made available to the Borrower the following credit facilities (collectively, the “**Credit Facilities**”):<sup>1</sup>

- (a) Revolving Credit Facility up to the maximum principal amount of \$5,000,000, subject to the Borrowing Base, to fund general corporate purposes, working capital requirements and capital expenditures;
- (b) Non-Revolver Term Credit Facility in the maximum principal amount of \$35,000,000 to fund the purchase of the business in 2016;
- (c) Non-Revolver Delayed Draw Term I Credit Facility in the maximum principal amount of \$10,000,000 to fund a portion of the 2017 Adjustment Payment relating to the purchase of the business in 2016;
- (d) Non-Revolver Delayed Draw Term II Credit Facility in the maximum principal amount of \$15,000,000 to fund the Quarterly Deferred Payments;
- (e) Risk Management Credit Facility comprised of (i) an Interest Rate SWAP in the maximum amount of \$4,500,000; and (ii) FEFC in the maximum amount of USD\$353,353, to hedge foreign currency exposure or interest rate risk; and
- (f) Corporate MasterCard with a maximum limit of \$150,000.

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<sup>1</sup> All capitalized term use in this paragraph and not otherwise defined herein have the meanings attributed to them in the Credit Agreement.

7. As at December 13, 2017, the Borrower was indebted to the Bank under Credit Facilities (a) and (b) above (as those facilities listed in (c) to (f) above were never drawn down) in the principal amount of CAD\$33,961,934.79 (which includes principal and accrued interest), together with accruing interest thereon and all costs and fees, including legal fees and disbursements, incurred by the Bank until the indebtedness is paid in full. Attached as **Exhibit "B"** is a true copy of the Credit Agreement.

#### **Security Held by the Bank**

8. Pursuant to the Credit Agreement, as security for its obligations to the Bank, the Borrower granted security over all of its personal property to the Bank pursuant to, among other things, a General Security and Pledge Agreement dated October 17, 2016 (the "GSA"). Attached as **Exhibit "C"** is a copy of the GSA.
9. It is a term of the GSA that the Bank may appoint a receiver upon the occurrence of an Event of Default (as defined in the Credit Agreement) by the Borrower. It is a further term of the GSA that, upon an Event of Default, the Bank may collect accounts receivable of the Borrower.
10. The Borrower also assigned its interest in its insurance policies to the Bank pursuant to a Transfer and Assignment of Insurance dated October 17, 2016 (the "**Insurance Assignment**"). The Insurance Assignment is attached hereto as **Exhibit "D"**.
11. The Bank registered its security interest against the Borrower pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") on February 29, 2016 against all classes of collateral, except "consumer goods", which is the first priority registration against the



Borrower. Attached as **Exhibit "E"** is a copy of a certified PPSA Enquiry Response Certificate from the Ministry dated November 15, 2017 in respect of the Borrower.

12. The PPSA Enquiry Response Certificate lists one registration made subsequent to the Bank's in favour of Penske Truck Leasing Canada Inc. on May 9, 2017 over "equipment", "other" and "motor vehicle included". The registration is valid for a period of seven years and is due to expire on February 29, 2024.

### **Share Pledge Agreement**

13. Blue Goose Capital Corp. ("**Blue Capital**"), the parent company of the Borrower, granted a Share Pledge Agreement to the Bank dated October 17, 2016 (the "**Share Pledge Agreement**"). Pursuant to the Share Pledge Agreement, Blue Capital, the sole shareholder of the Borrower, pledged and assigned its share of the Borrower to the Bank, which is enforceable upon an Event of Default (as defined in the Credit Agreement). Attached as **Exhibit "F"** is a copy of the Share Pledge Agreement.
14. According to the records maintained by Industry Canada, Blue Capital was amalgamated pursuant to the laws of Canada on January 1, 2017. The registered head office of Blue Capital is listed as 99 Spadina Avenue, Suite 600, Toronto, Ontario, M5V 3P8. The Corporation Profile Report for Blue Capital lists Ben Nikolaevsky, Mark Goodman, Harold (Sonny) Gordon, Arlene Dickinson, Mark Attanasio, Darryl Bergman, John Nanos, Eric Klein and Aaron Serruya as the Directors. Attached as **Exhibit "G"** is a true copy of the Corporation Profile Report with respect to Blue Capital.

15. The Bank registered its security interest against Blue Capital pursuant to the PPSA on October 11, 2016 over “accounts” and “other”. The registration is valid for a period of eight years and is due to expire on October 11, 2024. There are three registrations made prior to the Bank’s. The first is in favour of The Blue Goose Cattle Company Ltd., registered on January 14, 2013, for a period of five years, against “equipment”, “other” and “motor vehicle included”. The next registration is in favour of Blueshore Leasing Ltd., registered on May 6, 2014, for a period of four years, against “equipment”. The third registration is in favour of the Bank of Montreal (“BMO”), registered on March 26, 2015 for a period of five years against “accounts” and “other”. The Bank has received an Estoppel Letter from BMO confirming that BMO’s registration against Blue Capital is limited to the guarantee and/or postponement and assignment of claim given by Blue Capital to BMO in respect of indebtedness owing by Blue Goose Cattle Company Ltd. to BMO. Attached as **Exhibit “H”** is a copy of a certified PPSA Enquiry Response Certificate from the Ministry dated November 16, 2017 in respect of Blue Capital.

#### **Recent Concerns**

16. On November 8, 2017, Canadian Food Inspection Agency (“CFIA”) issued a Notice of Suspension of a Licence to Operate (the “**Suspension Notice**”) to the Borrower pursuant to s. 29.2(1) of the *Meat Inspection Regulations, 1990* (the “**Regulations**”). A copy of the Suspension Notice is attached hereto as **Exhibit “I”**.
17. Pursuant to the Suspension Notice, CFIA suspended the Borrower’s license to operate at the Premises effective on November 10, 2017 (the “**Suspension**”). The Suspension was to be in effect until the required corrective measures had been taken.

18. Upon the issuance of the Suspension, the Borrower began its remediation efforts in order to correct the areas of non-compliance outlined in 288 corrective action requests. These need to be complied with in order for the CFIA to consider lifting the Suspension.
19. The Bank became aware of the Suspension on or around the effective date of the Suspension. The Bank immediately engaged in discussions with the Borrower in order to address the Bank's concerns with the Suspension. With the Borrower's consent, the Bank's engaged Deloitte as its consultant to enter the Premises and review the Borrower's operations, accounts receivable and accounts payable pursuant to an engagement letter agreement dated November 22, 2017.
20. By letter dated November 20, 2017, the Bank advised the Borrower that the Suspension constituted a Material Adverse Effect (as defined in the Credit Agreement), which constituted an Event of Default pursuant to the Credit Agreement.
21. By letter dated November 22, 2017, the Bank terminated all Commitments (as defined in the Credit Agreement) and no further credit has been available to the Borrower since that date, without the Bank's prior consent.

#### **Forbearance Agreement**

22. The Bank and the Borrower began forbearance discussions and entered into a forbearance agreement dated November 27, 2017 (the "**Forbearance Agreement**"). The Forbearance Agreement expired on December 4, 2017. A copy of the Forbearance Agreement is attached hereto as **Exhibit "J"**.

23. The Bank provided the Borrower with an extension to the Forbearance Agreement (the “**Forbearance Extension Agreement**”), as per the Borrower’s request, on December 5, 2017. The Forbearance Extension Agreement was not signed by the Borrower.

**Fire at the Premises**

24. Prior to the completion of the corrective actions requests, on December 6, 2017, at approximately 4:00 p.m., the Premises caught on fire. The Deloitte personnel and all employees on site were immediately evacuated, and no one was injured. The fire continued for several hours and has severely damaged a significant portion of the Premises.
25. To date, the Borrower’s management has been unable to enter the building and access the Premises due to the Fire Marshall’s orders. Accordingly, the extent of the damage is not fully known to the Bank at this time.
26. Pursuant to the Insurance Assignment, the Bank is the first loss payee on the Borrower’s insurance policies and holds the first ranking interest in any proceeds payable from the insurance coverage. Therefore, the Bank requests that an Interim Receiver oversee and facilitate the processing of the insurance claims under the Borrower’s various insurance policies. The Interim Receiver will not otherwise be in possession or control of the business or operations, unless to the extent necessary for protection and preservation of the Bank’s collateral.
27. On November 21, 2017, and again as recently as last week, the Borrower advised the Bank that neither it, nor its management or parent company, was prepared to inject

further funds into the operations of the Borrower's business at that time. I have received no information to suggest that position has changed. Accordingly, the Bank requires the Interim Receiver to have the power to, if deemed necessary by the Interim Receiver, take possession of and exercise control over the Bank's collateral and dispose of any collateral that is perishable or likely to depreciate rapidly in value.

### **Issuance of Demand**

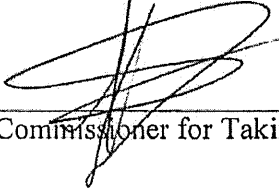
28. By letter dated December 7, 2017, the Bank demanded repayment from the Borrower of all amounts then outstanding (the "**Demand**") and together therewith delivered a Notice of Intention to Enforce Security (the "**BIA Notice**") pursuant to Section 244 of the BIA. The 10-day notice period thereunder will expire on December 18, 2017. A copy of the Demand and BIA Notice is attached hereto as **Exhibit "K"**.

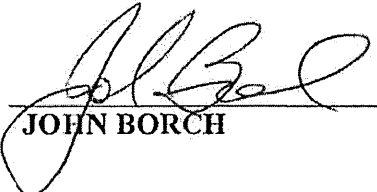
### **Need for an Interim Receiver**

29. The Bank's need for the appointment of an Interim Receiver is apparent based on the current circumstances, including the following facts:
- (a) a significant portion of the Borrower's inventory may be unsellable due to the fire damage and loss of power;
  - (b) the Bank is listed as the first loss payee on the Borrower's insurance policies;
  - (c) the Bank requires an Interim Receiver to oversee the processing of the insurance claims; and
  - (d) the Bank has issued the Demand and BIA Notice and the notice period has not yet expired.

30. The Bank requests that the Interim Receiver be appointed, as it is just and convenient in the circumstances and is necessary to protect the Bank's collateral.
31. As a matter of cost efficiency, and as the Interim receiver will assist in advancing the insurance claims for the benefit of the Bank as first loss payee, the Bank requests that the proposed Interim Receiver be entitled to use the same counsel as the Bank unless and until such time as a conflict or potential conflict arises. In the event that the Interim Receiver is appointed as Receiver, the Receiver would have the opportunity to retain separate counsel.
32. I swear this affidavit in support of an application by the Bank for the appointment of the Interim Receiver and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 13<sup>th</sup> day of  
December, 2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
JOHN BORCH

*Gloria Kalkounis, a Commissioner, etc.,  
City of Toronto, for ThomsonGrouitFinnigan LLP,  
Barristers and Solicitors.  
Expires August 27, 2019.*

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA and  
Applicant

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE  
FOODS

Respondent

Court File No. CV-17-588349-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at Toronto

AFFIDAVIT OF JOHN BORCH

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Email: [rbengino@tgf.ca](mailto:rbengino@tgf.ca)

Lawyers for the Applicant

# **EXHIBIT “C”**



THIS INDENTURE made as of the 17<sup>th</sup> day of October, 2016.

AMONGST OR BETWEEN:

**PALETTA BROS. FOUR LIMITED**

(hereinafter called the "Landlord")

**OF THE FIRST PART**

- and -

**2519459 ONTARIO INC.**

(hereinafter called the "Tenant")

**OF THE SECOND PART**

**ARTICLE 1  
DEFINITIONS**

- 1.1 For the purposes of this Lease, the following terms shall have the meanings indicated:
- 1.2 "Accepting Notice" has the meaning ascribed to it in Section 17.3.
- 1.3 "Affiliate" has the meaning ascribed thereto in Section 1(1) of the Business Corporations Act R.S.O. 1990, ch. B.16, as amended.
- 1.4 "Alterations" has the meaning ascribed to it in Section 7.6.
- 1.5 "Architect" means the architect or engineer from time to time appointed by the Landlord.
- 1.6 "Assumption Agreement" has the meaning ascribed to it in Section 10.2.
- 1.7 "Basic Rent" means the basic rent payable by the Tenant pursuant to Section 5.1 of this Lease.
- 1.8 "Building" means the buildings, structures, and improvements from time to time during the Term erected on the Lands together with all fixtures, sprinklers, heating, ventilating, air-conditioning and mechanical and electrical equipment and machinery and water, gas, sewage, telephone and other communication facilities and electrical power services and utilities comprised therein, belonging thereto, connected therewith or used in the operation thereof, now or hereafter constructed, erected and installed therein and thereon, and all alterations, additions, and replacements thereto, and includes all Leasehold Improvements. The municipal address of

the Building is 4480 Paletta Court, 4500 Paletta Court and 931 Zelco Drive, Burlington, Ontario. The Building is outlined in black on Schedule "B" annexed hereto.

1.9 "Business Day" means a day of the week, other than a Saturday, Sunday or any other day which is a statutory holiday in the Province of Ontario.

1.10 "Demised Premises" or the "Property" means the Building and the Lands.

1.11 "Environmental Laws" has the meaning ascribed to it in Section 14.2;

1.12 "Event of Default" means the occurrence of any of the events set out in Section 13.2.

1.13 "Event of Insolvency" means any of the following:

- (a) the Tenant or the Indemnifier taking or consenting to any resolution or action for or in respect of its liquidation, dissolution or winding-up, whether by extra-judicial means or under any statute of applicable jurisdiction, making an assignment for the benefit of its creditors or any substantial number or portion of its creditors, filing an assignment in bankruptcy under any statute of any applicable jurisdiction, or taking or consenting to any resolution or action for or in respect of a proposal for any reorganization, arrangement, compromise, compounding, scheme or arrangement, composition, extension of time or moratorium of or in respect of any of its debts or obligations, whether by extra-judicial means or under any statute of any applicable jurisdiction; or
- (b) a custodian, receiver, manager, receiver and manager, receiver-manager, sequestrator, agent for a secured creditor or other person with similar powers being appointed for any substantial portion of the properties or assets of the Tenant or the Indemnifier, whether by a court or extra-judicial means; or
- (c) a bona fide petition or other legal process for or in respect of its bankruptcy, insolvency, liquidation, dissolution or winding-up being issued or presented or filed against the Tenant or the Indemnifier and the failure of the Tenant or the Indemnifier, as the case may be, to have such petition or other legal process set aside within thirty (30) days of issuance, presentation or filing.

1.14 "First Extension Term" has the meaning ascribed to it in Section 3.2.

1.15 "Hazardous Material" has the meaning ascribed to it in Section 14.2.

1.16 "Indemnifier" means Blue Goose Capital Corp.;

1.17 "Interim Period" has the meaning ascribed to it in Section 2.2.

1.18 "Interest" or "Interest Rate" as the context requires means interest at a rate equivalent to four (4%) per cent per annum in excess of the prime lending rate of Royal Bank of Canada, Main Branch, Toronto, Ontario (or its successors) where the prime lending rate of such bank means the rate of interest (now commonly known as that bank's "prime rate"), expressed as a rate

per annum, charged by such bank in Toronto on demand loans made by it in Canadian dollars at such time.

1.19 “**Landlord Group**” means the Landlord, Paletta International Corporation, Penta Properties Inc. and their respective Affiliates.

1.20 “**Landlord's Office**” means 4480 Paletta Court, Burlington, Ontario, L7L 5R2, or such other place as the Landlord shall hereafter from time to time direct in writing to the Tenant in accordance with the notice provisions hereof.

1.21 “**Lands**” means the lands legally described in Schedule “A” annexed hereto, and outlined in green on the sketch in Schedule “B” annexed hereto.

1.22 “**Lease**” means this document as originally signed and delivered, as amended, from time to time, which amendments to be effective shall be in writing, and shall be signed and delivered by both the Landlord and the Tenant.

1.23 “**Lease Year**” means in the case of the first Lease Year, the period of time commencing on the Term Commencement Date and ending on the last day of the month of December next following and, in the case of the second and each subsequent Lease Year, means the period of time commencing on the first day following the expiration of the preceding Lease Year and terminates on the earlier of the expiration of twelve (12) months thereafter or on the termination of this Lease;

1.24 “**Leasehold Improvements**” means all fixtures, improvements, installations, alterations and additions from time to time made, constructed, erected or installed in or to the Demised Premises by or on behalf of the Landlord or the Tenant, both before and after the date hereof, including without limitation, all interior partitions however affixed and all rugs, carpeting and floor coverings attached in any way to the Demised Premises, and all telephone and other communication facilities comprised in the Demised Premises or which are for the exclusive use of the Tenant, but excludes moveable trade fixtures, moveable partitions, and furniture and equipment not affixed to the Demised Premises.

1.25 “**Mortgagee**” means the holder of a fee simple charge against the Lands and Buildings, and includes, without limitation, a mortgage, charge, mortgage bond, debenture and trust deed, and includes a trustee for bondholders, and “**Mortgage**” shall have a similar meaning.

1.26 “**Offer**” has the meaning ascribed to it in Section 17.1.

1.27 “**Offered Property**” has the meaning ascribed to it in Section 17.1;

1.28 “**Operating Costs**” means:

- (i) the total annual costs of insuring the Property with such forms of coverage and in such amounts as the Landlord, or its Mortgagees, may from time to time determine, including, without limitation, any deductible amounts paid by the Landlord, any costs and premiums paid for insurance against any risks of physical loss or damage to property of the Landlord on a

replacement cost new basis, boiler, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus insurance on a broad form blanket cover repair and replacement basis, rental income insurance, third party liability hazards including the exposure to personal injury, bodily injury, property damage on an occurrence basis including insurance for all contractual obligations and covering also actions of all authorized employees, subcontractors and agents while working on behalf of the Landlord, and any other form or forms of insurance as the Landlord or its Mortgagees may require from time to time for insurable risks and in amounts against which a prudent owner of a comparable property would protect itself; and

- (ii) **Capital Tax:** for the purposes of this lease, Capital Tax means the applicable amount of any tax or taxes payable under the legislation of a Province or to any political subdivision within a Province or payable to the Government of Canada (including large corporations tax) by the Landlord based upon or computed by reference to the paid-up capital or place of business of the Landlord or as results from or in connection with the Landlord's ownership of the Property, as determined for the purposes of such tax or taxes; provided that, save hereinafter set out, for the purposes of this subparagraph the "applicable amount" of such tax or taxes payable to the Province of Ontario shall mean the amount thereof that would be payable if the Property were the only establishment of the Landlord in that Province and any other establishments of the Landlord therein were located outside that Province; further provided that if the tax or taxes payable by the Landlord are for a fiscal year of the Landlord not coinciding with the fiscal period for the computation of Operating Costs, the amount of such tax or taxes of the Landlord included in Operating Costs shall be that amount payable by the Landlord in respect of any fiscal year of the Landlord ending during the fiscal period for the computation of Operating Costs; and further provided that notwithstanding the foregoing, if the Landlord is entitled to a credit or exemption in calculating the amount of Capital Tax payable by it, the Landlord shall not be obligated to apply the entire credit or exemption to the Property but rather the Landlord shall be entitled to allocate the credit or exemption amongst the various properties owned by the Landlord that are utilized in the calculation of the Landlord's entire Capital Tax liability with such allocation to be based on the proportionate amount of paid up capital attributable to each of such properties.

1.29 **"Permitted Users"** means the Landlord Group, their respective officers, directors, employees, servants, agents, contractors, suppliers (including utility, telephone, internet, service and similar suppliers), employees, guests and invitees.

1.30 **"Purchaser"** has the meaning ascribed to it in Section 10.1.

1.31 **“Realty Taxes”** means all taxes, levies, rates, charges, duties, assessments (including assessments for local improvements or for benefits from public works, even though the improvements or works may have been begun or completed before the beginning of the Term, or may not be completed during the Term) and licence, permit or inspection fees that may be imposed, levied, rated, charged or assessed on, in respect of, or against the Property or any part of it, or against the Landlord in respect of or arising out of the leasing, use, occupation, operation or ownership of the Property or any part of it, or on, in respect of, or against, or measured by, all or any part of revenues or profits specifically attributable to the Property, and all other taxes, levies, rates, charges, duties, assessments or payments, whether or not of the foregoing character, and whether or not in existence at the beginning of the Term, that may be imposed, levied, rated or assessed against or charged to the Landlord or the Tenant in lieu of or in addition to any of the foregoing, or that may become a charge, lien or encumbrance against the Property or any part of it, in every case, whether general or special, ordinary or extraordinary and whether levied, rated, charged or assessed by a municipal, regional, school, provincial, federal or other lawful taxing authority, together with all interest and penalties in respect thereof, and any of the above items may individually be referred to as a **“Realty Tax”**. Realty Taxes does not include any general income, corporation, profits or excess profits taxes on the Landlord's income or place of business taxes to the extent such taxes are not imposed, levied or assessed in lieu of any of the foregoing. If the system of taxation shall be altered or varied and any new tax shall be levied or imposed on the Landlord or the Property in substitution for and/or in addition to Taxes levied or imposed upon the beginning of the Term, then any such new tax or levy shall be included in Realty Taxes.

1.32 **“Right of First Refusal”** has the meaning ascribed to it in Section 17.1.

1.33 **“Rent, rent, Rental or rental”** means all payments and charges payable by the Tenant pursuant to this Lease.

1.34 **“Retained Parking Area”** means that portion of the Land shown outlined in black on Schedule “D” hereto.

1.35 **“Retained Premises”** means those portions of the Building shown outlined in black on Schedule “C” hereto.

1.36 **“Sale Notice”** has the meaning ascribed to it in Section 17.2.

1.37 **“Sales Taxes”** means all sales taxes, harmonized sales tax and other taxes, rates, duties, levies, fees, charges and assessments whatsoever, whether or not in existence at the Term Commencement Date, imposed, assessed, levied, rated or charged on the Tenant or the Landlord in respect of the rent payable by the Tenant to the Landlord or the rental of the Premises or the provision of any goods, services or utilities whatsoever by the Landlord to the Tenant under this Lease.

1.38 **“Second Extension Term”** has the meaning ascribed to it in Section 3.2.

1.39 **“Sign”** or **“Signs”** has the meaning ascribed to it in Section 7.9.

1.40 **“Structure”** means the foundations, roof (including the roof membrane), exterior wall assemblies including weather walls and bearing walls, subfloor, concrete floor slab and structural

columns and beams of the Building, and all utility systems lying in or below the floor slab or outside the Building or below the ground that serve the Demised Premises including without limitation all stormwater retention and detention facilities.

1.41 “**Tenant’s Permitted Alterations**” has the meaning ascribed to it in Section 7.6.

1.42 “**Term**” means the initial term of ten (10) years and any extension thereof.

1.43 “**Term Commencement Date**” means \_\_\_\_\_.

1.44 “**Term Expiry Date**” means the day immediately preceding the tenth (10th) anniversary of the Term Commencement Date.

1.45 “**Tower Lease**” means the lease between Paletta International Corporation and Clearnet Inc. dated February 6, 1996, as amended, and all subsequent amendments and renewals thereof. The successor to Clearnet Inc. is Telus Communications Company.

1.46 Schedules:

- A. Legal Description
- B. Sketch of Building, Demised Premises and Lands
- C. Sketch of Retained Premises
- D. Sketch of Retained Parking Area

**ARTICLE 2  
DEMISE AND RIGHTS OF THE LANDLORD**

**Demised Premises**            2.1 (a) In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, subject to Sections 2.2, 2.3, 2.4 and 2.5, the Landlord doth demise and lease unto the Tenant the Demised Premises, subject to the terms, covenants and conditions set out in this Lease.

(b) The Landlord and Tenant confirm that the verbal lease between them with respect to the Demised Premises has been terminated as at the day preceding the Term Commencement Date and such verbal lease is of no force or effect.

**Retained Premises**    2.2 Notwithstanding anything contained to the contrary in this Lease, for a period of one (1) year commencing on the Term Commencement Date (the “**Interim Period**”), the Landlord (and any member of the Landlord Group if so required by the Landlord) shall have the sole and exclusive right to occupy and possess the Retained Premises for the purposes of the Landlord or the Landlord Group conducting any lawful business or use therein, and, in connection therewith, the Landlord shall be entitled to allow the Permitted Users to use and have unrestricted access to the Retained Premises. The Landlord shall deliver vacant

possession of the Retained Premises, in the same condition as on the Term Commencement Date, to the Tenant on the earlier of the date of the expiration of the Interim Period or the date of termination in accordance with Section 2.6 hereof, as applicable. There shall be no rent or other compensation payable by the Landlord to the Tenant in connection therewith, provided however that the Landlord shall be responsible for the payment of all telephone services supplied to the Retained Premises. The Landlord shall be solely responsible for maintaining the Retained Premises during the Interim Period and for repairing any damage caused to the Retained Premises by the Landlord Group or the Permitted Users during the Interim Period. The Tenant covenants and agrees that the Permitted Users shall have unrestricted and unimpeded access to the Retained Premises at all times over those portions of the Lands which are necessary to accommodate access to the Retained Premises.

**Retained Parking Area**

2.3 Notwithstanding anything herein contained to the contrary in this Lease, during the Interim Period the Landlord shall have the sole and exclusive right to occupy and possess the Retained Parking Area for the purposes of the parking of vehicles thereon, and in connection therewith the Landlord shall be entitled to allow the Permitted Users to use and have unrestricted access to the Retained Parking Area. The Landlord shall deliver vacant possession of the Retained Parking Area, in the same condition as on the Term Commencement Date, to the Tenant on the earlier of the date of the expiration of the Interim Period or the date of termination in accordance with Section 2.6 hereof, as applicable. There shall be no rent or other compensation payable by the Landlord in connection therewith. The Landlord shall be solely responsible for maintaining the Retained Parking Area during the Interim Period and for repairing any damage caused to the Retained Parking Area by the Landlord Group or the Permitted Users during the Interim Period. The Tenant covenants and agrees that the Permitted Users shall have unrestricted and unimpeded access to the Retained Parking Area at all times through those portions of the Lands which are necessary to accommodate access to the Retained Parking Area.

**Landlord's Signs**

2.4 The Landlord shall have right to keep and maintain all of its existing signage on or within the Building during the Interim Period.

**Tower Lease**

2.5 Notwithstanding anything contained to the contrary in this Lease, the Tower Lease shall remain as an asset and the property of the Landlord and shall not be, and shall not be deemed to have been, assigned to the Tenant. The Landlord shall have the right to alter and amend the Tower Lease and extend the term thereof as the Landlord may require from time to time. All rents and other payments payable under the terms of the Tower Lease shall remain the sole and absolute property of the Landlord. The Tenant shall execute and deliver to the Landlord and to the tenant under the Tower Lease all such assurances, directions and confirmations as the Landlord may reasonably require from time to time in order to give full force and effect to the provisions of this Section.

The Tenant covenants and agrees that the tenant under the Tower Lease and the Permitted Users shall have unrestricted and unimpeded access to the premises described in the Tower Lease over those portions of the Lands to accommodate such access, provided that in no case shall such access materially interfere with the Tenant's use or enjoyment of the Demised Premises. Such access shall include the right to bring trucks, vehicles, machinery and equipment for the purposes of operating, maintaining, repairing and replacing the structures, facilities and equipment situate from time to time on the premises described in the Tower Lease. Notwithstanding anything to the contrary herein, in no event shall the Tenant be responsible for any costs or expenses attributable to the Tower Lease or the use of the Lands by the tenant under the Tower Lease, save and except for any Realty Taxes attributable thereto which shall be paid by the Tenant (it being acknowledged by the Tenant that the tenant under the Tower Lease does not pay any Realty Taxes).

**Termination by  
Landlord**

2.6 The Landlord shall have the right to terminate its right to use and occupy the Retained Premises and the Retained Parking Area upon the giving of thirty (30) days notice to the Tenant.

**ARTICLE 3  
TERM AND EXTENSIONS**

**Term**

3.1 TO HAVE AND TO HOLD the Demised Premises, unless such Term shall be sooner terminated as hereinafter provided, for and during the Term commencing on the Term Commencement Date.

**Extensions**

3.2 (a)(i) Provided that no material Event of Default has occurred and is continuing and that the Tenant has not delivered the notice referred to in Section 3.2(a)(ii), the term of this Lease shall be automatically extended for a period of five (5) years (the "**First Extension Term**") commencing on the first day immediately following the expiration of the original ten (10) year term, upon the same terms and provisions as are set out in this Lease, save and except that:

- (1) the Basic Rent payable during the First Extension Term shall be the sum of Three Million Four Hundred and Seventy-Two Thousand Eight Hundred and Seventy-Five Dollars (\$3,472,875.00) per annum, payable in equal consecutive monthly instalments, in advance, of Two Hundred and Eight-Nine Thousand Four Hundred and Six Dollars and Twenty-Five Cents (\$289,406.25), with the first payment of Basic Rent to become due



and payable on the first (1st) day of the First Extension Term, and

- (2) there shall be no further extension except as set out in Section 3.2(b)(i);
- (ii) in the event that the Tenant determines that it does not wish the term of this Lease to be extended as provided in Section 3.2(a)(i), then the Tenant shall deliver written notice to the Landlord to that effect at least twelve (12) months prior to the expiration of the original ten (10) year term. If such notice shall be delivered then the provisions of this Section 3.2 shall be of no force or effect and the Term shall end and be fully completed on the last day of the original ten (10) year term;
- (b)(i) provided that no material Event of Default has occurred and is continuing and the Tenant has not delivered the notice referred to in Section 3.2(b)(ii) and the term of this Lease has been extended as set out in Section 3.2(a)(i), the term of this Lease shall be automatically extended for a period of five (5) years (the "**Second Extension Term**") commencing on the first (1st) day immediately following the expiration of the First Extension Term, upon the same terms and provisions as are set out in this Lease, save and except that:
    - (1) the Basic Rent payable during the Second Extension Term shall be the sum of Three Million Six Hundred and Forty-Six Thousand Five Hundred Eighteen Dollars and Seventy-Five Cents (\$3,646,518.75) per annum, payable in equal consecutively monthly instalments, in advance, of Three Hundred Three Thousand Eight Hundred Seventy-Six Dollars and Fifty-Six Cents (\$303,876.56), with the first payment of Basic Rent to become due and payable on the first (1st) day of the Second Extension Term, and
    - (2) there shall be no further extension following the Second Extension Term;
  - (ii) in the event that the Tenant determines that it does not wish the term of this Lease to be extended as provided in Section 3.2(b)(i), then the Tenant shall deliver written notice to the Landlord to that effect at least twelve (12) months prior to the expiration of the First Extension

Term. If such notice shall be delivered then the provisions of this Section 3.2 shall be of no force or effect and the Term shall end and be fully completed on the last day of the First Extension Term.

#### **ARTICLE 4 USE OF PREMISES**

**Use**

4.1 The Tenant shall use and occupy the non-office portions of Demised Premises only for the operation of a facility for turkey, beef and poultry slaughter and food and meat processing and for all ancillary uses related thereto and for no other purpose and the Tenant shall, subject to Section 2.2, use the office portions of the Demised Premises solely for general office purposes; provided the Tenant, in the use and occupation of the Demised Premises and in the prosecution or conduct of any business therein, shall comply in all respects with all requirements of all laws, orders, ordinances, rules and regulations of the Federal, Provincial, Regional and/or Municipal authorities, including the Canada Food Inspection Agency, and with any direction or certificate of occupancy issued pursuant to any law by a public officer or officers. The Tenant covenants that it will not use or permit to be used any part of the Demised Premises for any dangerous, noxious or offensive trade or business and it will not cause or maintain any nuisance in, at or on the Demised Premises. The Tenant shall take possession of the Demised Premises no later than the Term Commencement Date, unless the Landlord otherwise consents in writing.

#### **ARTICLE 5 RENT**

**Basic Rent**

5.1 (a) The Tenant hereby covenants to pay without any abatement, set-off or deduction, except as expressly provided in this Lease, during the first five (5) years of the Term, the sum of THREE MILLION ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,150,000.00) of lawful money of Canada per annum to be paid in advance in equal consecutive monthly instalments of TWO HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$262,500.00) each on the first day of each and every month during such period, together with additional rent herein reserved.

(b) The Tenant hereby covenants to pay without any abatement, set-off or deduction, except as expressly provided in this Lease, during the sixth to tenth years of the Term, the sum of THREE MILLION THREE HUNDRED SEVEN THOUSAND AND FIVE

HUNDRED DOLLARS (\$3,307,500.00) of lawful money of Canada per annum to be paid in advance in equal consecutive monthly instalments of TWO HUNDRED SEVENTY-FIVE THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS (\$275,625.00) each on the first day of each and every month during such period, together with additional rent herein reserved.

- Deposit** 5.2 The Landlord acknowledges receipt, on or before the Term Commencement Date, of the sum of TWO HUNDRED NINETY-SIX THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS (\$296,625.00) to be held as a deposit and applied against the Basic Rent, plus Sales Taxes, for the last month of the fifth (5<sup>th</sup>) year of the Term.
- First and Last Month Adjustments** 5.3 If the Term commences or terminates on any day other than the first, rent for the fraction of the month at the commencement shall be adjusted pro rata and paid in advance, and rent for the fraction of the last month shall be adjusted pro rata and paid on the first day of the last month.
- Realty Taxes and Operating Costs** 5.4 The Tenant hereby covenants to pay to the Landlord all Operating Costs and the Tenant covenants to pay all Realty Taxes in the manner set out in Section 6.1 of this Lease. The Landlord shall invoice the Tenant for Operating Costs as incurred and the Tenant shall pay same together with the next due instalment of Basic Rent.
- Utilities – Light Fixtures** 5.5 The Tenant shall pay directly to the party providing such service the cost of all separately metered utilities, including without limitation, water, gas, electrical power or energy, steam or hot water used upon or in respect of the Demised Premises and for fittings, machines, apparatus, meters or other things leased in respect thereof, and for all work or services performed by any corporation or commission in connection with such public or private utilities, supplied to the Demised Premises. Upon the request of the Landlord, the Tenant shall provide satisfactory evidence of the payment of the aforesaid costs and charges.
- General Provisions Regarding Payment** 5.6 (a) No Delay in Rent: Nothing contained in this Lease shall suspend or delay the payment of any rent at the time it becomes due and payable. The Tenant agrees that the Landlord may, at its option, apply any sums received against any amounts due and payable under this Lease in such manner as the Landlord sees fit.
- (b) Interest on Arrears: If any amount of Rent is in arrears it shall bear interest at the Interest Rate.

- (c) General: All amounts payable by the Tenant to the Landlord in accordance with this Lease shall be deemed to be Rent. All Rent shall be paid without deduction, abatement or set-off, except as expressly provided in this Lease, and where payments due have been invoiced, such invoiced amounts shall be paid within ten (10) business days of receipt of such invoice, unless otherwise expressly provided for herein.
- (d) Legal Tender: Any payment required to be made by any provision of this Lease shall be made in lawful money of Canada.
- (e) Sales Taxes: The Tenant shall be responsible for the payment for all Sales Taxes. The Tenant shall reimburse the Landlord for the amount of such Sales Taxes forthwith upon demand (or at any time designated from time to time by the Landlord) as Rent.
- (f) Direction: The Landlord hereby directs the Tenant to pay all Rent to Penta Properties Inc.

**Payments  
Deemed  
Rent**

5.7 If the Tenant fails to pay any Operating Costs, Realty Taxes or other charges it has herein covenanted to pay, the Landlord, in addition to any other rights, shall have the same remedies and may take the same steps for the recovery of all such sums together with Interest thereon, as it might have and take for the recovery of Rent in arrears under the terms of this Lease and all such payments required to be made under the terms of this Lease shall be deemed to be Rent.

**Payment**

5.8 All payments required to be made by the Tenant under and in respect to this Lease shall be made to the Landlord at the Landlord's Office.

**Waiver of Set-Off**

5.9 The Tenant hereby expressly waives in favour of the Landlord, and any Mortgagees during the whole of the Term hereby granted, the benefit of and right granted by Section 35 of the *Commercial Tenancies Act*, R.S.O. 1990, Chapter L.7, and amendments thereto, and any other and all future Acts of any competent legislative body having jurisdiction herein permitting or which may permit the Tenant to claim or effect any set-off in whole or in part of any debt due to the Tenant from the Landlord against the rental reserved hereby.

**ARTICLE 6  
REALTY TAXES AND BUSINESS TAXES**

**Realty Taxes  
Payable**

6.1 Throughout the Term, the Tenant covenants and agrees to pay all Realty Taxes. During the first and last calendar years of the Term the

**by Tenant**

Tenant shall pay to the Landlord on the 1st of each month an amount determined by the Landlord to be the Realty Taxes for such calendar year, divided by the number of payments to be made by the Tenant for each calendar year. During each full calendar year of the Term, the Landlord shall estimate the Realty Taxes, and the Tenant shall pay to the Landlord on the 1st of each month from January to September inclusive, one-ninth (1/9th) of such estimates. The Landlord may, acting reasonably, from time to time re-estimate the amount of projected Realty Taxes for the then current calendar year and the Tenant shall change its monthly instalments to conform with the revised estimates. After the end of each calendar year the Landlord shall determine the actual Realty Taxes and the difference between such actual determination and the amount already paid by the Tenant. If the aggregate of the Tenant's instalments for the calendar year in question were less than the actual determination, then the Tenant shall pay the difference to the Landlord with its next payment of Basic Rent, or if the aggregate of such instalments were more than the actual determination, the Tenant shall deduct the difference from its next payment of Basic Rent.

**Business  
and Other Taxes  
Payable by  
the Tenant**

6.2 The Tenant shall pay before delinquency all business taxes and other taxes, charges, rates, duties and assessments levied, rated, imposed, charged or assessed against and in respect of any use or occupancy of the Demised Premises or in respect of the personal property, trade fixtures, Leasehold Improvements and facilities of the Tenant or the business or income of the Tenant on or from the Demised Premises, and the Tenant shall indemnify the Landlord from and against costs or charges resulting from the Tenant not paying these amounts and the Tenant shall, upon request of the Landlord supply receipts for such taxes paid. The Tenant shall pay to the Landlord any increase or incremental amount of Realty Taxes or other taxes which the Landlord, acting reasonably, has determined to be attributable to an act by the Tenant (for example declaring itself a separate school supporter) or attributable to the Leasehold Improvements.

**Contesting  
Taxes**

6.3 The Tenant may, at its expense, appeal or contest the taxes, assessments and other amounts payable as described in Section 6.1 hereof, provided it first gives the Landlord written notice of its intention to do so, and consults with the Landlord, and obtains the Landlord's prior written approval, which approval shall not be unreasonably withheld, delivers to the Landlord such security for the payment of such taxes, assessments and other charges as the Landlord deems advisable, diligently prosecutes any such appeal or contestation to a speedy resolution and keeps the Landlord advised of its progress from time to time; provided the Landlord's approval may be withheld where the effect of such appeal or contestation by the Tenant will be to the detriment of the Landlord or other tenants within the Building. The Landlord reserves

the right to appeal or contest any taxes payable by the Landlord so long as it does so in a diligent manner and does not interfere with the quiet enjoyment granted to the Tenant in this Lease.

**ARTICLE 7  
MAINTENANCE, REPAIRS AND ALTERATIONS**

**General  
Statement**

7.1 The Tenant agrees to carry out its responsibilities for maintenance, repair and replacement as detailed in this Lease as would a prudent owner of a comparable property in the City of Burlington, provided that in no event shall the Tenant be required to carry out such responsibilities to a standard that exceeds the condition and state of repair of the Demised Premises on the Term Commencement Date, and, notwithstanding anything herein to the contrary, this will be the applicable and prevailing standard for all maintenance, repairs and replacements to be carried out by the Tenant hereunder.

**Responsibilities of  
Tenant**

7.2 Without notice or demand from the Landlord, the Tenant shall:

- (a) except as otherwise set out herein and subject to the obligations of the Landlord hereunder, maintain and keep in a good state of repair the Demised Premises, all systems therein and the Leasehold Improvements, and promptly make all needed repairs and replacements, including, without limitation, to the floors, drains and sewer connections and those repairs and replacements set out in Article 8 hereof.
- (b) keep the Demised Premises in a well painted, clean and tidy condition, and not permit wastepaper, garbage, ashes, waste or objectionable material to accumulate thereon or in or about the Building, other than in areas designated by the Landlord.
- (c) repair all damage in the Demised Premises resulting from any misuse, excessive use or installation, alteration, or removal of Leasehold Improvements, fixtures, furnishings or equipment by the Tenant or by those for whom the Tenant is responsible.
- (d) maintain and keep the sidewalks, parking areas, driveways and landscaping in a good state of repair, and in a clean and tidy condition. With respect to the sidewalks, parking areas and driveways such state shall include without limitation, keeping same free from accumulation of dirt, rubbish, snow and ice. With respect to landscaping, such state shall include without limitation landscaping in such condition as a careful owner would do including the

replacement of lawn and landscaping where the Tenant has failed to care for such lawn and landscaping as a careful owner would do.

- (e) with respect to the Landlord's use and occupancy of the Retained Premises, continuously and without interruption supply to the interior portions thereof all utilities and services required for the occupation thereof, including heating, hydro, gas and air-conditioning, provided that the Tenant shall in no event be responsible or liable in the event of any interruption in the supply of such utilities and/or services by the utility supplier.
- (f) keep and maintain the Retained Parking Area secure, clean, properly lighted and clear of snow, ice and debris.

**Responsibilities of  
Landlord**

7.3

- (a) The Tenant shall make all necessary repairs and replacements to the roof and the roof membrane of the Building. Prior to commencing any necessary repairs and replacements the Tenant shall obtain the Landlord's written approval with respect to the repair or replacement to be performed, the proposed contractor and the cost thereof, such approval not to be unreasonably withheld or delayed. The Tenant shall be responsible for the cost of such repairs and replacements to a maximum amount of \$37,500.00 per Lease Year, with all repair and replacement costs in excess of \$37,500.00 per Lease Year being the sole responsibility of the Landlord. Any request by the Tenant for reimbursement from the Landlord shall be accompanied by such supporting documentation as the Landlord may reasonably require. Reimbursement shall be made with ten (10) Business Days following receipt by the Landlord of: (1) the aforesaid supporting documentation, and (2) evidence that the cost of the repair and replacement has been paid for by the Tenant, and (3) evidence that all lien periods under the *Construction Lien Act* (Ontario) have expired and that no lien has been registered on title to the Demised Premises in connection with such work.

The Landlord shall, at its sole cost and expense and without reimbursement from the Tenant, maintain, repair and replace the Structure (excluding the roof and roof membrane), including, without limitation, structural defects and latent defects not apparent from reasonable examination, but excluding the cost of repairs and replacements which are required as a result of the

negligence or willful default of the Tenant or those for whom the Tenant is in law responsible, which repairs and replacements shall be performed by the Tenant at its sole cost and expense.

The Landlord and Tenant will perform their respective obligations in this Section 7.3 in a timely and good and workmanlike manner as would a prudent owner of premises similar to the Demised Premises.

(b) The Landlord agrees that it will, at its expense and prior to the Term Commencement Date, (i) retain a third party contractor to perform a flush of the drainage system which serves the Building, and (ii) otherwise repair any defects or deficiencies in the drainage system.

**Inspection,  
Exhibiting, Entry  
and Notice**

7.4 (a) The Landlord, or its agents, may, from time to time upon not less than forty-eight (48) hours prior written notice to the Tenant, acting reasonably and in a manner that will not disrupt the Tenant's business, enter the Demised Premises and inspect the state of maintenance and repair, and upon written notice to the Tenant, show the Demised Premises to prospective purchasers or tenants, and existing or prospective Mortgagees.

(b) The Landlord may give notice to the Tenant requiring it to perform its obligations in accordance with Section 7.2 hereof, and the Tenant shall commence to remedy any such failure to so perform within thirty (30) days following receipt of such notice. Should the Tenant fail to commence such remedy within the allotted time, or having so commenced, fail to diligently continue such remedy to conclusion, the Landlord may carry out such remedy without further notice to the Tenant, in which event the provisions of Section 13.1 shall apply.

(c) If the Tenant is not present to open and permit an entry into the Demised Premises when for any reason an entry shall be necessary in the case of emergency, the Landlord or its agents may, using reasonable force, enter the same without rendering the Landlord or such agents liable therefor, and without affecting the obligations and covenants of this Lease.

(d) The Landlord, or its agents, shall have the right, upon not less than forty-eight (48) hours prior written notice to the Tenant, to enter the Demised Premises at all reasonable



times for the purpose of making changes, additions, and/or repairs to any services, pipes, conduits, or ducts affecting the Demised Premises.

- (e) Nothing in this Lease shall make the Landlord liable for any actions, notices or inspections as described in this Section 7.3, nor is the Landlord required to inspect the Demised Premises, carry out remedies on the Tenant's behalf, or under any obligation for the care, maintenance or repair of the Demised Premises, except as specifically provided in this Lease.

**Notify the  
Landlord**

7.5 The Tenant covenants to immediately notify the Landlord of any material defect, damage or malfunction affecting the Demised Premises of which the Tenant is aware.

**Alterations or  
Improvements**

7.6 (a) (i) The Tenant shall not make any decorations, alterations, repairs, changes, replacements, additions, fixturing, installations or improvements (collectively, the "Alterations") to any part of the Demised Premises or Leasehold Improvements without the Landlord's prior written approval, which approval shall not be unreasonably withheld, unless the request is in respect of a structural matter or will affect the basic mechanical, electrical, or other basic systems of the Building or the capacities thereof or unless the proposed Alterations are not, in the opinion of the Landlord, consistent with the character of the Building as at the Term Commencement Date, in which instances the Landlord's approval may be arbitrarily withheld.

- (ii) The Tenant shall submit to the Landlord details of any proposed work, including complete working drawings and specifications prepared by qualified designers and conforming to good engineering practice, and the Tenant shall provide such indemnification against liens, costs, damages and expenses as the Landlord shall reasonably require, and evidence satisfactory to the Landlord that the Tenant has obtained all necessary consents, permits, licences and inspections from all governmental authorities having jurisdiction.

- (b) All Alterations shall be performed expeditiously and at the sole cost of the Tenant, be performed by competent workmen whose labour union affiliations, if any, are compatible with others employed by the Landlord and its

contractors, not interfere unreasonably with work being performed by the Landlord, be performed in a good and workmanlike manner and in accordance with the drawings and specifications which the Landlord has approved, be performed in compliance with the applicable requirements of all regulatory authorities, and be subject to the reasonable supervision and direction of the Landlord

- (c) Any Alterations made by the Tenant without the prior written consent of the Landlord or which are not in accordance with the drawings and specifications approved by the Landlord shall, if requested by the Landlord, be promptly removed by the Tenant at the Tenant's expense, and the Demised Premises restored to their previous condition.
- (d) The Tenant shall reimburse the Landlord for the reasonable cost of technical evaluation of the plans and specifications and shall revise such plans and specifications as the Landlord deems necessary.
- (e) No Alterations by or on behalf of the Tenant shall be permitted which may adversely affect the condition or operation of the Building or Demised Premises or diminish the value thereof or restrict or reduce the Landlord's coverage for municipal zoning purposes.
- (f) During construction and installation of Leasehold Improvements the Tenant shall keep the Building clean from any mess related thereto, and in any event after construction is completed do an adequate "first clean" to the Demised Premises.
- (g) The Tenant shall promptly pay all its contractors and suppliers and shall do all things necessary to prevent a lien attaching to the Lands or Building for failure to pay its contractors and suppliers and should any such lien be made or filed, the Tenant shall discharge or vacate such lien within fifteen (15) business days of the Tenant receiving notice of such filing. If the Tenant shall fail to discharge or vacate any lien, then in addition to any other right or remedy of the Landlord, the Landlord may discharge or vacate the lien by paying into Court the amount required by statute to be paid to obtain a discharge, and the amount so paid by the Landlord together with all costs and expenses including solicitor's fees (on a substantial indemnity basis) incurred in connection therewith shall be due and payable

by the Tenant to the Landlord on demand.

- (h) Notwithstanding the foregoing, or any other provisions of this Lease, the Tenant will be entitled to make interior non-structural Alterations (the "**Tenant's Permitted Alterations**") to the Demised Premises without the Landlord's prior written consent or approval but on prior written notice to the Landlord, provided such interior non-structural Alterations: (i) comply with the applicable provisions of this Lease, (ii) in the aggregate do not exceed \$250,000.00 (Canadian) per year, (iii) in no way impact or affect the mechanical, electrical, HVAC system, life system or other systems of the Demised Premises, and (iv) comply with Landlord's design criteria for the Building. Prior to the commencement of any Tenant's Permitted Alterations, the Tenant shall provide the Landlord with evidence reasonably satisfactory to the Landlord that the Tenant has obtained all necessary approvals and permits, at the Tenant's expense, from any municipal and governmental authorities having jurisdiction and on the completion thereof the Tenant shall provide the Landlord with as-built plans and specifications therefor. For clarity, the performance of the Tenant's Permitted Alterations will not be subject to the terms of subsections 7.6(a)(i), 7.6(c) or 7.6(d).

**Removal and  
Restoration**

- 7.7 (a) The Leasehold Improvements shall immediately upon installation become the property of the Landlord without compensation to the Tenant, provided that notwithstanding the foregoing or anything to the contrary herein, the Landlord hereby acknowledges and agrees that at all times all refrigeration equipment and other equipment related thereto shall remain the sole and absolute property of the Tenant, regardless of the degree of affixation in the Demised Premises.
- (b) Unless the Landlord by notice in writing requests otherwise, the Tenant shall, at the end of the Term or earlier termination of this Lease, remove all (or part, as designated by the Landlord) of the Leasehold Improvements installed by or on behalf of the Tenant and restore the Demised Premises to its condition on the Term Commencement Date (as evidenced by the building condition assessment to be commissioned by the Tenant prior to the Term Commencement Date), subject to reasonable wear and tear, including the re-construction necessary to re-instate the Demised Premises original

structure in the event structural matters were undertaken by the Tenant.

- (c) The Tenant shall repair and make good any damage to the Demised Premises caused either in the installation or removal of Leasehold Improvements.
- (d) Any fixtures and equipment belonging to the Tenant, if not removed at the termination or expiration of this Lease, shall, if the Landlord so elects, be deemed abandoned and thereupon become the property of the Landlord without any compensation to the Tenant. If the Landlord shall not so elect, the Landlord may remove such fixtures or equipment from the Demised Premises and store them at the Tenant's risk and expense and the Tenant shall save the Landlord harmless from all damage to the Demised Premises caused by such removal, whether by the Tenant or by the Landlord.

**External  
Changes**

7.8 The Tenant agrees that it shall not erect, affix or otherwise attach to any roof, exterior walls or surfaces of the Building any antennae, sign (other than as provided for in Section 7.10), fixture or attachment of any kind, nor shall it make any opening in or alteration to the roof, walls or structure of the Demised Premises, or install in the Demised Premises free standing air-conditioning units, without the prior written consent of the Landlord which may not be arbitrarily withheld.

**Lien on  
Trade  
Fixtures**

7.9 Subject to the rights of any of the Tenant's lenders and other secured parties, if at any time the Tenant shall be in default under any covenant herein contained, the Landlord shall have the right to distrain on all stock-in-trade, inventory and fixtures, equipment and facilities of the Tenant as security against loss or damage resulting from any such default by the Tenant, and the stock-in-trade, inventory, fixtures, equipment or facilities shall not be removed by the Tenant until such default is cured, unless otherwise so directed by the Landlord.

**Tenant's  
Signs**

7.10 The Tenant shall not at any time cause or permit any sign, picture, advertisement, notice, lettering, flag, decoration or direction (hereinafter called a "Sign" or collectively "Signs") to be painted, displayed, inscribed, placed, affixed or maintained in or on any windows of or the exterior of the Demised Premises, nor anywhere else on or in the Building or on the roof, which can be easily seen from outside the Demised Premises, without the prior consent of the Landlord which consent may not be arbitrarily withheld. The Tenant further agrees to submit to the Landlord detailed plans and specifications of any proposed Sign, prior to the Tenant affixing such Sign. All Signs shall be in accordance with any local and/or regional building codes, by-laws or regulations. Any breach by the Tenant of this provision may be

immediately rectified by the Landlord at the Tenant's expense. The Signs shall remain the property of the Tenant and shall be removed by the Tenant, at its sole cost, at the earlier of the expiration of the Term or termination of this Lease. Upon such removal, the Tenant shall repair and damage to the Demised Premises caused by or resulting from the installation or removal of any Sign. The Tenant shall indemnify the Landlord against any loss or damage caused to any person or property as a result of the placing, use or removal of any Sign on or in the Building.

**Landlord's  
Representation and  
Warranty**

7.11 The Landlord hereby represents and warrants in favor of the Tenant, and acknowledges that the Tenant in entering into this Lease is relying on such representation and warranty, that the Landlord is the registered owner of the Property.

**ARTICLE 8  
HEATING AND AIR CONDITIONING**

**Heating**

8.1 The Tenant shall heat the Building in a reasonable manner at its own expense from heating equipment in the Building, so as, at all times, to protect the Building and all of its contents from damage by cold or frost, and shall maintain, keep in good repair and replace, if necessary, at its own expense, pursuant to a maintenance contract (evidence of which shall be delivered upon request) or as otherwise agreed to by the Landlord, the heating equipment and controls used in connection therewith.

**Air-Conditioning**

8.2 The Tenant shall air-condition the Building, from air-conditioning equipment in the Building, and shall maintain, keep in good repair and replace, if necessary, at its own expense, pursuant to a maintenance contract (evidence of which shall be delivered upon request) or as otherwise agreed to by the Landlord, the air-conditioning equipment and controls used in connection therewith.

**ARTICLE 9  
SERVICES**

**Interruption or  
Delay of  
Services**

9.1 The supply of services to the Building shall be subject to the rules and regulations of the supplier of such utility and/or municipal or other governmental authority regulating the business or providing any of these utilities. The utility supplier may slow down, interrupt, delay, or shut down any of the utilities services on account of repairs, maintenance or alterations to any equipment. The Landlord shall not in any event be held responsible for any direct or indirect damages, losses, or injuries caused.

**ARTICLE 10  
ASSIGNMENT AND SUBLETTING**

**Assignment,  
Subletting**

10.1 The Tenant shall not assign this Lease, nor sublet all, or any part of the Demised Premises without the prior consent in writing of the Landlord, which consent may not be unreasonably or arbitrarily withheld; provided however, such consent to any assignment or subletting, shall not relieve the Tenant from its obligations for the payment of Rent and for the full and faithful observance and performance of the covenants, terms and conditions herein contained. If this Lease is assigned or any part of the Demised Premises is occupied by any person other than the Tenant, the Landlord may collect Rent or sums on account of Rent from the assignee, subtenant or transferee of possession, and apply the net amount collected to the Rent and other amounts payable hereunder but no such assignment, subletting, transfer of possession or collection or the acceptance of the assignee, subtenant or transferee as tenant shall be deemed a waiver of the Tenant's obligations.

Notwithstanding the foregoing or anything to the contrary contained herein, provided that no Event of Default has occurred and is continuing, the Tenant may assign this Lease or sublet the whole of the Demised Premises pursuant to the terms of this Lease, without the Landlord's prior written consent, but on prior written notice to the Landlord, to:

- (a) an Affiliate of the Tenant; or
- (b) a corporation formed by the Tenant and another(s) as a result of a merger or amalgamation, provided that:
  - (i) the Tenant covenants and agrees that there will be a continuity of the existing management of the Tenant or its business practices and policies; and
  - (ii) the corporation formed thereby remains under the control of the existing principal shareholders of the Tenant or those shareholders forming part of the controlling block; or
- (c) a bona fide purchaser of all of the business operations of the Tenant ("**Purchaser**"), either by way of the purchase of the Tenant's applicable assets or shares, provided that the Tenant first demonstrates to the reasonable satisfaction of the Landlord that the Purchaser has a tangible net worth at least equal to that of the Indemnifier as of the date of this Lease and at least sufficient, in the Landlord's opinion, acting reasonably, to perform all of the Tenant's obligations under this Lease.

In the event of any assignment of this Lease by the Tenant, the Tenant covenants and agrees that it shall deliver an Assumption Agreement to the Landlord.

**Landlord's  
Consent**

10.2 If the Tenant desires to assign this Lease, or to sublet the Demised Premises, then and so often as such event shall occur, the Tenant shall make its request to the Landlord.

Requests by the Tenant to assign this Lease or sublet all, or part of the Demised Premises shall be in writing to the Landlord accompanied with such information as the Landlord may reasonably require and shall include an original copy of the proposed assignment or sublease, as the case may be. Prior to any consent being given by the Landlord to the Tenant's request, and without limiting the rights of the Landlord under Section 10.1, the Landlord shall be satisfied as to the following, inter alia: (a) that the liability of the Tenant in fulfilling the terms, covenants and conditions of this Lease shall remain, (b) the nature of the business to be carried on, the financial ability and good credit rating and standing of the proposed assignee, subtenant or transferee, as the case may be, (c) that the Tenant has regularly and duly paid Rent and performed all the covenants and provisos contained in this Lease, (d) that any Mortgagee of the Landlord will consent to such request, and (e) that the proposed assignee or subtenant has, or will enter into an agreement with the Landlord satisfactory to the Landlord agreeing to be bound by all of the terms, covenants and conditions of this Lease (the "**Assumption Agreement**"). All reasonable expenses incurred by the Landlord in connection with the review by the Landlord and/or its solicitors of the Tenant's request pursuant to this Article 10, and in the preparation and review of any documentation in connection therewith, shall be the responsibility of the Tenant and shall be paid forthwith upon demand.

**Corporate  
Ownership**

10.3 In the event that the Tenant proposes to transfer, or issue by sale, assignment, bequest, inheritance, operation of law, or other disposition, or by subscription, any part or all of the corporate shares of the Tenant, so as to result in any change in the present effective voting control of the Tenant by the party or parties holding such voting control at the date of commencement of this Lease, such transaction shall be deemed to be an assignment of this Lease, and the provisions of this Article 10 shall apply mutatis mutandis.

**Assignment  
and Subletting**

10.4 The use of the word "assignment", "subletting", "assign", "assigned" or "sublet" in this Lease shall include the mortgaging or encumbering of this Lease, the Tenant's interest herein or the Demised Premises or any part thereof and the occupation or parting with or sharing the possession of all or any part of the Demised Premises by any person, firm, partnership, or corporation, or any groups of persons, firms, partnerships, or corporations, or any combination thereof other than in respect of bona fide third party financing provided to the Tenant by a party with whom the Tenant deals at arm's length. An assignment or transfer shall be construed so as to include an assignment or transfer by operation of law.

**Assignment by  
Landlord**

10.5 The term "**Landlord**" as used in this Lease so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Demised Premises, and in the event of any transfer of ownership, the Landlord herein named, and in case of any subsequent transfers or conveyances, the then vendor or transferor, shall be automatically freed and relieved from and after the date of such transfer or conveyance, of all personal liability as respect the performance of any covenants or obligations on the part of the Landlord contained in this Lease thereafter to be performed, provided that:

- (a) Any funds in the hands of such Landlord of the then vendor or transferor at the time of such transfer, in which the Tenant has an interest, shall be turned over to the purchaser or transferee and any amount then due and payable to the Tenant by the Landlord or the then vendor or transferor under any provisions of this Lease, shall be paid to the Tenant; and
- (b) Upon any such transfer, the purchaser or transferee shall be deemed to have assumed, subject to the limitations of this paragraph, all of the terms, covenants and conditions in this Lease contained to be performed on the part of the Landlord; it being intended hereby that the covenants and obligations contained in this Lease on the part of the Landlord shall, subject as aforesaid, be binding on the Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.



**ARTICLE 11  
INSURANCE, INDEMNIFICATION AND RELEASE**

**Tenant's  
Insurance**

11.1 The Tenant, in the names of the Tenant, the Landlord and every Mortgagee of the Demised Premises from time to time and with such insurance company or companies satisfactory to the Landlord and every such Mortgagee, shall take out and maintain with respect to the Demised Premises and the Tenant's use and occupation thereof and furnish to the Landlord policies of:

- (a) public liability and property damage insurance, including personal injury, in respect of the Demised Premises and its operation therein up to such limits as the Landlord may from time to time reasonably request but to the extent of not less than FIVE MILLION DOLLARS (\$5,000,000.00) inclusive of all injuries or death to persons and damage to property of others arising from any one occurrence;
- (b) plate glass insurance in an amount sufficient to replace all plate glass in the Demised Premises and in the exterior doors and windows thereof;
- (c) insurance against loss by such insurable hazards as the Landlord may from time to time reasonably request on a replacement cost new basis in an amount sufficient to cover the cost of replacement of all alterations, decorations, fixtures, additions, improvements and trade inventory, made, installed, brought, maintained or stored by the Tenant on the Demised Premises.

**Increase in  
or Cancellation  
of Insurance**

11.2 The Tenant covenants that nothing will be done or omitted to be done by the Tenant or by those for whom the Tenant is responsible whereby any policy shall be cancelled or the rate increased or the Demised Premises rendered uninsurable.

**Cross-Liability  
and Waiver of  
Subrogation**

11.3 All insurance policies required under this Article shall provide cross-liability coverage and for waiver of subrogation, if available, in favour of the Landlord and Tenant respectively and all other companies respectively owned, operated or controlled by or affiliated to any of them, and each party may from time to time require the other to supply evidence in respect thereto provided that if such endorsement can only be obtained by payment of an additional premium, the other party, if it insists upon such endorsement, shall pay such additional premium; and in the event that waiver of subrogation is not available in favour of the Tenant, then the Tenant shall obtain Tenant's legal liability insurance in an amount reasonably satisfactory to the Landlord.

**Additional  
Insurance**

11.4 From time to time, at the request of the Landlord, the Tenant shall also maintain such other or additional insurance and in such amounts as at the time customarily is carried in respect of the Demised Premises and equipment contained therein, and shall also maintain such other or additional Insurance and in such amounts as may be reasonably required by any Mortgagee, pursuant to the terms of the particular Mortgage.

**Insurance  
Advisory  
Organization**

11.5 The Tenant shall comply with all regulations of the Insurance Advisory Organization or successor organization(s) or of any liability or fire insurance company by which the Landlord or Tenant may be insured, which are necessary to maintain such insurance. Such insurance shall, as from the respective dates upon which the several existing policies of insurance respectively expire, be effected with such insurance company or companies as the Landlord may approve; provided such approval shall not be unreasonably withheld and the policies of insurance shall be produced to the Landlord. In the event that the Tenant shall fail to insure and keep insured as herein provided, the Landlord shall be at liberty to effect insurance as aforesaid and the cost of such insurance shall be added to the rent hereby reserved and the amount thereof shall be payable with the next ensuing instalment of rent, and the Landlord, in the event of non payment, shall be entitled to all remedies for the recovery of same as for rent in arrears: and the Tenant shall have the public liability insurance in the name of the Landlord and Tenant as the persons assured.

**Receipts for  
Insurance**

11.6 Receipts or satisfactory evidence establishing the payment of premiums in respect of each of the said policies shall be delivered to the Landlord upon request.

**Landlord's  
Insurance**

11.7 The Landlord shall obtain and maintain in full force and effect during the Term with respect to the Property insurance against such occurrences and in such amounts and on such terms and conditions and with such deductible(s) as would reasonably be obtained and maintained by a prudent owner of comparable property. Such insurance shall include, without limitation:

- (a) insurance on the Demised Premises and improvements and equipment contained therein owned or leased by the Landlord or which Landlord desires to insure, against damage by fire and other risks contained in fire insurance policies with endorsements generally known as extended coverage and riot, vandalism and malicious acts endorsements or, at the Landlord's option, "all risks" insurance;
- (b) boiler and machinery insurance;
- (c) rental income insurance;

- (d) public liability insurance; and
- (e) such other insurance and insurance in such amounts and on such terms as Landlord, in its discretion, may reasonably determine.

**Release of Liability  
for Loss, Injury or  
Damage**

11.8 Save and except where caused by or attributable to the acts or omissions of the Permitted Users, the tenant under the Tower Lease or those for whom the Landlord is otherwise responsible at law, the Landlord shall not be liable for (a) any death or injury arising from or out of any occurrence in, upon, at or relating to the Lands or Building or (b) damage to property of the Tenant or others located on the Demised Premises, or (c) any loss or damage to any property of the Tenant or others from any cause whatsoever (whether or not such property has been entrusted to the Landlord, its agents, servants or employees) and, without limiting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place or quarter, or (d) any damage caused by or attributable to the condition or arrangement of any electric or other wiring or (e) any claim or demand in connection with any injury, loss or damage to the Tenant, its agents, invitees or to the property of the Tenant, its agents, invitees or licencees, where such injury, loss or damage arises out of the security services in force or the lack thereof in the Building from time to time, and the Tenant hereby so releases the Landlord from all liabilities, fines, suits, claims, demands, costs and actions of any kind or nature whatsoever to which the Landlord might otherwise be liable for in that regard.

**Indemnification of  
the Landlord**

11.9 The Tenant shall indemnify the Landlord and also save it harmless from all losses, liabilities, damages, claims, demands and actions of any kind or nature which the Landlord shall or may become liable for or suffer by reason of any breach, violation or non-performance by the Tenant of any covenant, term or provision of this Lease and against any and all losses, liabilities, damages, claims, demands, actions and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Demised Premises or arising from the occupancy or use by the Tenant of the Demised Premises, the Lands or Building by the Tenant, its agents, contractors, employees, servants, licencees, concessionaires or invitees or occasioned wholly or in part by any act or omission of the Tenant, its agents, contractors, employees, servants, licencees or concessionaires whether on the Demised Premises, Lands or in the Building, save and except in all cases where caused by or attributable to the acts or omissions of the Permitted

Users, the tenant under the Tower Lease or those for whom the Landlord is otherwise responsible at law. In case the Landlord, without actual fault on its part or on the part of the Permitted Users, the tenant under the Tower Lease or those for whom the Landlord is otherwise responsible at law, is made a party to any litigation commenced by or against the Tenant, the Tenant shall protect and hold the Landlord harmless from, and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in respect of such litigation. Such indemnification is in respect of all liabilities, fines, suits, claims, demands, costs and actions of any kind or nature whatsoever to which the Landlord might otherwise be liable for in that regard.

**Indemnification of the Tenant**

11.10 The Landlord shall indemnify the Tenant and also save it harmless from and against any and all losses, liabilities, damages, claims, demands, actions and expenses in connection with loss of life, personal injury or damage to property arising from or related to the acts or omissions of the Landlord Group or those for whom the Landlord is otherwise responsible at law on the Demised Premises.

**Mutual Release**

11.11 The Tenant hereby releases the Landlord and its servants, agents, employees, contractors and those for whom the Landlord is in law responsible from all losses, damages and claims of any kind in respect of which the Tenant is required to maintain insurance hereunder or is otherwise insured, but only to the extent of the insurance proceeds actually received by the Tenant. Except to the extent of damage for which the Tenant is insured or is required to be insured pursuant hereto (it being acknowledged that the Tenant's insurance shall at all times be primary and shall not call into contribution any insurance available to the Landlord) and to the extent only of the insurance proceeds actually received by the Landlord, the Landlord hereby releases the Tenant and its servants, agents, employees, contractors and those for whom the Tenant is in law responsible from any losses, damages and claims of any kind in respect of which the Landlord is required to maintain insurance hereunder or is otherwise insured.

**ARTICLE 12  
DAMAGE**

**Damage to Demised Premises**

12.1 It is understood and agreed that, notwithstanding the other provisions of this Lease, should the Demised Premises at any time be partially or wholly destroyed or damaged by any cause whatsoever or should demolition of the Demised Premises be necessitated thereby or should the Demised Premises become unfit for occupancy by the Tenant:

- (a) Subject as hereinafter provided in this Section 12.1, the Landlord shall, to the extent of the insurance proceeds available for reconstruction and actually received by the

Landlord from its insurers following an election by the Mortgagee to apply all or any portion of such insurance proceeds against the debt owing to the Mortgagee as the case may be, expeditiously reconstruct the Building, but such obligation to repair shall not extend beyond the state of repair that existed on the date of the damage. Upon substantial completion of the Landlord's work, the Landlord shall notify the Tenant, and the Tenant shall, to the extent of the insurance proceeds available for reconstruction and repair and actually received by the Tenant from its insurers, forthwith commence and expeditiously complete reconstruction and repair of the Demised Premises in accordance with the Tenant's obligations to repair under the provisions of Section 7.2 hereof;

- (b) Rent shall not abate unless the Demised Premises are rendered wholly or partially unfit for occupancy by such occurrence in the opinion of the Architect, acting reasonably, and in such event Rent, as of the date of such occurrence, shall abate proportionately as to the portion of the Demised Premises rendered unfit for occupancy, for such period of time as may be reasonable in the circumstances for the Tenant to complete its repair work having regard to the nature of the damage following receipt by the Tenant of the Landlord's notice of substantial completion given to the Tenant as provided in subsection 12.1(a) hereof, at which time Rent shall recommence;
- (c) If, in the opinion of the Architect, such opinion to be given to the Landlord and Tenant within thirty (30) days of the date of such damage, the Demised Premises cannot be repaired and made fit for occupancy to the extent of the Landlord's obligations set out in subsection 12.1(a) within one hundred and eighty (180) days from the date of such damage (employing normal construction methods without overtime or other premium), then either the Landlord or the Tenant may, by written notice to other party given within thirty (30) days of receipt of such opinion of the Architect, elect to terminate this Lease, in which case Rent shall cease and be adjusted as of the date of such damage and the Tenant shall forthwith vacate the Demised Premises and surrender same to the Landlord; and
- (d) In no event shall the Landlord be liable to reimburse the Tenant for damage to, or replacement or repair of any

Leasehold Improvements or of any of the Tenant's property.

**Architect's  
Certificate**

12.2 It is understood and agreed by the Tenant that wherever a certificate of the Architect is required or deemed appropriate by the Landlord, the certificate of the Architect shall bind the parties hereto as to completion of construction of the Demised Premises and the availability of services, and the number of days required to make repairs or reconstruct and the state or tenantability of the Demised Premises, the state of completion of any work or repair of either the Landlord or the Tenant, and the computation of the area of any premises including the Demised Premises provided, however, the Landlord may elect to furnish a certificate prepared by a qualified land surveyor for the purpose of area measurement and such certificate shall be equally binding.

**ARTICLE 13  
LANDLORD'S REMEDIES**

**Landlord May  
Perform Tenant's  
Covenants**

13.1 If the Tenant is in default of any of its covenants, obligations or agreements under this Lease (other than its covenant to pay Rent) and (i) in cases of no emergency such default shall have continued for a period of thirty (30) consecutive days after notice by the Landlord to the Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied (or, if by reason of the nature thereof, such failure cannot be cured by the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period, if the Tenant shall fail to proceed promptly to cure the same or shall thereafter fail to prosecute the curing of such failure with due diligence); or (ii) without notice or any curative period if in the reasonable exercise of Landlord's judgment an emergency exists; the Landlord, without prejudice to any other rights which it may have with respect to such default, may (but shall not be obligated to) remedy such default and the cost thereof together with Interest thereon from the date such cost was incurred by the Landlord until paid shall be treated as additional rent and added to the Rent due on the next succeeding date on which Basic Rent is payable and such amount shall thereupon become due and payable as Rent in addition to the regular payment of Basic Rent then due. The Landlord shall be subrogated to the extent of such payment to all rights, remedies and priorities of the payee to the extent of the amount paid by the Landlord to remedy such default.

**Re-Entry**

13.2 Provided that when:

- (a) the Tenant shall be in default in the payment of any Rent, whether lawfully demanded or not, and such default shall continue for a period of five (5) consecutive business days; or

- (b) the Tenant shall be in default of any of its covenants, obligations or agreements under this Lease (other than its covenant to pay rent) and such default shall have continued for a period of thirty (30) consecutive days after notice by the Landlord to the Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied (or, if by reason of the nature thereof, such failure cannot be cured by the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period, if the Tenant shall fail to proceed promptly to cure the same or shall thereafter fail to prosecute the curing of such failure with due diligence); or
- (c) or any property of the Tenant has been sold under a valid writ of execution or any of the Tenant's goods and chattels have been seized or taken in execution or attachment, or the Tenant shall make any assignment for the benefit of creditors or give any bill of sale without complying with the Bulk Sales Act (Ontario); or
- (d) an Event of Insolvency shall occur; or
- (e) any insurance policy is cancelled or not renewed by any insurer by reason of any particular use or occupation of the Demised Premises by the Tenant or those for whom the Tenant is responsible and the Tenant has failed to remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation within seventy-two (72) hours following receipt by the Tenant of written notice from Landlord; or
- (f) the Demised Premises shall have been abandoned, or have become vacant or shall have remained unoccupied for a period of twenty-one (21) consecutive days while the same are suitable for use by the Tenant without the consent of the Landlord;

then, and in any of such cases, the then current month's Rent together with the Rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Landlord the Term shall become forfeited and void, and the Landlord without notice or any form of legal process whatever may forthwith re-enter the Demised Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding. Such forfeiture shall be wholly without prejudice to the right of the Landlord to recover arrears of Rent and damages for any antecedent breach of the covenants,

obligations or agreements of the Tenant under this Lease. Notwithstanding any such forfeiture, the Landlord may subsequently recover from the Tenant damages for loss of Rent suffered by reason of this Lease having been prematurely determined and it may recover from the Tenant all damages it may incur with respect thereto, including the cost of recovering the Demised Premises, and including the worth at the time of such termination of the excess, if any, of the amount of Rent for the remainder of the Term over the then reasonable rental value of the Demised Premises for the remainder of the Term, all of which Rent shall be immediately due and payable from the Tenant to the Landlord. In determining the Rent which would be payable under this Lease by the Tenant subsequent to default, the annual Rent for each year of the unexpired portion of the Term shall be equal to the average of the aggregate of the Rent payable by the Tenant from the Term Commencement Date to the time of default, or during the three (3) full calendar years preceding such default, whichever period is shorter.

**Landlord May  
Re-let**

13.3 If the Landlord does not exercise its option under Section 13.2 hereof to terminate this Lease it may nevertheless in the events set out in Section 13.2 hereof from time to time, re-enter the Demised Premises without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Demised Premises, and re-let the Demised Premises or any part thereof as agent for the Tenant for such period or periods (which may extend beyond the Term) and at such rental or rentals and upon such other terms and conditions as the Landlord in its sole discretion may deem advisable. Upon each such re-letting all rentals received by the Landlord from such re-letting shall be applied, first, to the payment of any indebtedness other than rent due from the Tenant to the Landlord; second, to the payment of any costs and expenses of such re-letting, including brokerage fees and solicitors' fees and of the costs of alterations and repairs performed in connection with such re-letting; third, to the payment of rent due and unpaid; and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same may become due and payable. The Tenant shall pay to the Landlord the amount by which the rent received from such re-letting during any month during the Term is less than the rent payable during that month by the Tenant. Notwithstanding any such re-letting without termination, the Landlord may at any time thereafter elect to terminate this Lease. No such re-entry or taking of possession by the Landlord shall be construed as an election on its part to terminate this Lease unless, at the time of or subsequent to such re-entry or taking of possession, a written notice of such intention has been given to the Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.



**Right to Distrain**

13.4 The Tenant waives and renounces the benefit of any present or future statute purporting to limit or qualify the Landlord's right to distrain and agrees with the Landlord that in the event of a default set out in Section 13.2(a) hereof the Landlord, in addition to the other rights reserved to it, shall have the right to enter the Demised Premises as agent of the Tenant either by force or otherwise without being liable for any prosecution therefor and to take possession of any goods and chattels whatever on the Demised Premises, save and except any such goods and chattels which are owned by any occupiers of the Demised Premises other than the Tenant, and to sell the same at public or private sale without notice and apply the proceeds of such sale on account of the Rent or in satisfaction of the breach of any covenant, obligation or agreement of the Tenant under this Lease and the Tenant shall remain liable for the deficiency, if any. Notwithstanding anything contained in the *Commercial Tenancies Act*, R.S.O. 1990, or any successor legislation or other statute which may hereafter be passed to take the place of the said Act or to amend the same, none of the goods and chattels of the Tenant at any time during the continuance of the Term shall be exempt from levy by distress for Rent and the Tenant hereby waives all and every benefit that it could or might have under such Act. Upon any claim being made for such exemption by the Tenant, or on distress being made by the Landlord, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods. The Landlord acknowledges and agrees that its right to distrain is subject in all respects to the rights of the Tenant's lenders and other secured parties.

**Landlord May Follow Chattels**

13.5 In case of removal by the Tenant of the goods or chattels of Chattels the Tenant from the Demised Premises, the Landlord may follow the same for thirty (30) days in the same manner as is provided for in the *Commercial Tenancies Act*, R.S.O. 1990, or any successor legislation or other statute which may hereafter be passed to take the place of the said Act or to amend the same.

**Rights Cumulative**

13.6 The rights and remedies given to the Landlord or the Tenant in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by the Landlord or the Tenant, as the case may be, shall be deemed to be in exclusion of any other rights or remedies provided in this Lease or by law or in equity. All rights and powers reserved to Landlord may be exercised by either Landlord or its duly authorized agents or representatives.

**Acceptance of Rent - Non-Waiver**

13.7 No receipt of monies by the Landlord from the Tenant after the cancellation or termination of this Lease in any lawful manner shall reinstate, continue or extend the Term, or affect any notice previously given to the Tenant or operate as a waiver of the right of the Landlord to enforce the payment of Rent then due or thereafter falling due or operate

as a waiver of the right of the Landlord to recover possession of the Demised Premises by proper suit, action, proceedings or other remedy; it being agreed that, after the service of a notice to cancel this Lease and the expiration of the time therein specified, and after the commencement of any suit, action, proceeding or other remedy, or after a final order or judgment for possession of the Demised Premises, the Landlord may demand, receive and collect any monies due, or thereafter falling due without in any manner affecting such notice, suit, action, proceeding, order or judgment; and any and all such monies so collected shall be deemed payments on account of the use and occupation of the Demised Premises or at the election of the Landlord on account of the Tenant's liability hereunder.

**Tenant's Right to  
Cure Landlord's  
Default**

13.8 In the event the Landlord fails to perform and/or pay for any of its maintenance, repair or replacement obligations set forth in this Lease, then the Tenant may make such payment(s) or perform such obligation(s) or work at the Landlord's expense after giving thirty (30) days' notice to the Landlord of such failure or of the need for such work. In the event repairs are required on an emergency basis to protect persons or the property of the Tenant, then the Tenant may perform such repairs immediately without the necessity of prior notice to Landlord or any Mortgagee, and the Landlord shall pay all reasonable costs for such emergency repairs. If the Landlord fails to reimburse the Tenant for amounts incurred by the Tenant pursuant to this paragraph within thirty (30) days after notice from the Tenant containing an invoice for such amounts, then the Tenant may deduct the amount thereof from future rental payments.

**ARTICLE 14  
GENERAL COVENANTS OF TENANT**

**Outside Storage**

14.1 The Tenant may utilize any exterior areas or facilities for outside storage purposes provided that the Tenant shall construct a fence in compliance with all municipal by-laws, and in the event that such by-laws do not exist, then in accordance with the specifications of the Landlord. To the extent that the Tenant elects to utilize any such exterior areas and/or facilities, the Tenant at its sole cost and expense shall maintain and keep all outside storage areas in good order and condition, and promptly make all needed non-capital and non-structural repairs.

**Compliance with  
Laws**

14.2

- (a) The Tenant, at its own expense, shall observe and promptly comply with all statutes, orders-in-council, by-laws, rules, regulations and requirements of all Federal, Provincial, Regional and Municipal Governments and appropriate Departments thereof, including the Canada

Food Inspection Agency and the orders, rules and regulations of the Insurance Advisory Organization or any other body hereafter constituted exercising similar functions which may be applicable to the Demised Premises and or the Tenant's use or manner of use of the Demised Premises. The Tenant shall likewise observe and comply with the requirements of all policies of insurance at any time in force under the provisions of this Lease.

- (b) The Tenant covenants not to cause or permit any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material (a "**Hazardous Material**") to be placed, held, located or disposed of on, under or at any part of the Demised Premises, the Building, or Lands by the Tenant or by those for whom the Tenant is responsible at law to the extent that such would be in violation of any requirements under or prescribed by common law and all federal, provincial, regional, municipal and local laws, rules, statutes, ordinances, regulations, guidelines, directives, notices and orders from time to time with respect to any Hazardous Material, including without limitation, the discharge, generation, removal, transportation, storage and handling thereof (the "**Environmental Laws**") and covenants to operate its business and assets in compliance with Environmental Laws and to permit the Landlord to conduct inspections and appraisals from time to time to ensure such compliance. The Tenant hereby indemnifies the Landlord, its officers, directors, employees, agents and shareholders and agrees to hold each of them harmless from and against and all losses, liabilities, damages, costs, expenses and claims of any and every kind whatsoever, including costs of defending such actions, which at any time or from time to time may be paid, incurred, or asserted against any of them for, with respect to, or as a direct or indirect result of, the Tenant's breach of its covenants under this Section 14.2(b). The Tenant upon termination or other determination of the Lease shall remove any Hazardous Material which have been placed or located in, on or under the Demised Premises by the Tenant or by those for whom the Tenant is responsible at law and make good any damage caused thereby. Without limiting the generality of the foregoing the Tenant shall comply with and shall cause all occupants of the Demised Premises (other than the Landlord Group, Permitted Users or the tenant under the Tower Lease) to comply with all Environmental Laws and shall pay immediately

when due the cost of removal of any Hazardous Material and the cost of storage of any Hazardous Material which have been placed or located in, on or under the Demised Premises by the Tenant or by those for whom the Tenant is responsible at law (such storage to be effected in the manner and in locations approved by the Landlord and in accordance with applicable Environmental Laws from time to time) and shall keep the Demised Premises and every part thereof free from any lien, order or restriction imposed pursuant to such Environmental Laws.

- (c) Notwithstanding anything to the contrary in this Lease, the Tenant shall not be liable for: (i) any pre-existing environmental conditions (including, without limitation, any costs, expenses or other liabilities arising as a result of any Hazardous Material that existed in any part of the Property prior to the Term Commencement Date, including those identified in the Phase II Report), (ii) any environmental conditions caused by or contributed to by the Permitted Users, the tenant under the Tower Lease or those for whom Landlord is otherwise in law responsible, and (iii) any Hazardous Material emanating from any adjacent property (except where caused or contributed to by the Tenant or those for whom Tenant is in law responsible).
- (d) The provisions of Section 14.2 shall survive the termination of the Lease.

**Nuisance**

14.3 The Tenant shall not do, nor omit nor permit to be done or omitted upon or about the Demised Premises, anything which shall be or shall result in a nuisance or menace to the Landlord or the owners or occupiers of neighbouring premises.

**Plate Glass**

14.4 The Tenant shall be responsible for plate glass and hereby covenants to replace all plate glass in the Demised Premises and in the exterior doors and windows thereof.

**Overloading**

14.5 The Tenant will not bring upon the Demised Premises or any part thereof or hang from the ceiling or walls any machinery, equipment, article or thing that by reason of its weight, size or use might damage the floor, roof or walls of the Demised Premises or the Building, and that if any damage is caused to the Demised Premises or the Building by any machinery, equipment, article or thing or by overloading or by any act, neglect or misuse on the part of the Tenant or any of its servants, agents or employees or any person having business with the Tenant, the Tenant will forthwith repair the same or pay to the Landlord the cost of making good the same.

**Refuse** 14.6 The Tenant covenants to keep the Demised Premises and every part thereof in a clean and tidy condition and will not permit waste paper, garbage, ashes or waste or objectionable material to accumulate thereon.

**Liens** 14.7 If any construction or other liens or order for the payment of money shall be filed against the Demised Premises by reason or arising out of any labour or material furnished to the Tenant or to anyone claiming through the Tenant, the Tenant shall, within fifteen (15) days after notice to Tenant of the filing thereof, cause the same to be discharged by bonding, deposit, payment, court order or otherwise. The Tenant shall defend all suits to enforce such lien, or orders, whether against Tenant or Landlord, at Tenant's sole expense. The Tenant hereby indemnifies the Landlord against any expense or damage as a result of such liens or orders.

**ARTICLE 15**  
**STATUS CERTIFICATES, ATTORNMENT, SUBORDINATION**

**Certification** 15.1 The Landlord and Tenant respectively agree that within ten (10) days after a written request therefor, they shall execute and deliver to the other or to such person as may be identified in the written request a written statement certifying that this Lease is unmodified and is in full force and effect (or if modified stating the modifications and that this Lease is in full force and effect as modified), the amount of the Basic Rent and the date to which it as well as all other charges under this Lease have been paid, whether or not there is any existing default on the part of the Landlord or the Tenant of which the person signing the certificate has notice, whether or not there are then existing any set offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions of this Lease upon the part of Tenant to be performed or complied with and, if so, specifying the same, and giving as well such further information or statements as the person requesting the certificate shall reasonably require.

**Attornment** 15.2 If proceedings are brought for the foreclosure of, or if there is exercise of the power of sale under or if there is an entry into possession of the Building or any part thereof pursuant to any Mortgage, or any lien resulting from any other method of financing or refinancing made by the Landlord covering the Demised Premises and the Building, the Tenant shall attorn to the Mortgagee, or the purchaser upon any such foreclosure or sale and recognize such Mortgagee or the purchaser as the Landlord under this Lease.

**Assignment by Landlord as Security** 15.3 The Landlord declares that it may from time to time assign its right under this Lease to any Mortgagee as security for a loan to Landlord and in the event that such an assignment is given and executed by Landlord and notification thereof is given to Tenant by or on behalf of

Landlord, it is expressly agreed between Landlord and Tenant that this Lease shall not be cancelled or modified for any reason whatsoever except as provided for, anticipated or permitted by the terms of this Lease or by law, without the consent in writing of such Mortgagee. Upon request the Tenant will execute and deliver to any Mortgagee an agreement confirming this Section.

**Subordination**

15.4 The Tenant hereby postpones and subordinates its rights and shall postpone and subordinate its rights under this Lease to any Mortgage or Mortgages, or any lien resulting from any other method of financing or refinancing, now or hereafter in force against the Lands and Building or any part or parts thereof as it exists from time to time, and to all advances made or hereafter to be made upon the security thereof and the Tenant hereby covenants and agrees that it will promptly, at any time and from time to time, as required by the Landlord, during the term hereof, execute all documents and give all further assurances to this proviso as may be reasonably required to effect the postponement of its rights and privileges hereunder to the holder or holders of such charge or charges.

**Rights of  
Mortgagees,  
Trustees**

15.5 If at any time during the currency of any Mortgage or other charge on the interest of the Landlord in the Demised Premises, notice of which has been given to the Tenant, any default shall occur in the performance of any of the covenants, obligations or agreements of the Landlord which would give rise to a right of the Tenant to terminate this Lease, then the Tenant, before becoming entitled as against the holder of such Mortgage or charge to exercise any right to terminate this Lease, shall obtain from the Landlord the address of such Mortgagee or chargee and give to the holder of such Mortgage or charge notice in writing of such default. The holder of such Mortgage or charge shall thereupon have such period as may be reasonable in the circumstances within which to remedy such default as agent of the Landlord (or by such other means as will avoid the holder if a Mortgagee, becoming a Mortgagee in possession of the Demised Premises by reason of effecting such remedy) and if such default is remedied within such time the Tenant shall not by reason thereof terminate this Lease. The rights and privileges granted to the holder of any such Mortgage or charge by virtue of this Section 15.5 shall not in any way be deemed to alter, affect or prejudice any of the rights and remedies available to the Tenant against the Landlord. Any notice to be given to the holder of such security shall be deemed to have been properly given if mailed by registered mail to its most recent address of which the Tenant shall have received notice by such holder or the Landlord.

**Non-Disturbance  
Agreement**

15.6 The Landlord covenants and agrees that it will use reasonable efforts to obtain a non-disturbance agreement in the Mortgagee's usual form addressed to the Tenant from any existing Mortgagee whereby such Mortgagee acknowledges that in the event of any such Mortgagee

realizing upon the security, it will not disturb Tenant and will permit Tenant to remain in possession under this Lease in accordance with its terms, so long as Tenant is not in default. In addition, the Tenant shall not be obligated to postpone and subordinate this Lease as contemplated in Section 15.4 to any future Mortgage unless the Mortgagee agrees to deliver the aforesaid non-disturbance agreement to the Tenant.

**ARTICLE 16  
INTENTIONALLY DELETED**

**ARTICLE 17  
RIGHT OF FIRST REFUSAL**

**Right of First  
Refusal**

17.1 The Landlord hereby covenants and agrees to and with the Tenant that if the Landlord at any time, or from time to time, during the Term receives an offer (herein called the "**Offer**") to purchase all or any part or parts of the Property which the Landlord is ready and willing to accept, and no Event of Default has occurred which is continuing and the Tenant is the original Tenant under this Lease, then the Tenant shall be entitled to purchase the Property or parts thereof which are included in the Offer (the "**Offered Property**") in accordance with the terms and provisions hereinafter set forth (the "**Right of First Refusal**"). It is understood and agreed that if the Landlord receives an offer or agreement for the sale of the Property together with any other property (whether or not owned by the Landlord) then the provisions of this Article shall not apply to such offer or agreement and the sale of the Property and the other property may be completed without the Landlord being obligated to comply with this Article.

17.2 Upon receipt of an Offer which the Landlord is ready and willing to accept, the Landlord shall forthwith give written notice to the Tenant that the Landlord desires to sell the Offered Property in accordance with the Offer received. Such notice shall be accompanied by and shall not be valid unless accompanied by:

- (a) a true copy of the Offer;
- (b) a certificate of an officer or director of the Landlord confirming:
  - (i) that the Offer is not made as part of or in connection with any other transaction;
  - (ii) that there is no other consideration being given or received in connection with the Offer other than as disclosed in the Offer; and

- (iii) that the Offer is a bona fide offer and that the relationship of the Landlord to the offeror is arms-length;

the foregoing materials are hereinafter collectively referred to as the "**Sale Notice**".

17.3 The Tenant shall have a period of fifteen (15) days from the delivery of the Sale Notice within which to exercise its rights hereunder. The Tenant shall exercise the Right of First Refusal by delivering a written notice (the "**Accepting Notice**") to the Landlord, within fifteen (15) days from the delivery of the Sale Notice to the Tenant, in which it specifically agrees to purchase the Offered Property in accordance with the terms of the Offer. Upon delivery of an Accepting Notice, a binding agreement of purchase and sale shall be constituted thereby on the terms and conditions set out in the Offer, and the Tenant shall purchase, and the Landlord shall sell, the Offered Property in accordance with the Offer and the parties agree to complete the transaction accordingly. Provided however, that notwithstanding herein contained to the contrary, in order for an Accepting Notice to be valid, the Accepting Notice shall be accompanied by a certified cheque payable to the Landlord for the amount of any deposit payable with respect to the purchase of the Offered Property as set out in the Offer. Failure to deliver such certified cheque shall render the Accepting Notice to be null and void.

17.4 If the Tenant fails to exercise the Right of First Refusal within the period provided for herein, the Landlord shall be free to complete the sale of the Offered Property to the party entitled to acquire the Offered Property pursuant to the terms of the Offer, at a price not lower than that contained in the Offer and upon and otherwise subject to terms and conditions substantially the same as, and in any event no more favourable to the offeror than those contained in the Offer. In addition, if the Landlord shall complete the transaction of purchase and sale as aforesaid, then the provisions of this Article shall cease and be at an end with the intent that no subsequent owner of the Property shall be required to comply with this Article.

17.5 Notwithstanding any other provision of this Article, it is acknowledged and agreed that this Article shall not apply to a sale or transfer of the Property to a member of the Landlord Group, provided that contemporaneously with such sale or transfer the transferee enters into an agreement with the Tenant whereby it shall be bound by the terms of this Lease, including this Article.



**ARTICLE 18  
MISCELLANEOUS**

**Joint and Several  
Liability**

18.1 If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) sign this Lease as the Tenant, the liability of each such individual, corporation, partnership or other business association to pay Rent and to perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if the Tenant is a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.

**Landlord and  
Tenant  
Relationship**

18.2 No provision of this Lease is intended to nor creates a joint venture or partnership or any other similar relationship between the Landlord and Tenant, it being agreed that the only relationship created by this Lease is that of landlord and tenant.

**Planning Act**

18.3 It is an express condition of this Lease that the provisions of Section 50 of the Planning Act of Ontario and amendments thereto be complied with.

**No Waiver**

18.4 No condoning or waiver by either the Landlord or Tenant or any default or breach by the other at any time or times in respect of any of the agreements, terms, covenants and conditions contained in this Lease to be performed or observed by the other shall be deemed or construed to operate as a waiver of the Landlord's or Tenant's rights under this Lease, as the case may be (any law, statutory or otherwise, to the contrary notwithstanding), in respect of any continuing or subsequent default or breach nor so as to defeat or affect in any way the rights or remedies of the Landlord or the Tenant under this Lease, as the case may be, in respect of any such continuing or subsequent default or breach. Unless expressly waived in writing, the failure of the Landlord or the Tenant to insist in any one or more cases upon the strict performance of any of the agreements, terms, covenants or conditions contained in this Lease to be performed or observed by the other shall not be deemed or construed to operate as a waiver of the future strict performance or observance of such agreements, terms, covenants and conditions.

**Expropriation**

18.5 The Landlord and the Tenant shall co-operate in respect of any expropriation of all or any part of the Demised Premises so that the Tenant may receive the maximum award to which it is entitled in law for relocation costs and business interruption and so that the Landlord may receive the maximum award to which it is entitled in law for all other compensation arising from or relating to such expropriation (including all compensation for the value of the Tenant's leasehold interest expropriated

and for the reduction in value of the Tenant's remaining leasehold interest upon a partial expropriation) which shall be the property of the Landlord, and to which the Tenant waives all rights. If the whole or any part of the Demised Premises are expropriated, as between the parties hereto, their respective rights and obligations under this Lease shall continue until the day on which the expropriating authority takes possession thereof. If, in the case of partial expropriation of the Demised Premises this Lease is not frustrated by operation of governing law and such expropriation does not render the remaining part of the Demised Premises untenable for the purposes of this Lease, the Tenant shall, to the extent of any applicable insurance or expropriation proceeds actually received by the Tenant, restore the part not so taken in accordance with its repair obligations under the provisions of Article 7 of this Lease. In this Section the word "expropriation" shall include a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.

**Notice**

18.6 Any notice or certificate required or, contemplated by any provision of this Lease shall be given in writing enclosed in a sealed envelope addressed, in the case of the Landlord to: c/o Paletta International Corporation, at the Landlord's Office, Attention: the President, and in the case of notice to the Tenant, to it at the Demised Premises and delivered or sent in both cases by registered mail, postage prepaid, return receipt requested. The time of giving of such notice if mailed shall be conclusively deemed to be the third (3rd) business day after the day of such mailing. If regular mail service is interrupted on or before the third (3rd) business day following the mailing thereof by strikes or other irregularities, which are made known to the public, then such notice shall be deemed to have been received when it would have been received in the normal course following the resumption of normal mail service. Such notice shall also be sufficiently given if and when the same shall be delivered, in the case of notice to the Landlord, to an officer or employee of the Landlord at the above address of the Landlord, and in the case of notice to the Tenant, to an officer or employee of the Tenant at the above address for the Tenant. Such notice, if delivered, shall be conclusively deemed to have been given and received at the time of such delivery. If in this Lease two or more persons are named as Tenant, such notice shall be delivered personally to any one of such persons. Provided that either party may, by notice to the other, from time to time designate another address in Canada to which notices mailed more than ten (10) days thereafter shall be addressed.

**Net Lease**

18.7 It is the intent of the parties hereto that, except as expressly herein set out, this Lease be a lease that is absolutely net to the Landlord, and that the Landlord shall not be responsible for any expenses or obligations of any kind whatsoever in respect of or attributable to the Demised Premises.

**Alternate Methods  
of Taxation**

18.8 If, during the Term, any method of taxation shall be altered, or any new type of tax shall be created affecting the whole or any part of Realty Taxes or any of the taxes contemplated in the definition of Realty Taxes herein, which shall be imposed upon the Landlord, including without limitation, any business transfer tax, value added tax, or multi-stage sales tax, then all such taxes shall be included in determining Realty Taxes.

**No Tacit Renewal**

18.9 In the event the Tenant remains in possession of the Demised Premises after the end of the Term hereof and without the execution and delivery of a new lease or any written renewal or extension hereof, there shall be no tacit or other renewal of this Lease and the Term hereby granted, and the Tenant shall be deemed to be occupying the Demised Premises, as a tenant from month to month at a monthly rental payable in advance on the 1st day of each month equal to the sum of:

- (i) The fixed Basic Rent payable for the last month of the Term of this Lease; and
- (ii) One-twelfth of the amount of additional rent charges payable by the Tenant for the last year of the Term of this Lease;

and otherwise upon the same terms and conditions as are set forth in this Lease, so far as applicable.

**Lease Entire  
Agreement**

18.10 There are no covenants, representations, warranties, agreements, or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Lease or the Demised Premises save as expressly set out in this Lease and this Lease constitutes the entire agreement between the Landlord and the Tenant and may not be amended or modified except by subsequent agreement in writing of equal formality executed by the Landlord and the Tenant. The submission of this Lease for examination does not constitute a reservation of or option for the Demised Premises, and this Lease becomes effective as a Lease only upon execution and delivery thereof by both the Landlord and the Tenant.

**Registration**

18.11 The Tenant shall not register this Lease on the title to the Lands; however, the Tenant may register a notice of Lease on title to the Lands, at its sole cost, provided such notice of Lease shall only describe the parties, the Demised Premises and the Term of this Lease (including all extension rights). Such notice of Lease shall be prepared by the Tenant's solicitors, and shall be subject to the prior written approval of Landlord and its solicitors, at the Tenant's expense, and shall be registered at the Tenant's expense.

**Governing Law**

18.12 This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario.

- Survival of Covenants** 18.13 All agreements, covenants and indemnifications in this Lease made by either the Tenant or the Landlord shall survive the expiration or earlier termination of this Lease, anything to the contrary in this Lease notwithstanding.
- Quiet Enjoyment** 18.14 The Landlord agrees that upon the Tenant duly paying the Rent hereby reserved and duly observing and performing the agreements, terms and conditions herein on its part to be observed and performed, the Tenant shall and may peaceably possess and enjoy the Demised Premises for the Term without any hindrance, interruption or disturbance from the Landlord or from anyone or any entity claiming from or under the Landlord.
- Binding on Successors** 18.15 This Lease and everything herein contained shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each and every of the parties hereto, subject to the granting of consent by the Landlord to any assignment or sublease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives or such party, and where there is more than one tenant or there are male or female parties or where a corporation is a party, the provisions hereof shall be read with all grammatical changes thereby rendered necessary.
- Compliance with Laws, Registered Title, Conditions of Demised Premises** 18.16 The Tenant acknowledges that the Demised Premises are subject to all local ordinances and building restrictions as the same may affect the Demised Premises. The Tenant accepts the Demised Premises in its present condition.
- Terminology** 18.17 In this Lease "herein", "hereof", "hereunder", "hereinafter" and similar expressions refer to this Lease and not to any particular paragraph, Section or other portion thereof, unless there is something in the subject matter or context inconsistent therewith.
- Covenants** 18.18 All of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof.
- Consents and Approvals** 18.19 Except as otherwise specifically provided in this Lease, the Landlord and the Tenant, and each person acting for them, in granting a consent or approval or making a determination, designation, calculation, estimate, conversion or allocation under this Lease, will act reasonably and in good faith and each Architect or other professional person employed or retained by the Landlord or Tenant will act in accordance with the applicable principles and standards of such person's profession.

- Severable** 18.20 Should any provision or provisions of this Lease be illegal or unenforceable, it or they shall be considered separate and severable from this Lease, and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said provision or provisions had never been included.
- Captions** 18.21 The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or of any provision hereof.
- Time of the Essence** 18.22 Time shall be of the essence of this Lease and each of the provisions hereof.
- Easements** 18.23 The Tenant acknowledges that the Landlord and any persons authorized by the Landlord may install, maintain and repair pipes, wires and other conduits through the Demised Premises. Any such installing, maintaining and repairing shall be done as quickly as possible and in a manner that will least inconvenience the Tenant. If the Landlord grants any easement to any third party, then the Tenant shall execute any documents reasonably required by the Landlord to consent thereto and shall postpone this Lease and any notice thereof in favour of any such easement.
- No Waste, Efficiency of Use or Nuisance** 18.24 The Tenant shall not commit or permit any waste or damage to the Demised Premises. The Tenant further covenants to co-operate with the Landlord in any of its programmes to improve or make more efficient the operation of the Lands and Building.
- Unavoidable Delay** 18.25 Whenever and to the extent that the Landlord or Tenant shall be unable to fulfil or shall be delayed or restricted in the fulfilment of any obligation hereunder in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to fulfil such obligation or by reason of any strike, work stoppage, statute, law or order-in-council or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administrator, controller or board, or any governmental department or officer or other authority, or by reason of not being able to obtain any permission or authority required thereby, or by reason of any other cause beyond its control whether of the foregoing character or not, the Landlord or Tenant shall be entitled to extend the time for fulfilment of such obligation by a time equal to the duration of such delay or restriction and the Landlord or Tenant shall not be entitled to any compensation for any inconvenience, nuisance or discomfort thereby occasioned. The provisions of this Section 18.25 shall not operate to excuse the Tenant from prompt payment of all sums required to be paid pursuant to the terms of this Lease.

**Registered  
Establishment**

18.26 The Landlord covenants and agrees during the Term to maintain its current registration of the Demised Premises as an establishment with the Canadian Food Inspection Agency under the *Meat Inspection Act and Regulations* (the “**CFIA Registration**”) provided, however, that the Landlord shall not be required to incur any fees, costs, expenses, obligations or liabilities of any kind whatsoever to maintain the CFIA Registration and, without limitation to the foregoing, any and all such fees, costs, expenses, obligations or liabilities incurred by the Landlord in respect of the CFIA Registration from time to time during the Term shall be for the sole account of the Tenant and the Tenant shall indemnify and save harmless the Landlord and its affiliates (other than Tender Choice Foods Inc. and/or 2519459 Ontario Inc.) and their shareholders, directors, officers, employees, agents and representatives of, from and again, and will pay for, any Damages (as hereinbelow defined) suffered by, imposed upon or asserted against the Landlord or any of its affiliates (other than Tender Choice Foods Inc. and/or 2519459 Ontario Inc.) and their shareholders, directors, officers, employees, agents and representatives as a result of, in respect of, connected with, or arising out of, under, or pursuant to the Landlord maintaining the CFIA Registration. The Parties confirm and agree that any works required to maintain the CFIA Registration shall be performed by and at the expense of the Tenant. The Landlord covenants to provide the Tenant as soon as reasonably practicable with a copy of any written notice received by the Landlord from the Canadian Food Inspection Agency during the Term in respect of the Demised Premises. As used herein, “**Damages**” means any loss, liability, damage, direct or indirect, (including incidental damages and lost profits) or expense (including reasonable legal fees and expenses) whether resulting from any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party or any cause, matter, thing, act, omission or state of facts not involving a third party.

**[signature page immediately follows]**

IN WITNESS WHEREOF the parties have hereunder set their hands and seals.

**PALETTA BROS. FOUR LIMITED**

Per:  
Name:  
Title:

  
\_\_\_\_\_

Per:  
Name:  
Title:

\_\_\_\_\_

I/We have authority to bind the Corporation.

**2519459 ONTARIO INC.**

Per:  
Name:  
Title:

  
\_\_\_\_\_

Per:  
Name:  
Title:

\_\_\_\_\_

I/We have authority to bind the Corporation.

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

FIRSTLY:

PIN 07035-0018 (LT)

Part of Lot 6, Concession 4, South of Dundas Street, designated as Part 1, Plan 20R-5712; Lot 13, Plan 1286 and Part of Lot 6, Concession 3, South of Dundas Street, designated as Part 1, Plan 20R-6112; Burlington/Nelson Township

SECONDLY:

PIN 07035-0040 (LT)

Part of Lot 6, Concession 4, South of Dundas Street, designated as Parts 1 and 3, Plan 20R-14174; Burlington. S/T 656467 and 147818



**SCHEDULE "B"**  
**SKETCH OF BUILDING, DEMISED PREMISES AND LANDS**

See attached.



PLAN 20R-14414  
 Record and Indexed  
 July 24, 2001  
 City of Burlington  
 Planning Department  
 1000 Wellington Street West  
 Burlington, Ontario N2R 1N2  
 (905) 335-1000

DATE: July 24, 2001  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]

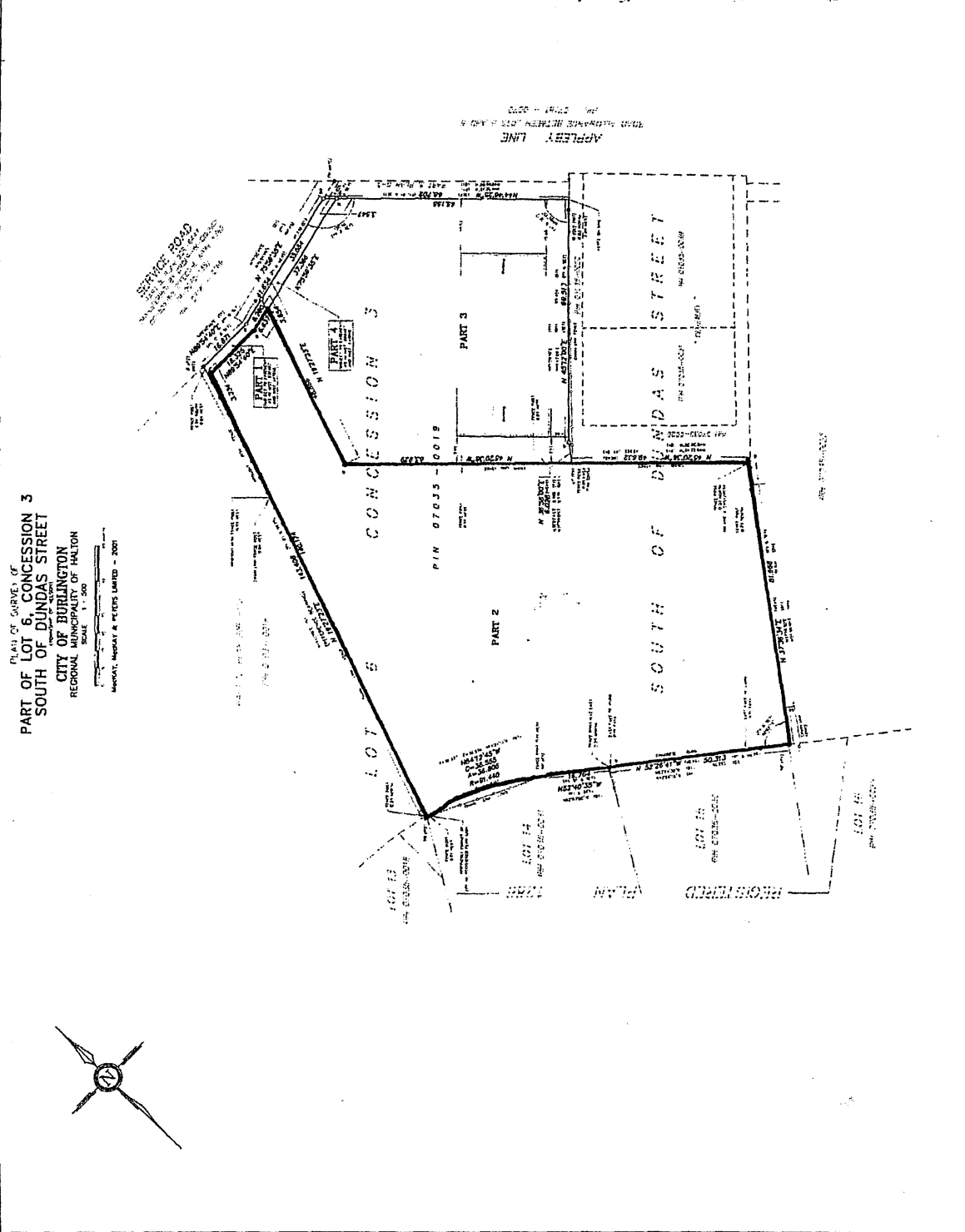
SCHEDULE  
 Part of Lot 6, Concession 3  
 City of Burlington

PARTS 1, 2, 3 AND 4, COMPRISING ALL OF THE RESIDUAL  
 PARTS 1 AND 4, SUBJECT TO EASEMENT AS SHOWN HEREON

NOTES:  
 1. ALL DIMENSIONS ARE IN METERS.  
 2. THE DISTANCE BETWEEN THE CENTERS OF THE CURVES IS 100.00 METERS.  
 3. THE DISTANCE BETWEEN THE CENTERS OF THE CURVES IS 100.00 METERS.  
 4. THE DISTANCE BETWEEN THE CENTERS OF THE CURVES IS 100.00 METERS.

APPROVED:  
 [Signature]  
 [Title]  
 [Date]

REGISTERED PROFESSIONAL ENGINEER  
 CIVIL ENGINEERING  
 MACKAY & PETERS LIMITED  
 1000 WELLINGTON STREET WEST  
 SUITE 100  
 BURLINGTON, ONTARIO N2R 1N2  
 (905) 335-1000



PLANS OF SURVEY OF  
 PART OF LOT 6, CONCESSION 3  
 SOUTH OF DUNDAS STREET  
 CITY OF BURLINGTON  
 REGIONAL MUNICIPALITY OF HALTON  
 SCALE 1:500  
 MACKAY, MURPHY & PETERS LIMITED - 2001

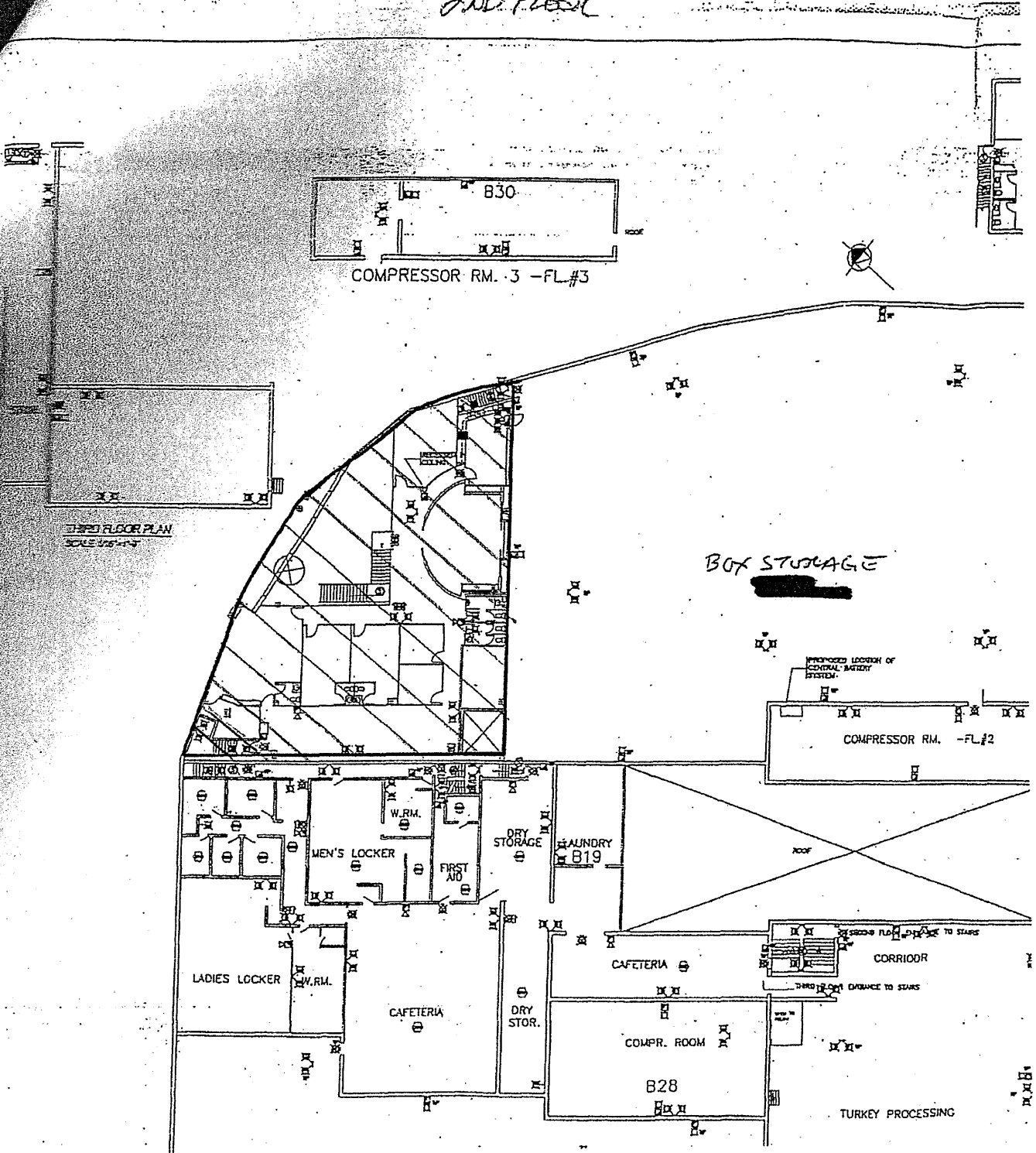
**SCHEDULE "C"**  
**SKETCH OF RETAINED PREMISES**

See attached.



# SCHEDULE "C" INTERIOR SKETCH (RETAINED PREMISES)

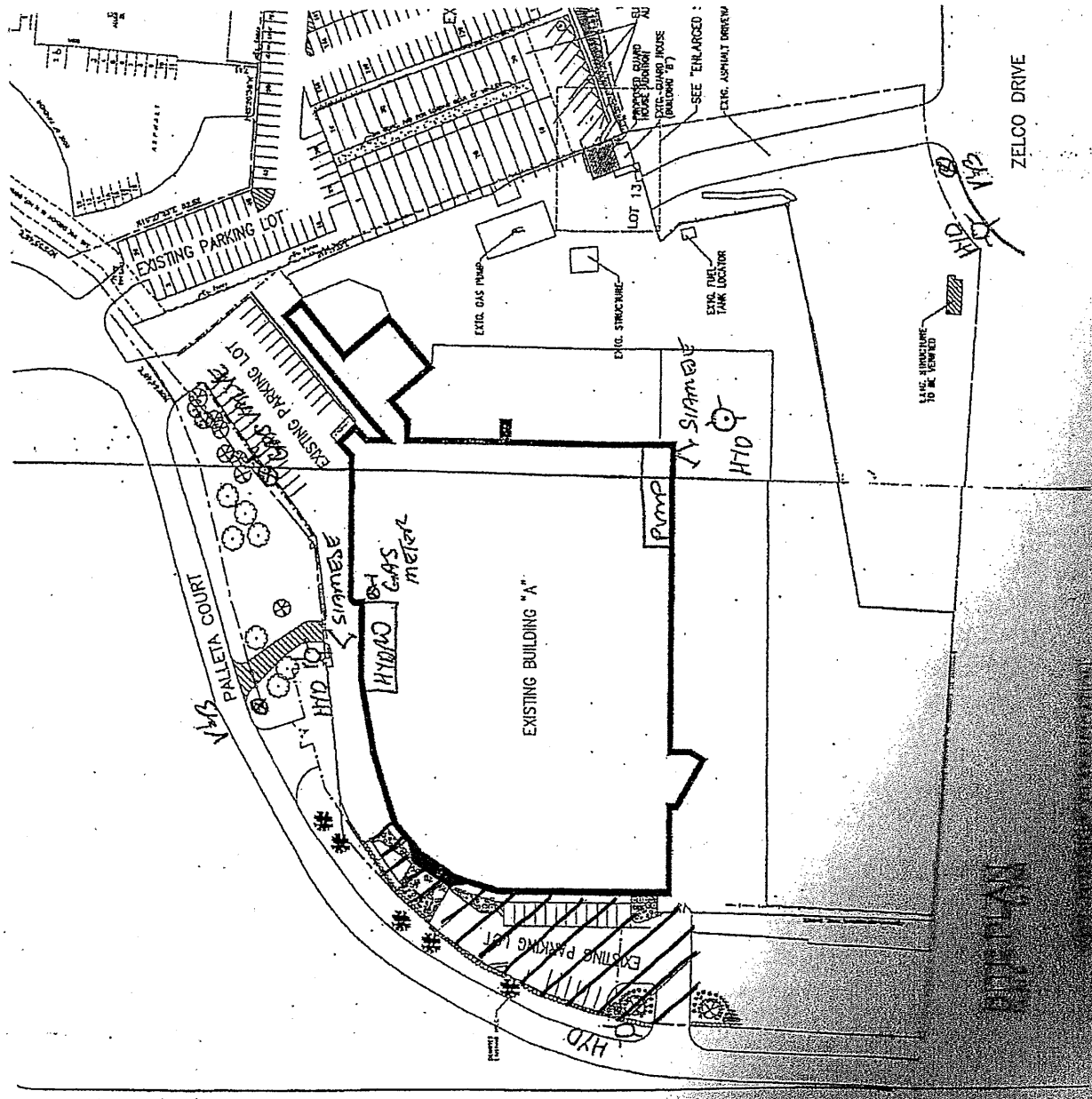
*2nd Floor*



**SCHEDULE "D"**  
**SKETCH OF RETAINED PARKING AREA**

See attached.

SCHEDULE "D"  
 EXTERIOR SKETCH (RETAINED PARKING AREA)







**CONSENT TO ASSIGNMENT OF LEASE**

**MEMORANDUM OF AGREEMENT** made this 17<sup>th</sup> day of October, 2016 (the "Effective Date").

**BETWEEN:**

**PALETTA BROS. FOUR LIMITED**

(hereinafter called the "Landlord")

**OF THE FIRST PART;**

**- A N D -**

**2519459 ONTARIO INC.**

(hereinafter called the "Assignor")

**OF THE SECOND PART;**

**- A N D -**

**BLUE GOOSE PURE FOODS LTD.**

(hereinafter called the "Assignee")

**OF THE THIRD PART;**

**- A N D -**

**BLUE GOOSE CAPITAL CORP.**

(hereinafter called the "Indemnifier")

**OF THE FOURTH PART.**

**WHEREAS** the Landlord and the Assignor, as Tenant, entered into a lease dated the \* day of October, 2016 in respect of the lands and premises described in Schedule "A" hereto (the "Lease");

**AND WHEREAS** the Assignor herein now desires to assign the said Lease to the Assignee herein for the remainder of the said term and has requested the Landlord to consent to said assignment;

**AND WHEREAS** in consideration of the Landlord consenting to the assignment of the Lease the Indemnifier has agreement to execute this Agreement;

**AND WHEREAS** all capitalized terms and phrases used herein, unless defined in this Agreement, shall have the meanings ascribed to them in the Lease.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and other good and valuable consideration, the parties hereto hereby agree as follows:

1. The Landlord does hereby consent to the Assignor assigning the said Lease and the lands and premises therein described to the Assignee for the remainder of the said term, subject to the terms of the said Lease and to the payment of rent reserved by and to the performance and observance of the covenants, conditions and agreements contained in the said Lease.
2. It is expressly agreed and understood that nothing herein contained shall be deemed in any way to authorize any further or other assignment of the Lease or sub-letting of the premises or any part thereof.
3. The Assignee doth hereby covenant, undertake and agree to and with the Landlord that from and after the Effective Date it will well and truly pay to the Landlord all such sums of money as are now or shall at any time hereafter become due or payable, whether for rent, charges, taxes, costs or otherwise howsoever, under or by virtue of the said Lease, or any renewal thereof, at the times and in the manner therein provided, and that from and after the Effective Date the Assignee will at all times do, observe, perform, keep, be liable under and be bound by every covenant, attornment, license, power, proviso, condition, agreement and stipulation in the Lease contained, to the same extent as if the Assignee had been the original lessee and Tenant and as such had executed the said Lease.
4. Any subsequent bankruptcy or insolvency of any one or more of the Assignor and Assignee herein shall not relieve the other of any liability for any of the covenants contained in the said Lease, for any of the liabilities arising out of the said Lease, or for any of the covenants contained in this document, or any subsequent documents pertaining to the said premises and/or any subsequent covenants and agreements, and for the payment of the rents for the full term described in the said Lease.
5. (a) In consideration of the Landlord consenting to the assignment of the Lease to the Assignee and in consideration of the sum of One Dollar (\$1.00) now paid by the Landlord to the Indemnifier and other valuable consideration (the receipt of which is hereby acknowledged) the Indemnifier hereby unconditionally covenants with the Landlord:
  - (i) to make the due and punctual payment of all Rent, monies, charges and other amounts set out and expressed to be payable under the Lease during the Term;
  - (ii) to effect prompt and complete performance of all of the terms, covenants, conditions, agreements and provisions in the Lease contained on the part of the Tenant to be kept, observed, and performed during the Term;
  - (iii) to indemnify and save harmless the Landlord from any and all losses, costs and damages arising out of any failure to pay the aforesaid Rent, monies, charges and amounts and the failure to perform any of the terms, conditions, covenants and provisions contained in the Lease.
- (b) In the event of a default under the Lease, the Indemnifier waives any right to require the Landlord to:

- (i) proceed against the Tenant or pursue any rights or remedies with respect to the Lease;
- (ii) proceed against or exhaust any security of the Tenant held by the Landlord; or
- (iii) pursue any other remedy whatsoever in the Landlord's power.

The Landlord shall have the right to enforce this indemnity regardless of the acceptance of additional security from the Tenant and regardless of the release or discharge of the Tenant by the Landlord or by others or by operation of any law.

- (c) Without limiting the generality of the foregoing, the liability of the Indemnifier under this indemnity shall not be deemed to have been waived, released, discharged, impaired, or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors proceeding or the rejection, disaffirmance or disclaimer of the Lease in any proceeding. The liability of the Indemnifier shall not be affected by any repossession of the Demised Premises by the Landlord, provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossessing or reletting the same, including solicitor's costs on a substantial indemnity basis, shall be credited from time to time by the Landlord to the account of the Indemnifier, and the Indemnifier shall pay any balance owing to the Landlord from time to time, immediately upon ascertainment.
- (d) 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 or defaults hereunder or in the performance and observance of the terms, covenants, conditions and provisions in the Lease. The Indemnifier shall, without limiting the generality of the foregoing, be bound by this indemnity in the same manner as though the Indemnifier were the Tenant named in the Lease.
- (e) This indemnity is absolute and unconditional and the obligation of the Indemnifier shall not be released, discharged, mitigated, impaired or affected by:
  - (i) any extensions of time, indulgences or modifications which the Landlord may grant or extend to or make with the Tenant, its successors and assigns, in respect of or the performance of any or all of the obligations of the Tenant under any one or more of the provisions of the Lease;
  - (ii) any waiver by or failure of the Landlord to enforce any of the terms, covenants, conditions and provisions of the Lease;
  - (iii) any assignment of the lease by the Tenant or by any trustee, receiver, receiver-manager or liquidator; or
  - (iv) any consent which the Landlord may give to any assignment of the Lease.
- (f) The 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 the Tenant of the terms, covenants, conditions and provisions of the Lease.

6. This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart.
7. It is further agreed and declared that these presents shall extend to, be binding upon and enure to the benefit of all the parties hereto, their successors and assigns respectively and shall be interpreted according to the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**PALETTA BROS. FOUR LIMITED**

Per:   
Name: Angelo Paletta  
Title: Director

I have authority to bind the Corporation.

**2519459 ONTARIO INC**

Per:   
Name: Angelo Paletta  
Title: Director

I have authority to bind the Corporation.

**BLUE GOOSE PURE FOODS LTD.**

Per:  
Name:  
Title:

I have authority to bind the Corporation.

**BLUE GOOSE CAPITAL CORP.**

Per:  
Name:  
Title:

I have authority to bind the Corporation.

6. This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart.
7. It is further agreed and declared that these presents shall extend to, be binding upon and enure to the benefit of all the parties hereto, their successors and assigns respectively and shall be interpreted according to the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**PALETTA BROS. FOUR LIMITED**

Per:

Name: Angelo Paletta  
Title: Director

I have authority to bind the Corporation.

**2519459 ONTARIO INC.**

Per:

Name: Angelo Paletta  
Title: Director

I have authority to bind the Corporation.

**BLUE GOOSE PURE FOODS LTD.**

Per:

Name: Ben Nikolavsky  
Title: President

I have authority to bind the Corporation.

**BLUE GOOSE CAPITAL CORP.**

Per:

Name: Ben Nikolavsky  
Title: President & CEO

I have authority to bind the Corporation.

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

FIRSTLY:

PIN 07035-0018 (LT)

Part of Lot 6, Concession 4, South of Dundas Street, designated as Part 1, Plan 20R-5712; Lot 13, Plan 1286 and Part of Lot 6, Concession 3, South of Dundas Street, designated as Part 1, Plan 20R-6112; Burlington/Nelson Township

SECONDLY:

PIN 07035-0040 (LT)

Part of Lot 6, Concession 4, South of Dundas Street, designated as Parts 1 and 3, Plan 20R-14174; Burlington. S/T 656467 and 147818

# **EXHIBIT “D”**



EXHIBIT "D"



**EXHIBIT “E”**

"E"



IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA and  
Applicant

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE  
FOODS

Respondent

Court File No. CV-17-588349-00CL

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

Proceedings commenced at Toronto

**AFFIDAVIT OF JOHN BORCH**

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Lawyers for the Applicant

## **TAB 3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) THURSDAY, THE 21ST  
 )  
JUSTICE ) DAY OF DECEMBER, 2017  
 )

IN THE MATTER OF Section 243(1) of the *Bankruptcy and  
Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and  
Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43, as amended

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS

Respondent

ORDER  
(appointing Receiver)

THIS MOTION made by HSBC Bank Canada (the "**Applicant**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Deloitte Restructuring Inc. as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Borch sworn December 19, 2017 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the Debtor, no one appearing for any other party although duly served as appears from the affidavit of service of Rachel Bengino

sworn December 20, 2017 and on reading the consent of Deloitte Restructuring Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

3. THIS COURT ORDERS that this Order hereby replaces the Order of this Court granted in these proceedings on December 14, 2017 appointing Deloitte Restructuring Inc. as the Interim Receiver of the assets, undertakings and properties of the Debtor.

### **RECEIVER'S POWERS**

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized (but not required) to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to process any and all claims for insurance under the Debtor's insurance policies and receive and collect all monies that may become payable under such policies, subject to the interest of the Applicant as first loss payee;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed



shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to redirect the mail of the Debtor; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, authorized signing officers, employees, agents, accountants, legal counsel (subject to solicitor and client privilege) and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that each of the relevant landlords of the Debtor at any of its leased locations or any owners of warehouses where any Property of the Debtor may be located

shall grant the Receiver immediate and continued access to the Property upon request. The Receiver shall not take occupation, possession or control of the Debtor's leased premises located at 4480 Paletta Court, Burlington, Ontario, L7L 5R2 (the "**Burlington Premises**") which were the site of a recent industrial fire. The Receiver shall, however, be permitted continued, unrestricted access to any Property of the Debtor located on the Burlington Premises for the purposes of fulfilling the provisions of this Order. In no event shall the Receiver be required to pay occupation rent in respect of the required access as provided for in this paragraph 5.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises (including the Burlington Premises) at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

11. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent

the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

13. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for

herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

16. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste

or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession. The Receiver shall incur no liability or obligation as a result of it carrying out the provisions of this Order with respect to any Property of the Debtor located at the Burlington Premises.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.



## **RETENTION OF LAWYERS**

27. THIS COURT ORDERS that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include the solicitors for the Applicant herein, in respect of any aspect where the Receiver is satisfied that there is no actual or potential conflict of interest.

## **SERVICE AND NOTICE**

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/en-ca/BlueGooseTenderChoice](http://www.insolvencies.deloitte.ca/en-ca/BlueGooseTenderChoice)

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

33. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Blue Goose Pure Foods Ltd. o/a Tender Choice Foods acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of December, 2017 (the "**Order**") made in an action having Court file number CV-17-588349-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Deloitte Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

Revised: January 21, 2014  
s.243(1) BIA (National Receiver) and s.101 CJA (Ontario) Receiver

Court File No. CV-17-588349-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~ THURSDAY, THE #21ST  
JUSTICE \_\_\_\_\_ ) DAY OF ~~MONTH~~ DECEMBER, ~~20YR~~ 2017

**PLAINTIFF<sup>†</sup>**

*Plaintiff*

IN THE MATTER OF Section 243(1) of the *Bankruptcy and  
Insolvency Act, R.S.C. 1985, c. B-3, as amended, and  
Section 101 of the *Courts of Justice Act, R.S.O. 1990 c.C-43, as amended**

BETWEEN:

HSBC BANK CANADA

*Applicant*

- and -

**DEFENDANT**

*Defendant*

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS

*Respondent*

**ORDER**  
(appointing Receiver)

<sup>†</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.  
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

THIS MOTION made by ~~the Plaintiff~~<sup>2</sup> HSBC Bank Canada (the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc. as receiver-~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ Blue Goose Pure Foods Ltd. o/a Tender Choice Foods (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ John Borch sworn ~~[DATE]~~ December 19, 2017 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant, the Debtor, no one appearing for ~~[NAME]~~ any other party although duly served as appears from the affidavit of service of ~~[NAME]~~ Rachel Bengino sworn ~~[DATE]~~ December 20, 2017 and on reading the consent of ~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc. to act as the Receiver,

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

<sup>3</sup>If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.

3. THIS COURT ORDERS that this Order hereby replaces the Order of this Court granted in these proceedings on December 14, 2017 appointing Deloitte Resturcturing Inc. as the Interim Receiver of the assets, undertakings and properties of the Debtor.

### RECEIVER'S POWERS

4. ~~3.~~ THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized (but not required) to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to process any and all claims for insurance under the Debtor's insurance policies and receive and collect all monies that may become payable under such policies, subject to the interest of the Applicant as first loss payee;
- (f) ~~(e)~~ to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) ~~(f)~~ to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

<sup>4</sup>~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~



(l) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$~~\_\_\_\_\_~~, 250,000, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~ 500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be,]<sup>5</sup>~~ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

(m) ~~(l)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

<sup>5</sup>~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to redirect the mail of the Debtor; and
- (t) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. ~~4.~~ THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, authorized signing officers, employees, agents, accountants, legal counsel (subject to solicitor and client privilege) and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that each of the relevant landlords of the Debtor at any of its leased locations or any owners of warehouses where any Property of the Debtor may be located shall grant the Receiver immediate and continued access to the Property upon request. The Receiver shall not take occupation, possession or control of the Debtor's leased premises located

at 4480 Paletta Court, Burlington, Ontario, L7L 5R2 (the "Burlington Premises") which were the site of a recent industrial fire. The Receiver shall, however, be permitted continued, unrestricted access to any Property of the Debtor located on the Burlington Premises for the purposes of fulfilling the provisions of this Order. In no event shall the Receiver be required to pay occupation rent in respect of the required access as provided for in this paragraph 5.

7. ~~5-~~ THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~56~~ or in paragraph ~~67~~ of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. ~~6-~~ THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. ~~7.~~ THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises, (including the Burlington Premises) at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

10. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

11. ~~9.~~ THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. ~~10.~~ THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

13. ~~11.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

14. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

15. ~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

16. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

17. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the

disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession. The Receiver shall incur no liability or obligation as a result of it carrying out the provisions of this Order with respect to any Property of the Debtor located at the Burlington Premises.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

<sup>6</sup>~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

21. ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

23. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ ~~\_\_\_\_\_~~ 250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. ~~22.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.



26. ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### RETENTION OF LAWYERS

27. THIS COURT ORDERS that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include the solicitors for the Applicant herein, in respect of any aspect where the Receiver is satisfied that there is no actual or potential conflict of interest.

### **SERVICE AND NOTICE**

28. ~~25.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL-  
~~'@>':~~ [www.insolvencies.deloitte.ca/en-ca/BlueGooseTenderChoice](http://www.insolvencies.deloitte.ca/en-ca/BlueGooseTenderChoice)

29. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or

distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

30. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

33. ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. ~~31.~~ THIS COURT ORDERS that the PlaintiffApplicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the PlaintiffApplicant's security or, if not so provided by the PlaintiffApplicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ Blue Goose Pure Foods Ltd. o/a Tender Choice Foods acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of December, 2017 (the "**Order**") made in an action having Court file number CL CV-17-588349-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

Document comparison by Workshare 9.5 on Tuesday, December 19, 2017  
10:52:29 PM

Input:	
Document 1 ID	interwovenSite://TGF-WSS01/Client/2245587/1
Description	#2245587v1<Client> - Model receivership-order-EN
Document 2 ID	interwovenSite://TGF-WSS01/Client/2245588/5
Description	#2245588v5<Client> - Receivership Order
Rendering set	Standard

Legend:	
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<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	105
Deletions	102
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	207

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA and  
Applicant

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE  
FOODS

Respondent

Court File No. CV-17-588349-00CL

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

Proceedings commenced at Toronto

**ORDER**  
(appointing Receiver)

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, Ontario M5K 1K7

**D.J. Miller (LSUC# 34393P)**  
Tel: 416-304-0559  
Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

**Rachel Bengino (LSUC# 68348V)**  
Tel: 416-304-1153  
Fax: 416-304-1313  
Email: [rbengino@tgf.ca](mailto:rbengino@tgf.ca)

Lawyers for the Applicant

## **TAB 4**



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

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

**HSBC BANK CANADA**

Applicant

**- and -**

**BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE FOODS**

Respondent

**CONSENT**

Deloitte Restructuring Inc. hereby consents to act as Court-appointed Receiver in this proceeding should such an Order be granted by the Court.

Dated at Toronto this 19<sup>th</sup> day of December, 2017.

**DELOITTE RESTRUCTURING INC.**



Per: \_\_\_\_\_

Name: Paul Casey

Title: Senior Vice-President

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

**HSBC BANK CANADA - and -**

Applicant

**BLUE GOOSE PURE FOODS LTD. O/A TENDER  
CHOICE FOODS**

Respondent

Court File No. CV-17-588349-00CL

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

Proceedings commenced at Toronto

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**CONSENT**

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**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**D.J. Miller (LSUC# 34393P)**  
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IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA and  
Applicant

BLUE GOOSE PURE FOODS LTD. O/A TENDER CHOICE  
FOODS

Respondent

Court File No. CV-17-588349-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at Toronto

MOTION RECORD  
Returnable December 21, 2017

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