

Court File No. CV-24-00723457-00CL
Estate File No. 31-459983

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

COSMAN MORTGAGE HOLDING CORP.

Applicant

and

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED PARTNERSHIP,
11275127 CANADA INC., and 11250396 CANADA INC.**

Respondents

**MOTION RECORD
OF POLLARD & ASSOCIATES INC., LIT,
COURT APPOINTED RECEIVER
(RE: APPROVAL AND VESTING ORDER)**

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Respondents

**APPLICATION UNDER 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**

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**APPLICATION UNDER 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**

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TAB 1

Court File No. CV-24-00723457-00CL
Estate File No. 31-459983

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

COSMAN MORTGAGE HOLDING CORP.

Applicant

-and-

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
PARTNERSHIP, 11275127 CANADA INC., and 11250396 CANADA INC.**

Respondents

NOTICE OF MOTION

POLLARD & ASSOCIATES INC., in its capacity as Court-appointed Receiver (the **“Receiver”**), without security, over the assets and undertakings of Cacoeli Whitby LP also known as Cacoeli Whitby Limited Partnership, 11275127 Canada Inc., and 11250396 Canada Inc. (collectively, the **“Debtors” or the “Companies”**), will make a motion to a Judge presiding over the Commercial List on Wednesday, May 21, 2021 at 10 am, or as soon after that time as the motion can be heard, by way of video conference.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference.

THE MOTION IS FOR:

1. An Order substantially in the form attached at **Tab 3** of the Receiver’s Motion Record (the **“Motion Record”**) for the following:
 - a) Approving the Agreement of Purchase and Sale dated March 18, 2025 (the **“APS”**) for the Real Property between the Receiver, as vendor, and The Corporation of the

Town of Whitby, as purchaser (the “**Purchaser**”), for the purchase and sale of the Real Property, and authorizing the Receiver to complete the transaction contemplated in the APS (the “**Transaction**”); and

- b) Upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction, vesting in the Purchaser all rights, title and interest in the Real Property;

2. An Ancillary Order, substantially in the form included in **Tab 4** of the Motion Record, seeking the following relief:

- a) If necessary, abridging the time for service of the Notice of Motion and Motion Record so that this Motion is properly returnable on May 21, 2025, and dispensing with further service thereof;
- b) Approving the Receiver’s activities since its appointment as set out in the First Report of the Receiver dated May 5, 2025 (the “**First Report**”);
- c) Approving the sale and marketing process undertaken by the Receiver with respect to the Real Property;
- d) Sealing the Confidential Appendices (as defined below) to the First Report pending completion of the Transaction;
- e) Such further and other relief as counsel may request and this Honourable Court deems just.

3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION are:

4. On August 30, 2024, Pollard & Associates Inc. (the “**Receiver**”), was appointed receiver over all of the assets, undertakings, and property, including without limitation the lands and premises registered in the name of 11250396 Canada Inc. (“11250396”) in its capacity as general

partner of Cacoeli Whitby LP (“Whitby LP”) and 11275127 Canada Inc. (“11275127”), (collectively the “Debtors” or the “Companies”), by Order of the Honourable Justice Penny dated August 30, 2024 (the “Appointment Order”).

5. The Appointment Order appointed the Receiver, without security, over all of the Companies’ assets, undertakings and properties, including without limitation the lands and premises municipally known as 132 Brock Street North, Whitby, Ontario, and 146 – 152 Brock Street North, Whitby, Ontario (collectively the “**Real Property**”).

6. The Real Property is located on the west side of Brock Street North, and the site is approximately .35 Hectares (0.87 acres) in size with approximately 70 metres of frontage on Brock Street North. The Real Property has seven buildings along with parking facilities. Two of buildings, 132 Brock, and 146 Brock are tenanted as described in the First Report.

7. The Real Property is located within a Regional Centre and within a Strategic Growth area and is zoned as a residential mixed-use development, with a maximum 6 storey and 97,170 square feet gross floor area permitted.

8. Prior to the date of the Appointment Order and the receivership, applications were submitted to the Town of Whitby for an extended mixed-use development at an extended building height of 11 storeys, and an increased residential density from 200 units per net hectare to 354 units per net hectare. An Ontario Land Tribunal (“OLT”) appeal in connection with these applications was pending and has been adjourned sine die.

9. The Appointment Order authorized the Receiver to market and sell the Real Property.

10. The Receiver engaged in securing the Real Property, and ensuring winter and other essential maintenance, as well as satisfying outstanding water and sewage accounts.

11. The Receiver engaged Cushman & Wakefield ULC (“CW”) to provide a full appraisal of the Real Property.

12. The Receiver ensured that there remained adequate insurance coverage for the Real Property and renewed the existing insurance policy.

13. The Receiver assessed outstanding property taxes for the Real Property and determined that there were outstanding property tax arrears owing for 146 Brock for taxation years 2022 to 2024, in the cumulative amount of \$67,705.43 as at July 3, 2024. The Receiver issued a Receiver's certificate obtain funds to make payment of these outstanding property tax arrears to the Town of Whitby. The Receiver further paid interim property taxes for 2025 in the amount of \$14,457.94 and the balance owing for 2023 in the amount of \$11,334.19. The Receiver also determined there were outstanding property taxes for 132 Brock for taxation years 2022 to 2024 in the cumulative amount of \$23,227.09, which were paid by the Receiver. The Receiver also paid the interim tax statement for 2025 in the amount of \$5,414.19 and the balance owing for taxation year 2024 in the amount of \$4,304.04 through Receiver's certificates.

14. The Receiver further addressed existing litigation as between Hansalex Corp. as plaintiff, and the Companies and its principals, Jedidiah Liu, Kasey Wong and Mark Bui as defendants, in Court File No. CV-21-00656186-0000, through an agreement to adjourn the trial for the action until after completion of the Receivership.

15. The Receiver engaged in communications with the first mortgagee, Cosman, and also with the second mortgagee, Perez-Youssoufian, in respect of the Receiver's proposed approach to the marketing and sale of the Real Property.

16. The Receiver requested a listing proposal from and engaged Lennard Commercial Realty which included a planning opinion letter from Weston Consulting, a proposal for environmental review, a survey, details of adjoining properties, a pricing strategy, and other details.

17. The Receiver provided Lennard with a draft form of agreement of purchase and sale to assist a potential purchaser with a form of agreement acceptable to the Receiver. Lennard prepared a promotional information brochure in respect of the Real Property.

18. The Real Property was listed on MLS on October 10, 2024. Lennard performed various electronic mail and media marketing efforts in connection with the Real Property.

19. Despite direct communications with 16 parties who expressed interest in the Real Property, no formal offers were received as potential purchasers expressed the asking price was too high given current market uncertainties and conditions.

20. Given the circumstances, the Receiver and Lennard discussed a reduction in the listing price to generate greater interest in the Real Property. On November 21, 2024 the Receiver executed a listing price reduction from \$4,425,000 to \$4,100,000.

21. Lennard continued its marketing efforts, and the Receiver and Lennard continued to communicate with interested parties and potential interest groups. It was expressed by potential purchasers that current economic trends reflected increasing available inventory on the market, and softening prices given present uncertain economic conditions. Despite communications with further potential purchasers, no offers were received.

22. After reviewing marketing efforts and market conditions, on January 30, 2025 the Receiver executed a second listing price reduction from \$4,100,000 to \$3,800,000. This generated greater interest and resulted in an increased number of 41 interested parties. Notwithstanding, interested parties continued to be non-committal, pointing to the softening of the market and/or expressing unfavorable conditions for any offer of purchase.

23. The Receiver and Lennard had further follow up discussions with potential purchasers and received one offer and one letter of intent for purchase of the Real Property. Following further discussions and follow ups with prospective purchasers, the Receiver negotiated and accepted the terms of an offer from the prospective purchaser, the Town of Whitby.

24. The Receiver held a number of meetings with counsel and representatives for the Town of Whitby. Following significant negotiations, the parties agreed to the terms of an agreement of purchase and sale (the "APS") which was executed.

25. The APS was conditional upon the Town of Whitby obtaining approval of the APS by Council for the Corporation of the Town of Whitby, as well as an enactment of an applicable By-law to purchase the Real Property. Such condition was waived as the By-law authorizing the acquisition of the Real Property by the Town of Whitby was passed. The Town of Whitby also waived its environmental conditional as a result of the Receiver's negotiation of the terms of the APS.

26. The APS was executed by the parties and a deposit in the amount of \$720,000 was received by the Receiver in connection with the APS.

27. The Receiver is of the view that the purchase price set out in the APS is reasonable based upon the conduct of the sales process, the exposure to and canvassing of the market, and current economic uncertainties and market conditions.

28. The Receiver seeks Court approval of its activities from the date of its appointment to date. The Receiver further seeks approval of the sale and marketing process undertaken by the Receiver.

29. The Receiver seeks authorization and approval of the APS as between the Receiver and the Purchaser, and to authorize the Receiver to take such steps as may be necessary to facilitate the completion of the purchase and sale transaction contemplated in the APS.

30. The Receiver further seeks approval of the sale and a vesting in the Purchaser, or as it may direct in writing, of all of the Purchased Assets.

31. The Receiver further seeks an Order sealing the Confidential Appendices as described in the First Report until the completion of the sales transaction contemplated under the APS or further Order of the Court.

32. At this time, the Receiver does not seek any distribution of sale proceeds from completion of the sales transaction of the Real Property.

33. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The First Report of the Receiver dated May 5, 2025;
2. Such further and other evidence and grounds as counsel may advise and this Honourable Court may permit.

May 7, 2025

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Pollard & Associates Inc.

TO: **SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB 2

Court File No. CV-24-00723457-00CL
Estate File No. 31-459983

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

COSMAN MORTGAGE HOLDING CORP.

Applicant

- and -

CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
PARTNERSHIP, 11275127 CANADA INC. and 11250396 CANADA INC.

Respondent

FIRST REPORT OF THE COURT APPOINTED RECEIVER OF
CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED PARTNERSHIP,
11275127 CANADA INC. and 11250396 CANADA INC.
(“First Report”)

May 5, 2025

INTRODUCTION

1. On August 21, 2024, pursuant to a motion brought by Cosman Mortgage Holding Corp. (“**Cosman**”) to appoint a receiver, the application was adjourned to August 30, 2024. Terra Bona Developments Ltd. (“**Terra Bona**”), a construction lien claimant, requested a short adjournment of 30 days in order for Terra Bona to have the opportunity to receive legal advice on the motion brought by Cosman. The Honourable Justice Steele’s endorsement provided for a short adjournment to August 30, 2024 to allow Terra Bona to receive legal advice. A copy of the endorsement of the Honourable Justice Steele is attached to this report as **Schedule “A”**.
2. On August 30, 2024, pursuant to the resumed motion brought by Cosman, Pollard & Associates Inc. (the “**Receiver**”) was appointed as receiver of all of the assets, undertakings and property, including, without limitation of the lands and premises registered in the name of 11250396 Canada Inc., (“**11250396**”) in its capacity as general partner of Cacoeli Whitby LP (“**Whitby LP**”) and 11275127 Canada Inc. (“**11275127**”), which together with 11250396 and

Whitby LP are collectively referred to as the “**Debtors**” or the “**Companies**”) by Order of the Honourable Justice Penny dated August 30, 2024 (the “**Appointment Order**”) made pursuant to subsection 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**”). A copy of the Appointment Order and the endorsement of the Honourable Justice Penny are attached to this report as **Schedule “B”**.

3. The Appointment Order appointed the Receiver, without security, over all of the Companies’ assets, undertakings, and properties, including without limitation the lands and premises municipally known as 132 Brock Street North and 146 – 152 Brock Street North, Whitby, Ontario, (collectively, the “**Real Property**”).

4. The purpose of this First Report is to update the Court on the Receiver’s actions and activities since its appointment, to outline the sale and marketing process and its outcome, including the entering into by the Receiver of an Agreement of Purchase and Sale for the Real Property, and to seek court approval for said sale. The Receiver seeks an Order from the Court:

- (a) Approving the Receiver’s activities since its appointment as set out in this First Report;
- (b) Approving the sale and marketing process undertaken by the Receiver with respect to the Real Property;
- (c) Authorizing the completion of the purchase and sale transaction contemplated by the Agreement of Purchase and Sale dated March 18, 2025, (the “**APS**”) for the real property known municipally as 132 Brock Street North, Whitby, Ontario (“**132 Brock**”) and 146-152 Brock Street North, Whitby, Ontario (“**146 Brock**”), (hereinafter, sometimes referred to as the “**Real Property**” or the “**Purchased Assets**”), entered into by the Receiver, as vendor, and The Corporation of the Town of Whitby, as purchaser (the “**Purchaser**”);
- (d) Vesting the Purchased Assets in the Purchaser or as it may direct; and
- (e) Sealing:

- (i) a summary prepared by the Receiver of all offers received for the Real Property;
 - (ii) the Appraisal of the Real Property prepared by Cushman & Wakefield ULC. (“CW”) effective date September 13, 2024; and
 - (iii) the unredacted APS.
- (collectively, the “**Confidential Appendices**”).

TERMS OF REFERENCE

5. The information contained in this First Report is based on unaudited financial information as well as discussions with representatives of the Companies and its advisors. The Receiver has reviewed the information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with the Canadian Auditing Standards (“CAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* (“**CPA Canada Handbook**”) and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the information.

6. Future oriented financial information referred to in this First Report was prepared based on discussions with representatives of the Companies. Readers are cautioned that since forecasts are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the forecasts, even if the assumptions materialize, and variations could be significant.

7. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

COMPANY OPERATIONS

8. The Companies acquired and assembled underdeveloped real property for the purpose of building mixed use residential projects. The Companies’ principal asset is the Real Property.

9. The Real Property is located on the west side of Brock Street North and the site is approximately .35 Hectares (0.87 acres) in size with approximately 70 metres of frontage on Brock Street North. Access to the Real Property is facilitated through four ingress/egress access points, three on Brock Street North and one from Elm Street via an access easement with adjacent properties to the south.

10. The Real Property has seven buildings along with parking facilities. On 132 Brock, a building has a tenant, Jacked Up Coffee Roasting Corp (“**Jacked Up**”), and on 146 Brock, the tenant is Larry Stevenson, operating an automotive detailing (“**Automotive Detailing**”) shop. The other buildings on the Real Property are not in use and have been secured. The Receiver is aware that three of the existing buildings have been identified as containing significant historical importance to the Town of Whitby, although they are not currently listed or designated.

LEASES

11. Jacked Up entered into a lease on or around December 6, 2023 for 132 Brock. The lease indicates that it is for a five-year term and that the commencement date is from January 1, 2024 to December 31, 2025, which is a two-year term. The rent for year two of the lease is \$2,850 per month. Jacked Up also pays for the utilities. A copy of the lease dated December 6, 2023 is attached to this report as **Schedule “C”**.

12. Larry Stevenson (“**Stevenson**”) entered into a lease for 146 Brock on or around March 1, 2024 for a one-year term with renewal options. The rent for year one of the lease is \$1,500 per month. Stevenson, in addition to the rent, pays for the utilities. A copy of the lease dated March 1, 2024 is attached to this report as **Schedule “D”**.

13. Jacked Up and Stevenson’s leases have language which allows the landlord the right to terminate leases. The Receiver has not reviewed the enforceability of the language to terminate the leases. In addition, the leases have language inconsistencies within the lease documents.

PROPERTY ZONING

14. The Real Property is located within a Regional Centre and within a Strategic Growth Area which are intended to provide more intensive, mixed-use, and complete communities that serve as a focal point for residential intensification, providing essential commercial and recreational functions for the surrounding community.

15. A maximum 6-storey proposed residential mixed-use development with a maximum gross floor area of 97,170 square feet is permitted under the existing zoning.

16. Prior to the Receivership, on or around April 2022, Official Plan Amendment (OPA-2022-W/03) and Zoning By-law Amendment (Z-11-22) applications were submitted to the Town of Whitby. The proposed development contemplated the redevelopment of the Real Property for a mixed-use building consisting of 11 storeys (45 meters in height), with 930 square metres of ground floor commercial/non-residential space fronting onto Brock Street North. The Official Plan Amendment seeks to increase the maximum permitted net residential density from 200 units per net hectare to 354 units per net hectare and increase the maximum permitted building height from 3 to 6 storeys to 11 storeys.

17. On or around September 12, 2022, a public hearing was held in reference to the proposed 11 storey development. Some members of the public expressed support for the project, while others expressed concerns about the height exceeding the limits set by the Downtown Whitby Secondary Plan, the impact on privacy, sunlight and the existing heritage character of the area.

18. An appeal was filed with the Ontario Land Tribunal (“OLT”) under case no. OLT-22-004776 due to failure to adopt the requested Official Plan Amendment and neglect to make a decision on the Zoning By-law Amendment application.

19. In June 2024, a case management conference was held in order to consolidate the appeal with the OLT. The consolidated appeal case file no(s) OLT-22-004776 and OLT-24-000115 were scheduled for a hearing commencing May 20, 2025.

20. The Receiver reviewed various documents in reference to the appeal and the case management conference. In addition, the Receiver had detailed discussions and correspondence

with Russell Cheeseman (“**Cheeseman**”) and Stephanie Fleming (“**Fleming**”), counsel with Municipal Law Chambers, on October 12, 2024. The Receiver obtained a budget to continue the appeal from Cheeseman.

21. The Receiver discussed with the first and second mortgage holder the costs associated with continuing the appeal and neither lender wished to fund the appeal process. In addition, the Receiver was of the opinion that the purchaser of the Real Property would proceed with a project they envision.

22. In addition, Weston Consulting, engaged by Lennard Commercial Realty (“**Lennard**”) to prepare a Planning Opinion letter to support the marketing efforts for the sale of the Real Property by the Receiver, indicated that the “active 11-storey development application exceeds the permissions of the Secondary Plan and Zoning by-law and does not have appropriate consideration for the existing and planned context of the surrounding area.”

23. Regardless of the building height, the floor space index (FSI) of 2.5 or 97,170 square feet is permitted without triggering the submissions for any land use control applications other than the Site Plan Application.

24. A copy of the Case Management Conference decision issued on July 25, 2024 is attached as **Schedule “E”**. On March 14, 2025 the hearing scheduled to commence on May 20, 2025 was adjourned sine die, and the file with the Tribunal remains open.

PROPERTY CONDITION

25. Upon the Receiver’s appointment, the Receiver contacted Jedidiah Liu, one of the principals of the Companies, and arranged for a meeting at the Real Property to allow for the Receiver to inspect the property, discuss the terms of the Appointment Order, and obtain assistance from the Companies as required.

26. The Receiver attended at the Real Property and met with Jedidiah Liu and another principal, Kasey Wong. The Receiver observed that the vacant buildings had been recently boarded. The property also had personal effects strewn about and it was apparent that individual(s) had used the space between the buildings to shelter.

27. The tenanted space being operated by Jacked Up at 132 Brock was clean, tidy and busy with customers. The customers of the coffee shop were able to park in the back of the property and there was ample parking.

28. The tenanted space being operated by Stevenson as an automotive detailing operation was also clean and cars were parked waiting to be serviced.

29. The Receiver obtained the leases currently entered into with each of the tenants. The tenants are independently paying utilities and water for their spaces.

30. As the winter approached and in order to ensure that the driveway, walkway and all of the property was free of snow and ice, the Receiver engaged Green Block Landscape (**"Green Block"**). The Receiver entered into a contract from the period of November 15, 2024 to April 15, 2025 whereby Green Block would attend to maintain the property and ensure that it was free of snow and ice. The cost of the snow removal, salt and ice management contract was \$11,950 plus HST. The Receiver confirmed that the snow was being removed and the property was being salted as required.

31. The Receiver would arrange for the property to be inspected for any issues on a regular basis.

32. The Receiver arranged to pay the outstanding water and sewage accounts for 150 Brock Street North, 152 Brock Street North, & 148 Brock Street North. The charges by the Regional Municipality of Durham are service charges for having water available to the property. The water is currently shut off. The vacant areas for the property have been winterized.

COSMAN SECURITY

33. As further set out in the Affidavit of Jason Cosman, sworn July 25, 2024 in support of the Appointment Order, Cosman agreed to advance to the Companies a loan with the original principal amount of \$2,600,000, as outlined in the commitment letter dated March 18, 2021, with interest of 8.5% per annum and a term of one year. The original loan agreement was amended on April 19, 2022 to increase the amount of the loan to \$3,200,000 and to extend the maturity date to April 1, 2023 with interest at 11% per annum. The original loan agreement was further

extended by a second renewal agreement dated March 30, 2023, which extended the maturity date to May 1, 2024 and provided for interest at 18% per annum.

34. As security for the indebtedness to Cosman, the Companies executed:

- (a) a General Security Agreement dated March 21, 2021 respecting the assets, property and undertaking of the Companies relating to the Real Property;
- (b) a charge/mortgage of land in the original principal amount of \$2,800,000 registered on March 22, 2021 against the Real Property;
- (c) a notice of assignment of rents in reference to municipal address 146 Brock Street North, Whitby; and
- (d) a notice of assignment of rents in reference to municipal address 132 Brock Street North, Whitby.

35. Counsel for the Receiver has advised the Receiver that Terra Bona, in accordance with a Development Management Agreement dated February 4, 2021, has registered a restrictive covenant on title. “No Transfer, charge or other dealings, either directly or indirectly by the registered owners of any of their interest in lands described hereon or any part thereof, shall be created, registered or occur without the prior consent of Terra Bona”. The Receiver has obtained a copy of the consent issued by Terra Bona in reference to the second advance made by Cosman on or around April 19, 2022. A copy of the consent dated April 19, 2022 from Terra Bona is attached to this report as **Schedule “F”**.

36. Counsel for the Receiver completed a review of the security delivered by the Companies in favour of Cosman (the “**Cosman Security**”). The Receiver has reviewed the security opinion which indicates that Cosman has valid and enforceable security, subject to the usual limitations, qualifications, reservations, and assumptions. A copy of this security opinion is attached to this report as **Schedule “G”**.

PEREZ-YOUSSEOUFIAN MEDICINE PROFESSIONAL CORPORATION

37. The parcel registers for the Real Property indicates a charge in the original principal amount of \$250,000 registered in favour of Perez-Youssoufian Medicine Professional Corporation (“**Perez-Youssoufian**”) on June 23, 2023. Counsel for the Receiver has not at this time reviewed the security delivered by the Companies in favour of Perez-Youssoufian.

38. The Receiver has obtained a copy of the consent provided to Perez-Youssoufian by Terra Bona to advance a new second mortgage and register the second mortgage in favour of Perez-Youssoufian against the Real Property. A copy of the consent provided by Terra Bona to Perez-Youssoufian is attached to this report as **Schedule “H”**.

TERRA BONA DEVELOPMENTS LTD

39. Terra Bona has registered a construction lien against the Real Property in the amount of \$135,215 on November 16, 2023. In addition, Terra Bona has issued a statement of claim in reference to the construction lien. Counsel for the Receiver has not at this time reviewed the construction lien in favour of Terra Bona. A copy of the statement of claim issued by Terra Bona is attached to this report as **Schedule “I”**.

DISTRIBUTION MOTION

40. The Receiver is not proposing to distribute the sale proceeds at this time except for standard closing adjustments and to repay the Receiver’s certificates. The Receiver is of the opinion that a separate distribution and discharge motion will be required.

APPRAISALS

41. The Receiver engaged CW to provide an appraisal of the Real Property. CW has extensive experience appraising similar properties.

42. The Receiver engaged CW to determine the current market value of 132 & 146-152 Brock Street North, Whitby based on an “as is” basis in order to assist the Receiver with determining a listing price for disposition purposes.

43. The appraisal prepared by CW outlines the current market value of the Real Property based upon the official plan designation of mixed use within the permitted use of the Region of Durham Official Plan and zoning by-law 2585. The appraisal was based upon the proposed buildable square feet of 97,170.

44. A copy of the CW appraisal is attached as **Schedule “J”**. Given the commercial sensitivity of this document, the Receiver requests that this schedule be subject to a sealing order.

INSURANCE

45. At the time of the receivership, the Companies had insurance in place with Co-operators Insurance through its broker Elvis Garcia Insurance Inc. (“**Garcia Insurance**”). The Receiver was advised that the payments under the policy were current. The Receiver reviewed the insurance policy and determined it had adequate coverage to cover the Real Property provided the Receiver was added as a named insured to the policy for the Real Property.

46. Garcia Insurance was able to arrange for the Receiver to be added as a named insured. The policy was scheduled to expire on March 20, 2025.

47. The Receiver discussed with Garcia Insurance the renewal of the insurance policy with Co-operators Insurance and the policy was renewed for a one year period to March 21, 2026.

PROPERTY TAX

48. The Receiver obtained the interim property taxes for 2025 for 146 Brock in the amount of \$14,457.94.

49. The Receiver was advised by the Town of Whitby that there were significant property tax arrears owing for 146 Brock for taxation year 2022 in the amount of \$9,935.18, taxation year 2023 in the amount of \$34,620.21, and taxation year 2024 in the amount of \$23,150.04 as at July 3, 2024. The total amount owing as at July 3, 2024 was \$67,705.43. The Receiver issued a Receiver’s certificate to obtain funds to make the payment to the Town of Whitby in the amount of \$67,705.43.

50. On March 25, 2025, the Receiver paid the interim property taxes for 2025 in the amount of \$14,457.94 plus the balance owing for 2024 in the amount of \$11,334.19 to the Town of Whitby.

51. The Receiver obtained the interim property taxes for 2025 for 132 Brock in the amount of \$5,414.19.

52. The Town of Whitby advised the Receiver that there were significant property tax arrears owing for 132 Brock from taxation year 2022 in the amount of \$3,253.81, taxation year 2023 in the amount of \$11,252.30 plus the balance owing for taxation year 2024 in the amount of \$8,720.98. The Receiver issued a Receiver's certificate to obtain the funds to make the payment in the amount of \$23,227.09 to the Town of Whitby.

53. The Receiver also issued payment to the Town of Whitby for the property taxes owing as outlined in the interim tax statement of 2025 in the amount of \$5,414.19 plus the balance owing for taxation year 2024 in the amount of \$4,304.04.

54. The Receiver was able to obtain sufficient funds by way of Receiver's certificates from Cosman to cover the property taxes owed to the Town of Whitby.

NOTICES

55. The Receiver, upon its appointment, completed, from the information available, the requisite Notice of Receiver under subsection 245(1) and the Statement of Receiver under subsection 246(1). A copy of the Notice of Receiver and the Statement of Receiver are attached to this report as **Schedule "K"**.

56. The Notice of Receiver under subsection 245(1) which sets out a list of known creditors and includes a copy of the Appointment Order, was emailed or mailed to all of the known creditors of the Companies.

57. The Receiver, as required, issued the requisite Statement of Receiver s. 246(2) notice on February 23, 2025. A copy of the Statement of Receiver is attached to this report as **Schedule "L"**.

58. Counsel for the Receiver registered the Appointment Order on title to the Real Property on September 16, 2024.

LEGAL ACTION

59. Counsel for the Companies, Miller Thomson LLP, as represented by Craig Mills (“**Mills**”) and Mitchell Lightowler (“**Lightowler**”), reached out to the Receiver in reference to a legal action between Hansalex Corp. (plaintiff), the Companies and Jedidiah Liu, Kasey Wong and Mark Bui (defendants), Court File Number CV-21-00656186-0000. The Receiver was provided with a copy of the statement of claim, defence and counterclaim.

60. Mills and Lightowler advised the Receiver that a trial in reference to this matter was scheduled to commence on February 5, 2025 and the Receiver was provided with an estimate of costs for the 10-day trial.

61. The Receiver canvassed the first and second mortgage holders if they were prepared to fund the 10-day trial and the Receiver was advised that neither party was prepared to fund the litigation going forward.

62. The Receiver discussed with Mills and Lightowler that the Receiver believed that the best course of action was to have the trial adjourned until after the completion of the Receivership. The Receiver also advised Liu that it was the Receiver’s opinion that it was best to adjourn the trial to a later date.

63. The Receiver was provided with a copy of the endorsement of the Honourable Justice Robert Centa adjourning the trial schedule sine die. A copy of the endorsement of the Honourable Justice Robert is attached to this report as **Schedule “M”**.

BOOKS AND RECORDS

64. The principal of the Debtors provided to the Receiver a summary of the outstanding debts owing.

65. The accountant for the Companies provided to the Receiver the financial statements and detailed trial balance from fiscal years 2019 to 2023, and a summary of the operation expenses from January 1, 2024 to August 30, 2024.

Tax filings

66. The Receiver engaged the accountant for the Companies to prepare the outstanding corporate tax returns for fiscal year 2023 and the pre-receivership HST returns for 2024. The returns were prepared by the accountant and filed with CRA.

67. The accountant also provided to the Receiver the financial records to support the T2 returns and the HST returns filed.

68. The Receiver has filed the post-receivership HST returns as required.

RECEIVER'S BORROWING

69. The Appointment Order authorized the Receiver to borrow a total principal sum of \$200,000. The Receiver has borrowed by way of Receiver's Certificates from Cosman at an annual interest rate of 18%, Receiver Certificate #1 - \$20,000 on September 16, 2024, Receiver Certificate #2 - \$96,000 on September 16, 2024, and Receiver Certificate #3 - \$36,000 on February 27, 2025. The total amount borrowed by the Receiver at the date of this report is \$152,000. A copy of Receiver's Certificates #1, #2 & #3 in the amount of \$20,000, \$96,000 and \$36,000 respectively are attached as **Schedule "N"**.

MARKETING AND SALES PROCESS

70. The Receiver determined that it was in the best interest of the creditors to commence a sales process as soon as possible as the general market for medium to small land development continued to be uncertain.

71. The Receiver was mindful of the additional costs associated with maintaining the Real Property, the costs of the professionals, as well as the continued interest associated with the mortgages.

72. The Receiver reached out to Cosman and its counsel to discuss the approach to marketing the Real Property. Cosman was in agreement with the approach proposed by the Receiver.

73. The Receiver discussed with Perez-Youssoufian the listing of the Real Property and the approach being taken by the Receiver. The Receiver also discussed the listing of the Real Property with counsel for Perez-Youssoufian.

74. The Receiver requested a proposal from Lennard as represented by Alastair Strachan (“**Strachan**”), Senior Vice president, to assist the Receiver to sell the Real Property. Lennard prepared a detailed listing proposal which included a planning opinion letter prepared by Weston Consulting, a proposal to commence a phase one ESA from AEL Environment, a survey, details of the adjoining properties, a pricing strategy and other details to assist the Receiver. The listing proposal dated September 24, 2024 from Lennard is attached to this report as **Schedule “O”**.

75. The listing agreement with Lennard was executed by the Receiver on October 9, 2024. The terms of the listing agreement provided for 3.75% commission if Lennard was the sole agent involved or 4.5% if another agent is involved in the sale which would be allocated as 2% commission to the buyer agent and 2.5% commission to Lennard.

76. The Receiver provided to Lennard a draft form of agreement of purchase and sale to assist a potential purchaser with a form of agreement that would be acceptable to the Receiver. The draft form of the agreement of purchase and sale was attached to the listing to assist potential purchasers.

77. Lennard prepared a brochure respecting the particulars of the Real Property and its development potential. A copy of the brochure prepared by Lennard is attached as **Schedule “P”**.

78. The Real Property was listed on MLS on October 10, 2024 with a listing price of \$4,425,000. The listing provided details of the Real Property including the brochure and the draft purchase and sale agreement.

79. Lennard placed on the Real Property a “For Sale” sign that conformed with the Town of Whitby by-laws facing Brock Street.

80. On November 1, 2024, Lennard did an email blast to land developers, investment brokers, land brokers, multi-family brokers, residential land developers, retail brokers, retail investors and Lennard agents. The email blast went to approximately 1,240 recipients.

81. From October 11, 2024 to November 18, 2024, Strachan had direct communications with 16 parties who expressed interest in the Real Property. Strachan advised the Receiver that most potential purchasers either felt the price was too high for the property given the current market conditions, or they were not interested.

82. Strachan and the Receiver discussed a reduction in the listing price to generate more interest in the Real Property and an offer. On November 21, 2024, the Receiver executed a listing price reduction from \$4,425,000 to \$4,100,000.

83. Lennard continued to send out email blasts to specific potential interest groups on a regular basis and, with each price reduction, to the brokerage community and land developers.

84. In addition, Strachan and the Receiver communicated with parties who had expressed an interest in the Real Property to advise of the price reduction.

85. Strachan continued to have direct communication with potential purchasers who expressed an interest in the Real Property. One of the interested parties expressed that there was so much property inventory on the market to choose from, and given economic conditions they expected the amount of inventory to increase and the market to continue to soften.

86. The Receiver continued to monitor the interest in the Real Property and the communications with various parties who had expressed an interest, in order to determine next steps to generate offers for the Real Property.

87. On December 17, 2024, an agent contacted Strachan to request additional details about the project, the development potential and various other details about the site. Strachan had a number of meetings with the agent and his client and arranged for his client to discuss the

development project with Weston Consulting. The potential purchaser decided that he was not interested in this specific project at this time and would not make an offer.

88. On January 30, 2025, the Receiver and Strachan discussed the interest being shown and the current market conditions. The Receiver executed a second listing price reduction from \$4,100,000 to \$3,800,000.

89. At the end of February, 2025, more serious interest in the Real Property occurred, whereby previous interested parties were again following up on the status of the sales process, and new interested parties were discussing presenting an offer or a letter of intent.

90. From the listing on the MLS, email blasts, and other communications and marketing efforts by Lennard as outlined above, Strachan and/or the Receiver had direct communications with 41 interested parties prior to entering into an acceptable APS. The comments generally received by the interested parties were that new available properties were coming onto the market, the market continued to soften, they were looking for financing or vendor take back financing as part of any offer, the condo residential market was in a downturn, the current and near future market conditions were uncertain, and they felt it was better to wait before making an offer.

91. The Receiver and Strachan had discussions with potential purchasers as to the terms of acceptable offers including the timing of the offers.

92. The Receiver received one offer and one letter of intent (“**LOI**”) for the Property resulting from these discussions.

93. The Receiver requested that Strachan advise the potential purchaser who provided the LOI to resubmit their offer in the form of the Receiver’s APS.

94. The Receiver reviewed the offers received in detail with its counsel. A summary of the offers received are outlined in **Schedule “Q”** which is attached to this report. Given the commercial sensitivity of this schedule, the Receiver requests that this schedule be subject to a sealing order.

95. The Receiver provided general details of the LOI and the offer to Cosman, as the first ranking mortgage holder of the Real Property.

96. The Receiver and Strachan continued to discuss the terms of the APS with the prospective purchasers and their representatives and requested that they present their best offer.

97. From the discussions with Strachan after his follow up with the prospective purchasers, the Receiver determined the best course was for the Receiver and the Receiver's counsel to continue negotiate the terms of the offer and purchase price with the prospective purchaser, the Town of Whitby.

98. A number of meetings occurred between the Receiver, counsel for the Receiver, and representatives for the Town of Whitby. After significant negotiations, both parties agreed to the final terms of the APS and the APS was executed.

99. The APS was conditional upon the Town of Whitby obtaining approval of the APS by Council for the Corporation of the Town of Whitby as well as an enactment of an applicable by-law to purchase the Real Property in accordance with the terms and conditions set out in the APS by 16:30 on March 25, 2025. This condition was waived by the Town of Whitby as the by-law to authorize the acquisition of the lands from the Receiver was authorized. A copy of the Town of Whitby By-Law #9172-5 is attached to this report as **Schedule "R"**.

100. In addition, the APS was conditional upon the Receiver authorizing the Town of Whitby to contact the authors of the Environmental Reports on or before March 25, 2025. A copy of the email sent to GHD on March 19, 2025 is attached to this report as **Schedule "S"**. The APS was also negotiated based on the Town of Whitby waiving its environmental condition.

101. The commission to Lennard as per the listing agreement and the APS is 3.75% of the purchase price as Lennard acted as the sole agent.

102. The Receiver is of the view that the purchase price set out in the APS is reasonable based on the conduct of the sales process, the exposure to and canvassing of the market, and the uncertain economic and market conditions.

103. Upon both parties being in agreement with the final terms of the APS, the APS was executed and the deposit in the amount of \$720,000 was paid to the Receiver. A copy of the executed APS is attached to this report as **Schedule "T"** with the purchase price having been redacted. Given the commercial sensitivity of this information, the Receiver requests that the non-redacted version of the APS be sealed by order of the Honourable Court.

104. The Receiver and the Town of Whitby have agreed on a closing date of June 5, 2025 subject to court approval of the APS.

CONCLUSION

105. For the reasons set out in this First Report, the Receiver respectfully requests that this Court:

- (a) Approve all of the actions, conduct and activities of the Receiver as set out in this First Report;
- (b) Approve the sale and marketing process undertaken by the Receiver as described in this First Report;
- (c) Authorize and approve the APS between the Receiver and the Purchaser and authorize the Receiver to take such steps as may be necessary to facilitate the completion of the purchase and sale transaction contemplated in the APS;
- (d) Approve the sale and vesting in the Purchaser, or as it may direct in writing, of all of the Purchased Assets; and
- (e) Seal the Confidential Appendices until the completion of the sales transaction contemplated under the APS or until a further Order of the Court in order to avoid a potential poisoning of the prospective purchaser pool should the proposed purchase transaction fail to close.

- 19 -

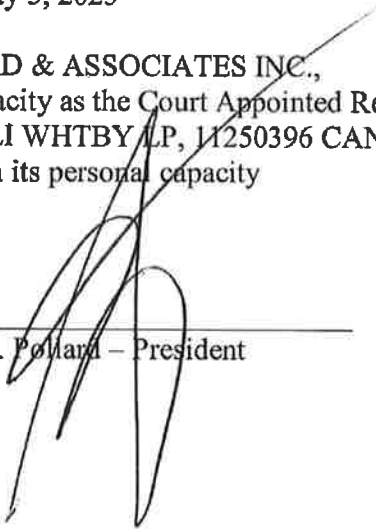
All of which is respectively submitted.

Dated May 5, 2025

POLLARD & ASSOCIATES INC.,
in its capacity as the Court Appointed Receiver of
CACOELI WHTBY LP, 11250396 CANADA INC., and 11275127 CANADA INC.
and not in its personal capacity

Per:

Angela K. Pollard – President



SCHEDULE "A"



SUPERIOR COURT OF JUSTICE

COMMERCIAL ENDORSEMENT FORM

COURT FILE NO.: CV-24-00723457-00CL DATE: August 21, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: Cosman Mortgage Holdings Corp v. Cacoeli Whitby LP., et al

BEFORE MADAM JUSTICE: J. STEELE

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Oren Chaimovitch	Counsel for the Applicant, <i>Cosman Mortgage Holdings Corp</i>	Oren.chaimovitch@devrylaw.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Adam Marchioni	Counsel for <i>Terra Bona Developments Ltd.</i>	amarch@marchlaw.ca
Angela Pollard	Receiver, <i>Pollard & Associates</i>	akpollard@pollardandassoc.ca
Majid Tavakoli	Self-Represented Respondent, <i>Terra Bona Developments</i>	

ENDORSEMENT OF MADAM JUSTICE STEELE:

- [1] The applicant, Cosman Mortgage Holdings Corp., seeks the appointment of a receiver, which is not opposed by the respondent.
- [2] The loan has been in default since November 2023.
- [3] However, a construction lien claimant, Mr. Tavakoli, seeks 30 day adjournment. Mr. Tavakoli informed the Court that his new lawyer is on vacation and will return on Thursday. Mr. Tavakoli's former lawyer was in attendance, but he advised the Court that he was no longer representing Mr. Tavakoli. Mr. Tavakoli was without counsel and asked for a short adjournment to give him an opportunity to receive legal advice on the motion. In the circumstances, I agreed to a short adjournment.
- [4] The application is adjourned to **August 30, 2024 at 12:30 pm (30 minutes)**.



J. STEELE J.**DATE: AUGUST 21, 2024**

SCHEDULE "B"

Court File No. **CV-24-00723457-00CL****ONTARIO****SUPERIOR COURT OF JUSTICE****COMMERCIAL LIST**

THE HONOURABLE MR.

)

FRIDAY, THE

JUSTICE PENNY

)

30th DAY OF AUGUST, 2024

)

COSMAN MORTGAGE HOLDING CORP.

Applicant

- and -

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED PARTNERSHIP,
 11275127 CANADA INC. and 11250396 CANADA INC.**

Respondents

ORDER**(appointing Receiver)**

THIS APPLICATION made by 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 Pollard & Associates Inc. as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and property of the Debtors defined below, including, without limitation, of the lands and premises registered in the name of 11250396 Canada Inc. (“**11250396**”) in its capacity as general partner of Cacoeli Whitby LP (the “**Whitby LP**”) and 11275127 Canada Inc. (“**11275127**”, which together with 11250396 and the Whitby LP are collectively referred to as the “**Debtors**” and each a “**Debtor**”), municipally known as 132 Brock Street North and 146 – 152 Brock Street North, Whitby, Ontario and more particularly described as follows:

LT 4 PL H50030 WHITBY; LT 5 PL H50030 WHITBY; PT LT 2 PL H50030 WHITBY; PT LT 3 PL H50030 WHITBY PTS 2 & 3 40R12737; S/T D490776 (PT 3); T/W D544453; SUBJECT TO AN EASEMENT AS IN C0231663; TOWN OF WHITBY
as described in PIN 26535 - 0187 LT

PT LT 36 PL H50030 WHITBY PT 6 40R 12737, S/T D490776; TOWN OF WHITBY
as described in PIN 26535 – 0209 LT

PT LT 2-3 PL H50030 WHITBY AS IN D552683 T/W D552683; TOWN OF WHITBY
as described in PIN 26535 – 0186 LT

(collectively, the “**Real Property**”),

was heard this day by judicial videoconference.

ON READING the affidavit of Jason Cosman sworn July 25, 2024 and the exhibits thereto, and on hearing the submissions of counsel for the Applicant and such other counsel as were present, and on hearing the submissions of the Respondent, appearing in person, and on reading the consent of Pollard & Associates Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record 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 243(1) of the BIA and section 101 of the CJA, Pollard & Associates Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors, including, without limitation, the Real Property, including all proceeds therefrom (together, the “**Property**”).

RECEIVER'S POWERS

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 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 Debtors in respect of or out of the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cause the Debtors to cease to carry on all or any part of the Debtors' business in respect of or out of the Property and to cause the Debtors to cease to perform any contracts of the Debtors; in respect of the Property;
- (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 purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors, for any purpose pursuant to this Order;
- (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 Debtors, 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;
- (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;
- (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, all before applicable taxes; 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, shall not be required;

- (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;
- (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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel 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.

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 Debtors, 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 5 or in paragraph 6 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.

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.

NO PROCEEDINGS AGAINST THE RECEIVER

7. 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 DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

10. 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 Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

12. 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

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 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*.

PIPEDA

14. 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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.

LIMITATION ON THE RECEIVER'S LIABILITY

16. 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

17. 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.¹

18. 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 Ontario Superior Court of Justice.

19. 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

20. 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 \$200,000.00 (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.

21. 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.

22. 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.

23. 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.

SERVICE AND NOTICE

24. 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 of the Rules of Civil Procedure (the “**Rules**”) this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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 pollardandassociates.ca/engagements/cacoeiliwhitbylp.

25. 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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

26. 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.

27. THIS COURT ORDERS that the Receiver is hereby authorized and empowered, but not obligated, to cause the Debtors, or any of them to make an assignment in bankruptcy, on 5 days' notice, and nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or any of them.

28. 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.

29. 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.

30. THIS COURT ORDERS that the Applicant shall have its costs of this application, 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 Debtors' estate with such priority and at such time as this Court may determine.

31. 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.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry and filing.



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Pollard & Associates Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 11250396 Canada Inc. ("11250396") in its capacity as general partner of Cacoeli Whitby LP (the "Whitby LP") and 11275127 Canada Inc. ("11275127", which together with 11250396 and the Whitby LP are collectively referred to as the "Debtors" and each a "Debtor") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ day of _____, _____ (the "Order") made in an action having Court file number _____ 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__.

Pollard & Associates Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Angela Pollard
President

and

Applicant

Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243 OF THE <i>BANKRUPTCY AND INSOLVENCY ACT</i>, R.S.C. 1985, c.B-3; s. 101 THE <i>COURTS OF JUSTICE ACT</i>, R.S.O 1990, c.C43, Rules 1.04, 2.03, 3.02(1), 14.05 (g), 14.05 (3)(g), 16.04(1) and 38 of the Rules of Civil Procedure Commenced at TORONTO</p>	<p>ORDER</p> <p>DEVRY SMITH FRANK LLP Lawyers & Mediators 95 Barber Greene Road, Suite 100 Toronto, Ontario M3C 3E9 Oren Chaimovitch – LSO #: 35403B Tel.: (416) 446-3342 Email: oren.chaimovitch@devrylaw.ca</p> <p>Lawyers for the Applicant</p>
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SCHEDULE "C"

LEASE

**JACKED UP COFFEE ROASTING CORP.
WHITBY, ONTARIO**

LANDLORD:	Cacoeli Whitby LP
TENANT:	Jacked Up Coffee Roasting Corp.
INDEMNIFIER:	
LEASED PREMISES:	132 Brock St. North, Whitby, ON L1N 2P2

THIS LEASE is made as of the 6th day of December 2023.

ARTICLE I – SUMMARY PROVISIONS

1.1 Landlord:

CACOELI WHITBY LP (hereafter called the “**Landlord**”) having an address for the purposes of this Lease as follows:

~~11889796 Canada Inc.~~
2 Sheppard Avenue East, Unit 901
North York, Ontario M2N 5Y7

Attention: Kasey Wong or Carolyn Humphries
Phone: (416) 419-9634 / (647) 326-0239
Email: admin@cacoeli.com

1.2 Tenant:

JACKED UP COFFEE ROASTING CORP. (hereafter called the “**Tenant**”) having an address for the purposes of this Lease as follows:

Attention: Jack Provan
Phone: (905) 924-0031
Email: jack.provan@gmail.com

1.3 Indemnifier

To advise.

1.4 Development:

The multi-use development is comprised of a residential component (the “**Residential Component**”) and a commercial component (the “**Commercial Component**”), located on the lands legally described in Schedule “A” attached hereto, which are municipally known as 132 Brock Street North, in the Town of Whitby (the “**Lands**”), as the boundaries of the Lands may be varied from time to time, and which together with the buildings, improvements and facilities erected thereon as at the Commencement Date or subsequently varied from time to time, are referred to herein as the “**Development**”. The Landlord shall be entitled, acting reasonably, to allocate Additional Rent among the different components of the Development.

1.5 Leased Premises:

Those portions of the Commercial Component having a total Rentable Area of approximately eight hundred sixteen square feet (816 sq. ft.) and includes the area in front and to the side of the building for car parking, municipally known as 132 Brock Street North, in the Town of Whitby (the “**Leased Premises**”).

1.6 Term: (Section 4.1)

Five (5) years commencing (the “**Commencement Date**”) January 1, 2024 and expiring (the “**Expiry Date**”) on December 31, 2025 (the “**Term**”). In the event the Lease is validly renewed or extended, the Term shall include such validly renewed or extended period.

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1.7 Options to Renew:

The Tenant shall have the right to two (2) further terms of five (5) years each in accordance with and subject to the terms and conditions of Schedule “D” attached hereto.

1.8 Base Rent: (Section 5.1)

The Tenant shall pay to the Landlord, commencing on the Commencement Date, Base Rent as follows:

Lease Year	Annual Rent Payable	Monthly Rent Payable
One (1) January 1, 2024 to December 31, 2024	\$30,000.00	\$2,500.00
Two (2) January 1, 2025 to December 2025	\$34,200.00	\$2,850.00

Base Rent, together with Rental Taxes applicable thereon, shall be payable in advance without deduction in equal monthly instalments on the first (1st) day of each and every month throughout the Term. If the Commencement Date falls on any day other than the first (1st) day of a month, then Base Rent for the fraction of the then-current month shall be adjusted pro rata. Base Rent shall be subject to adjustment, as required, upon final determination of the Rentable Area, in accordance with Section 5.2.

1.9 Rent Deposit/Security Deposit: (Section 5.10)

The Tenant has provided the Landlord with a deposit (the “**Rent Deposit**”) of **\$2,000.00**. The Rent Deposit is referred to as the “**Pre-Paid Rent**”, and shall be applied in accordance with Section 5.10.

The Tenant shall use the Leased Premises solely for the purpose of a coffee shop under the trade name “Jacked Up Coffee Roasting Corp.” and any other use permitted by the Landlord and for no other purpose, provided that the Leased Premises shall at all times be used and maintained, and the business shall be operated therein, by the Tenant in compliance with all Applicable Laws and in accordance with the standards of a first-class building. The Tenant covenants and agrees that it shall at all times be in compliance with all by-laws and regulations which are now or hereafter set forth by the Town of Whitby and with such other Federal or Provincial regulations or laws which may be applicable in the circumstances (the “**Permitted Use**”).

1.10 Permitted Name: (Section 9.1)

The Tenant’s trade name shall be “Jacked Up Coffee Roasting Corp.” or any other name that the Tenant chooses and is suitable for the Permitted Use, as approved by the Landlord in its sole discretion.

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1.11 Restrictive Covenant: (Article IX)

During the Term and provided the Tenant is in occupancy of the Leased Premises and no Event of Default has occurred and/or is continuing, the Tenant shall have the right to use the Leased Premises solely for the Permitted Use, and in the event that the Tenant utilizes the Leased Premises for any other commercial or retail use and such breach is not cured to the satisfaction of the Landlord, acting reasonably, within five (5) Business Days of delivery by the Landlord to the Tenant of written notice detailing same, in addition to any other remedies available to it, the Landlord shall have the immediate right to terminate this Lease and to recover from the Tenant all damages incurred by the Landlord as a result of such termination.

1.12 Special Provisions:

This Lease is subject to those additional provisions set out in Schedule "G" attached hereto.

1.13 Summary Provisions:

Each reference in this Lease to any of the Summary Provisions listed above shall be read as having the same dates, quantities and other meanings as specified in this Article I. The terms in the Summary Provisions are intended to be only a summary of certain basic terms of this Lease. In the event of any inconsistency between such terms and the terms hereinafter set out in this Lease, the latter shall govern.

ARTICLE II— INTERPRETATION

2.1 Definitions:

In this Lease, unless there is something in the subject matter or context inconsistent therewith:

- (a) "Adjustment Date" has the meaning ascribed thereto in Section 5.8(b) hereof.
- (b) "Applicable Law" means all applicable federal, provincial and/or municipal laws, by-laws, regulations, statutes, rules and directives or orders issued by agencies having jurisdiction in connection with, or pertaining to or affecting the Leased Premises.
- (c) "Architect" means such firm of third party professional architects, engineers, surveyors and, space planners as the Landlord may select from time to time engaged for preparation of construction drawings for the Development or for general supervision of architectural and engineering aspects and operations thereof or for the measurement of the Development or part or parts thereof and includes any consultant(s) from time to time appointed by the Landlord and/or the Architect whenever such consultant(s) is acting within the scope of his/her appointment and specialty.
- (d) "Article" means an article of this Lease and "Section" means a section of this Lease.
- (e) "Base Rent" has the meaning ascribed thereto in Section 5.1 hereof.
- (f) "Business Day" means any day other than a Saturday, Sunday or any statutory holiday on which chartered banks are not open for business in the Province of Ontario.

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- (g) "CA" means the *Construction Act* (Ontario).
- (h) "Commencement Date" has the meaning ascribed thereto in Section 1.6 hereof.
- (i) "Commercial Component" has the meaning ascribed thereto in Section 1.4 and includes the Leased Premises and all improvements located therein, thereto, thereon or thereunder and every enlargement thereof and every addition thereto even though separated therefrom.
- (j) "Common Areas" means those areas within the Development, which are designated by the Landlord, and which are not installed or intended for the use in common by tenants of the Development and not for the exclusive use or benefit of any individual tenant, including without limitation, all non-leasable areas, service and administrative areas (including, without limitation, administrative offices, janitorial rooms and storage rooms not reserved to any tenant exclusively), all roofs, roadways, sidewalks, landscaped areas, floor slabs, exterior walls and exterior and interior structural portions of the Development or other common means of access to leasable premises (excluding any structural mezzanines within any leasable premises), public lavatories, truck courts, common loading areas, driveways, music and public address systems, electrical, plumbing and drainage, fire protection, fire detection, heating, ventilation and/or air-conditioning systems or equipment servicing the Development and/or more than one tenant or promotional installations, customer and service stairways, directories and directional signs, elevators, escalators and all other areas, services and facilities which Landlord provides or designates from time to time to be part of Common Areas.
- (k) "Court" has the meaning ascribed thereto in Section 11.9 hereof.
- (l) "Date of Such Taking" has the meaning ascribed thereto in Section 17.1 hereof.
- (m) "Development" has the meaning ascribed thereto in Section 1.4 hereof.
- (n) "Ecologizer Unit" has the meaning ascribed thereto in Section 1 of Schedule "F" attached hereto.
- (o) "Environmental Claim" means all claims, losses, costs, expenses, fines, penalties, payments and/or damages (including, without limitation, all solicitors' fees on a substantial indemnity basis) relating to, arising out of, resulting from or in any way connected with the presence of any Hazardous Substance at the Leased Premises, the Lands and/or the Development, including, without limitation, all costs and expenses of any investigation, remediation, restoration or monitoring of the Leased Premises, the Lands and/or the Development and/or any property adjoining or in the vicinity of the Leased Premises, the Lands and/or the Development required or mandated by Environmental Law.
- (p) "Environmental Law" means any Applicable Law, as well as any common law obligations or requirements, relating to environmental or health and safety matters and/or regulating the generation, import, storage, distribution, labelling, sale, use, handling, transport or disposal of any Hazardous Substance which may be in force from time to time.
- (q) "Event of Default" has the meaning ascribed thereto in Section 21.1 hereof.

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- (r) "Expiry Date" has the meaning ascribed thereto in Section 1.6 hereof.
- (s) "Force Majeure" means any event of strike, lock-out, labour trouble, inability to procure material, failure of power, restrictive Applicable Law, riot, insurrection, war, act of God or other reason of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Lease.
- (t) "GAAP" means, at any time, the "new GAAP Standard" of generally accepted accounting principles in Canada, applied on a consistent basis, and statements and interpretations (if applicable) issued by the Canadian Institute of Chartered Accountants or any successor body in effect from time to time, based on the Accounting Standards for Private Enterprises (ASPE).
- (u) "Governmental Authority" or "Governmental Authorities" means any Person, body, department, bureau, agency, board, tribunal, commission, Court, branch, public Utility or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Lands, the transaction contemplated in this Agreement and/or one or both of the Parties hereto and shall include a board or association of insurance underwriters.
- (v) "Hazardous Substance" means:
 - (i) any materials or substances declared or deemed to be hazardous, deleterious, caustic, dangerous, a dangerous good, toxic, a contaminant, a waste, a source of contaminant, a pollutant or toxic under any Environmental Law;
 - (ii) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (A) endangers the health, safety or welfare of Persons or the health of animal life;
 - (B) interferes with normal enjoyment of life or property; or
 - (C) causes damage to plant life or to property; and
 - (iii) any substance which is hazardous to the environment, including Persons or property and includes, without limiting the generality of the foregoing, the following:
 - (A) radioactive materials;
 - (B) explosives; or
 - (C) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant.

However, substances typically used in the operation of a restaurant, including, but not limited to, cooking oils, grease and cleaning products, shall be deemed to not be included in this definition, so long as they are

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produced, maintained, utilized or disposed of in strict compliance with Environmental Laws and prudent first class restaurant practices.

- (w) "Initiating Party" has the meaning ascribed thereto in Section 2(a) of Schedule "D" attached hereto.
- (x) "Interest Rate" has the meaning ascribed thereto in Section 5.9 hereof.
- (y) "Landlord Fiscal Year" means the twelve (12) month period designated from time to time by the Landlord, as determined by the Landlord in its sole and unfettered discretion.
- (z) "Landlord's Work" has the meaning ascribed thereto in Schedule "E" attached hereto.
- (aa) "Lands" has the meaning ascribed thereto in Section 1.4 hereof.
- (bb) "Lease", "hereof", "herein", "hereunder" and similar expressions mean this Lease and all Schedules attached hereto, as originally signed, sealed and delivered or as amended, from time to time, which amendments shall be in writing and signed by the Landlord and Tenant.
- (cc) "Lease Year" in the case of the first (1st) Lease Year means the period beginning on the Commencement Date and terminating on the anniversary of the last day of the month in which the Commencement Date occurs, unless the Commencement Date is the first day of a month, in which event the first Lease Year period terminates on the expiration of the period of twelve (12) months thereafter. Each subsequent Lease Year commences 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.
- (dd) "Leased Premises" has the meaning ascribed thereto in Section 1.5 hereof.
- (ee) "Leasehold Improvements" means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant, or any previous occupant of the Leased Premises, in the Leased Premises and by or on behalf of other tenants in other premises in the Commercial Component (including the Landlord if an occupant of the Commercial Component), including all partitions and hardware however affixed, and whether or not movable, all mechanical, electrical and Utility installations and all carpeting and drapes, with the exception only of Trade Fixtures, furniture and equipment not of the nature of a fixture.
- (ff) "Non-Standard Leasehold Improvements" has the meaning ascribed thereto in Section 14.2 hereof.
- (gg) "Normal Business Hours" means 9:00 A.M. to 5:00 P.M. (GTA time), Monday to Friday, excluding statutory holidays on which chartered banks are not open for business in the Province of Ontario.
- (hh) "Occupancy Costs" has the meaning ascribed thereto in Section 5.3 hereof.
- (ii) "Operating Expenses" means those items described in Schedule "B" attached hereto and "Operating Expense" means any one of them.

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- (jj) "Parties" means, collectively, the Landlord and the Tenant and any other Person which becomes a party to this Agreement, and "Party" means any one of them.
- (kk) "Permitted Signage" has the meaning ascribed thereto in Section 11.11 hereof.
- (ll) "Permitted Use" has the meaning ascribed thereto in Section 1.11 hereof.
- (mm) "Person" means an individual, a partnership, a corporation, a government or any department or agency thereof, a trustee, and the heirs, executors, administrators or other legal representatives of an individual and "Persons" means more than one (1) Person.
- (nn) "Pre-Paid Rent" has the meaning ascribed thereto in Section 1.10 hereof.
- (oo) "Proportionate Share" means the ratio, expressed as a percentage, which the Rentable Area of the Leased Premises bears to the Rentable Area of the Development, which ratio shall be determined from time to time by the Landlord.
- (pp) "Realty Taxes" means:
 - (i) any form of assessment (including any "special" assessment), property tax, license fee, license tax, business license fee, business license tax, machinery tax, business improvements association assessment, including those for local improvement assessment, commercial rental tax, levy, charge, penalty or tax, imposed by any Taxing Authority having the direct power to tax, including any city, county, provincial or federal government, or any, school, agricultural, lighting, water drainage or other improvement or special district thereof, against the Leased Premises or any legal or equitable interest of the Landlord therein;
 - (ii) any assessment, tax, fee, levy or charge in substitution, partially or totally, of or in addition to any assessment, tax, fee, levy or charge previously included within the definition of Realty Taxes which may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services provided to property owners or occupants; and
 - (iii) all costs incurred by the Landlord contesting or appealing the Realty Taxes (including, without limitation, legal, appraisal and other professional fees and costs).

Realty Taxes shall not include the Landlord's income taxes. It is the intention of the Landlord and the Tenant that all new assessments, taxes, fees, levies and charges be included within the definition of Realty Taxes for purposes of this Lease. The following shall also be included within the definition of Realty Taxes for the purposes of this Lease, provided, however, that the Tenant shall pay the Landlord the entire amount thereof:

 - (iv) any tax allocable to or measured by the area of the Leased Premises or the rental payable hereunder, including without limitation, any gross income, privilege, goods and services, harmonized sales, sales or excise tax levied by any municipal or provincial or federal government, with respect to the receipt of such rental, or upon or with respect to the

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possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by the Tenant of the Leased Premises or any portion thereof; and

- (v) any tax upon this transaction or any document to which the Tenant is a party, creating or transferring an interest or an estate in the Leased Premises.
- (qq) "Redevelopment" has the meaning ascribed thereto in Section 10.10 hereof.
- (rr) "Renewal Notice" has the meaning ascribed thereto in Section 1 of Schedule "D" attached hereto.
- (ss) "Renewal Term" has the meaning ascribed thereto in Section 1 of Schedule "D" attached hereto.
- (tt) "Rent", "rent", "Rental" or "rental" means all payments and charges payable by the Tenant pursuant to this Lease, including without limitation, the Base Rent and Additional Rent.
- (uu) "Rent Deposit" has the meaning ascribed thereto in Section 1.10.
- (vv) "Rentable Area" of the Leased Premises, the Commercial Component, the Residential Component or any portion thereof, means the area of the Leased Premises, the Commercial Component, the Residential Component or any portion thereof, as applicable, measured in accordance with ANSI-BOMA Z65.1 — 2010 Standard Methods of Floor Measurement for Retail Buildings, as revised from time to time. Provided that the Rentable Area of the Leased Premises shall include all interior space, whether or not occupied by any projections, structures, stairs, elevators, escalators, shafts or other floor openings or columns, structural or non-structural, and if a storefront or entrance is recessed, same shall for all purposes be deemed to lie within and form part of the Rentable Area of the Leased Premises. In the event of any expansion of the Commercial Component or the creation of any additional Rentable Areas not contemplated by this Lease, the Landlord shall determine in its sole and unfettered discretion, whether such additional Rentable Areas shall form part of the calculation of the Rentable Area of the Commercial Component herein.
- (ww) "Rental Taxes" means any tax or duty imposed upon the Landlord or the Tenant which is measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Taxing Authority, including without limitation goods and services tax, value added tax, the provincial portion of harmonized sales tax, business transfer tax, retail sales tax, federal sales tax, excise taxes or duties, or any tax similar to any of the foregoing.
- (xx) "Residential Component" has the meaning ascribed thereto in Section 1.4.
- (yy) "Special Provisions" has the meaning ascribed thereto in Schedule "G" attached hereto.
- (zz) "Taxing Authority" means any duly constituted Governmental Authority legally empowered to impose taxes, rates, assessments, or charges, or other charges in lieu thereof, on, upon or in respect of the Landlord, the Lands, the Commercial

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Component and/or the Residential Component, including, without limitation, Realty Taxes and/or Rental Taxes.

- (aaa) "Tenant HVAC System" has the meaning ascribed thereto in Section 10.3 hereof.
- (bbb) "Tenant's Work" has the meaning ascribed thereto in Schedule "D" attached hereto.
- (ccc) "Term" has the meaning ascribed thereto in Section 1.6 hereof, together with any Renewal Term and/or any overholding period.
- (ddd) "Termination Date" has the meaning ascribed thereto in Section 4.4 hereof.
- (eee) "Trade Fixtures" means all items generally considered to be trade fixtures, including, without limitation, built-in fridges, stoves, walk-in coolers, counters, bars, chairs, stools, tables, racks, or any other equipment or fixtures used by the Tenant in its business, any of which have been installed in the Leased Premises by or on behalf of the Tenant and have been affixed to the realty, but, notwithstanding the foregoing, shall not include any Leasehold Improvements, any part of the electrical, plumbing, mechanical, sprinkler, heating, ventilating or air-conditioning equipment or systems, or any floor coverings, wall coverings, any part of the ceiling, whether or not installed by the Tenant or Landlord, all furniture, personal property, electronics and computer located at the Leased Premises prior to the Commencement Date and listed under Section 2 of Schedule "G".
- (fff) "Transfer" has the meaning ascribed thereto in Section 13.1(a) hereof.
- (ggg) "Transferee" has the meaning ascribed thereto in Section 13.1(a) hereof.
- (hhh) "Utilities" means electricity, oil, gas, power, telephone, water and all other utilities and garbage collection and "Utility" means any one of such Utilities.

2.2 Schedules

The following schedules are attached to this Lease and are incorporated as part of this Lease by reference thereto:

Schedule "A" Operating Expenses

Schedule "B" Rules and Regulations

Schedule "C" Option to Renew

Schedule "D" Tenant Improvements and Guidelines

Schedule "E" Landlord's Work

Schedule "F" Indemnity

ARTICLE III— GRANT OF LEASE

3.1 Grant

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hereby demises and

leases the Leased Premises to the Tenant, and the Tenant hereby leases and accepts the Leased Premises from the Landlord, to have and to hold during the Term, subject to the terms and conditions of this Lease.

3.2 Quiet Enjoyment

The Landlord covenants to provide the Tenant with quiet enjoyment and possession of the Leased Premises during the Term and any renewal or extension thereto, subject to the terms and conditions of this Lease.

3.3 Covenants of the Landlord and the Tenant

The Landlord covenants to observe and perform all of the terms and conditions to be observed and performed by the Landlord under this Lease including the terms and conditions contained in the Schedules hereto. The Tenant covenants to pay the Rent when due under this Lease (except as otherwise set out herein) and to observe and perform all of the terms and conditions to be observed and performed by the Tenant under this Lease including the terms and conditions contained in the Schedules attached hereto.

3.4 Net Lease

The Tenant is not responsible for any property taxes or maintenance costs.— TERM AND POSSESSION

3.5 Term

The Term of this Lease shall be as set forth in Section 1.6 hereof unless terminated earlier as provided in this Lease.

3.6 Delayed Possession

If the Landlord is delayed in delivering possession of all or any portion of the Leased Premises to the Tenant on the Commencement Date, then unless such delay is principally caused by or attributable to the Tenant, its servants, agents or independent contractors, the Commencement Date shall be postponed for a period equal to the duration of the delay. This Lease shall not be void or voidable, nor shall the Landlord be liable to the Tenant for any loss or damage resulting from any delay in delivering possession of the Leased Premises to the Tenant. If any delay in the completion of the Landlord's Work is attributable to the Tenant, its servants, agents or independent contractors, the Commencement Date shall not be postponed.

3.7 Acceptance of Leased Premises

Taking possession of all or any portion of the Leased Premises by the Tenant shall be conclusive evidence as against the Tenant that the Leased Premises or such portion thereof are in satisfactory condition as of the Commencement Date, subject to completion of the Landlord's Work set out in Schedule "F". For clarity, the Tenant agrees to accept the Leased Premises on a completely "as is, where is" basis and Landlord shall have no obligation to contribute towards any of the Tenant's Leasehold Improvements.

4.4 Landlord's Option to Terminate

The Landlord may, at any time after eighteen (18) months following the Commencement Date, terminate the Lease on one hundred eighty (180) days written notice to the Tenant (the "Termination Date"). The Landlord will not pay any compensation or relocation costs to the

Tenant for the termination. Despite such termination of the Lease, the Tenant shall remain liable to the Landlord for (i) any liability arising as a result of any non-observance or non-performance by the Tenant of its covenants and obligations under the Lease up to and including the Termination Date; (ii) any obligation of the Tenant pursuant to the Lease to indemnify the Landlord in respect of any claims made by third parties for damages or injuries suffered by such third parties prior to the Termination Date (which in all instances shall be subject to the terms and conditions applicable to such obligation and indemnity); (iii) those obligations of the Tenant which are expressly set out in the Lease to survive the expiration or earlier termination of the Term; and (iv) any amounts due and owing pursuant to the Lease prior to the Termination Date.

ARTICLE IV— RENT AND OCCUPANCY COSTS

4.1 Base Rent

The Tenant shall pay to the Landlord Base Rent for the Leased Premises as set forth in Section 1.8 hereof.

4.2 Adjustment of Base Rent based on Measurement of Rentable Area

The rentable area of the Leased Premises shall be determined by the Architect in accordance with 2010 BOMA Standard Methods of Floor Measurements for Retail Buildings, as revised from time to time (the "**Rentable Area**"). The Landlord shall provide a certificate of measurement, which shall be conclusive with respect to the measurement of Rentable Area of the Leased Premises, and that the Leased Premises have been measured as aforesaid (the "**Certificate of Area**"). The Landlord shall deliver the Certificate of Area to the Tenant on or before the Commencement Date.

4.3 Payment of Rent

All amounts payable by the Tenant to the Landlord under this Lease shall be deemed to be Rent and shall be payable and recoverable as Rent in the manner herein provided, and the Landlord shall have all rights against the Tenant upon the occurrence of an Event of Default in any such payment as in the case of arrears of Rent. Rent shall be paid to the Landlord, without deduction, abatement, set off or claim whatsoever, in legal tender of the jurisdiction in which the Lands are located, at the address of the Landlord set forth in this Lease, or to such other Person or at such other address as the Landlord may from time to time designate in writing. The Tenant's obligation to pay Rent shall survive the expiration or earlier termination of this Lease.

4.4 No Deduction or Set Off

The Tenant shall not under any circumstances be entitled to any deduction, abatement, compensation or set off whatsoever from the Rent payable hereunder, in respect of any amounts that the Tenant may claim to be entitled to from the Landlord unless the Landlord agrees in writing. All disputes with respect to amounts the Tenant wishes to claim from the Landlord shall be settled as a matter separate from the Tenant's obligation to pay Rent unless the Landlord agrees in writing.

4.5 Partial Month's Rent

If the Commencement Date is a day other than the first (1st) day of a calendar month, the instalment of Rent payable on the Commencement Date shall be that proportion of Rent which the number of days from the Commencement Date to the last day of the month in which the Commencement Date falls bears to three hundred sixty five (365) or three hundred and sixty-six (366) in the event of a leap year. If the Term ends on a day other than the last day of a calendar

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month, the instalment of Rent payable on the first day of the last calendar month of the Term shall be that proportion of Rent which the number of days from the first day of such last calendar month to the last day of the Term bears to three hundred sixty five (365) or three hundred and sixty-six (366) in the event of a leap year.

4.6 No Deemed Satisfaction and Interest Rate

No payment by the Tenant or receipt by the Landlord of a lesser amount than any instalment or payment of the Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any cheque or payment of Rent shall be deemed an accord and satisfaction. The Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such instalment or payment of Rent, or pursue any other remedies available to the Landlord. If any amount of Rent is in arrears it shall bear interest from the due date thereof to the date of payment, compounded monthly at the rate of fifteen (15%) percent per annum (the "**Interest Rate**").

4.7 Pre-Paid Rent

The Pre-Paid Rent is to be held without interest and applied by the Landlord upon receipt of same against Rent and Rental Taxes payable pursuant to Section 6.7 hereof, in respect of the first month's Rent payable under this lease, with the balance of the Pre-Paid Rent to be held by the Landlord as security for the performance by the Tenant of its covenants and obligations under this Lease. If an Event of Default occurs, the Landlord, at its option, may apply all or part of any yet to be applied Pre-Paid Rent towards the payment of any cost or expense which the Landlord may incur as a result of any such breach, without limiting or excluding any other right which the Landlord may have hereunder or pursuant to Applicable Law, and the Tenant will, upon demand, deliver such amount as is required to restore the Pre-Paid Rent to the original amount held by the Landlord prior to such application, and the Tenant's failure to do so within three (3) days after delivery of such demand to the Tenant constitutes an Event of Default under this Lease. Any Pre-Paid Rent remaining at the end of the Term shall be returned to the Tenant, provided that there is no Event of Default that is continuing. Notwithstanding anything contained in this Lease, in case of bankruptcy or insolvency of the Tenant, the Pre-Paid Rent shall be deemed to have been the Landlord's property from its date of delivery.

4.8 Transfer of Prepaid Rent

In the event of a sale, transfer or assignment of this Lease by the Landlord, the Landlord may transfer the Pre-Paid Rent, or so much thereof as shall then be remaining, to the purchaser, transferee or assignee, and thereupon the Landlord shall be freed and discharged from any further liability in respect of the Pre-Paid Rent.

ARTICLE V— TAXES

5.1 Landlord's Taxes

The Landlord shall pay Realty Taxes before delinquency (subject to participation by the Tenant by payment of Occupancy Costs pursuant to Section 5.8 hereof and excluding those taxes described in Sections 6.2 and 6.3 hereof), which are imposed, levied, assessed or charged by any Taxing Authority having jurisdiction and which are payable by the Landlord in respect of the Term upon or on account of the Commercial Component.

ARTICLE VI— UTILITIES

6.1 Utilities

The Tenant shall be solely responsible for and shall promptly pay all taxes and charges for water, gas, electricity, telephone and other public and private Utilities and services used or consumed in or in respect of the Leased Premises, and for all fittings, machines, apparatus or other things leased or purchased in respect thereof, and for all work or services performed by any corporation or commission in connection with such Utilities or services. The Tenant hereby acknowledges that hydro is separately metered and gas and water consumption within the Leased Premises is sub-metered and pre-billed separately. The Tenant further acknowledges and agrees that it may be required, on or prior to the Commencement Date, to enter into an (i) agreement with the respective distributors of such Utilities or (ii) assumption agreement with respect to any such existing agreement entered into by the Landlord with the respective distributors of such Utilities. The Tenant shall, at the Commencement Date and on or prior to the Expiry Date, and, if there has been an assignment or subletting, on the date of such assignment or subletting, notify the distributor of any change of tenant or termination of tenancy with respect to the Leased Premises.

6.2 General

The Tenant shall immediately advise the Landlord of any installations, appliances or machines used by the Tenant which consume or are likely to consume large amounts of electricity or other Utilities and, on request, shall promptly provide the Landlord with a list of all installations, appliances and machines used in the Leased Premises. The Tenant's use of any such Utilities shall not exceed the available capacity of the existing systems from time to time. The Tenant shall satisfy itself that the building standard Utilities supplied to the Leased Premises are sufficient for its purposes.

ARTICLE VII— USE OF UNIT

7.1 Use

The whole of the Leased Premises shall be used and occupied throughout the Term only for the Permitted Use. The Tenant shall be responsible for obtaining at its sole cost and expense all necessary approvals, licences and permits, including, but not limited to, zoning, development, building, occupancy, liquor and business approvals, licences and permits, for the Permitted Use of the Leased Premises and shall submit all applications for such approvals, licences and permits to the Landlord for its prior written consent (which consent, if the application pertains to the zoning applicable to the Development or may adversely affect the value or use of the Development or any part thereof may be arbitrarily withheld by the Landlord) prior to making application. Notwithstanding the Landlord's consent to an application, the Tenant shall indemnify and defend the Landlord and save it harmless from and against any and all claims incurred or suffered by the Landlord directly or indirectly arising out of the Tenant's application for, or failure to obtain such approvals, licences or permits or the resulting approvals, licences and permits with respect to the use, intended or otherwise, of the Leased Premises, whether such claims are in respect of the Leased Premises or in respect of the Development. The Landlord makes no representation or warranty whether or not necessary approvals can be obtained for the Permitted Use of the Leased Premises.

7.2 Character of Business

Without limiting Section 9.1, the Tenant shall not use or permit all or any portion of the Leased Premises to be used for:

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- (a) a store conducted in whole or in part for the sale of fire sale stock, second-hand goods or surplus articles, insurance salvage stock, bankruptcy stock or as an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting under the Lease), liquidation sale, "going out of business sale", bankruptcy sale, warehouse sale, pawn shop or flea market;
- (b) any operation in any line of merchandising or other business which is associated with any fraudulent or deceptive advertising or selling procedures or which, because of merchandise being sold or the merchandising or pricing methods adopted, in the opinion of the Landlord, tends to lower the character of the Commercial Component;
- (c) machines vending merchandise, services or entertainment unless expressly permitted in writing by the Landlord;
- (d) the sale, rental or display of materials that are pornographic in nature;
- (e) any unusual fire, explosive or dangerous hazards (including the storage, sale or display of explosives, firecrackers or fireworks);
- (f) any manufacturing, warehouse and/or storage facility;
- (g) a bowling alley, theatre, amusement arcade, bingo hall, premises for games of chance, and/or off track betting;
- (h) growing of marijuana plants;
- (i) operation of a marijuana clinic;
- (j) the sale of merchandise which is or may be used for the consumption of drugs, or tobacco or similar products contrary to law; and/or
- (k) any other noxious or offensive use, as determined by the Landlord in the Landlord's sole and absolute discretion.

7.3 Conduct of Tenant's Business

In the conduct by the Tenant of its business as described in Section 9.1 hereof, the Tenant shall:

- (a) open for business on the Commencement Date and operate its business in an active, continuous and diligent manner throughout the Term that is in keeping with the overall standard and nature of the Development as a first-class building;
- (b) supply and maintain or cause to be installed and maintained Utility services within the interior of the Leased Premises where the same are required for the proper operation thereof; and
- (c) keep the Leased Premises properly heated and air-conditioned as necessary and in any event in such manner as shall avoid the appropriation of heat or air-conditioning from any other part of the Commercial Component, maintain adequate lighting for the Leased Premises as necessary during the hours that the Leased Premises is open for business.

7.4 Discontinuance of Unacceptable Use

Any business, conduct or practice promulgated, carried on or maintained by the Tenant, whether through advertising or selling procedures or otherwise, which in the opinion of the Landlord, acting reasonably, may harm or tend to harm the business or reputation of the Landlord or reflect unfavourably on the Development, the Landlord or other tenants in the Development, or which may tend to confuse, mislead, deceive or be fraudulent to the public, shall be immediately discontinued by the Tenant at the request of the Landlord.

7.5 Compliance with Applicable Law

The Tenant covenants to comply with all present and future Applicable Laws, which affect the Tenant's use and occupancy of the Leased Premises or any Leasehold Improvements of the Tenant or any use by it of other parts of the Lands or Development or the making of any repairs, alterations, additions, changes, substitutions or improvements of or to the Leased Premises, and the regulations of any insurance underwriters in respect of the insurance maintained by the Landlord in respect of the Commercial Component, and carry out all modifications to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which may be required by any such Governmental Authorities, at its sole cost and expense.

7.6 Abandonment

Subject to the provisions of Section 9.1 hereof, the Tenant shall not abandon the Leased Premises at any time during the Term without the Landlord's prior written consent.

7.7 Nuisance

The Tenant shall not cause or maintain any nuisance in or about the Leased Premises, and shall keep the Leased Premises free of debris, rodents, vermin and anything of a dangerous, noxious or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat or noise. The Tenant shall indemnify, defend and hold the Landlord harmless from and against any and all claims, demands, losses, costs or damages, whether direct or consequential relating to disturbances caused to the quiet enjoyment of the Landlord or other tenant's or occupants in the Development resulting from the use of the Leased Premises, including as examples only, any odours, smells, rats or vermin. The Landlord acknowledges that the use of the Leased Premises for the Permitted Use shall be deemed not to be a nuisance and not to create a fire hazard, undue vibration, heat or noise, provided that the Tenant carries on such Permitted Use in compliance with this Lease and all Applicable Law. If the Tenant's garbage is of a deteriorating nature, or creating offensive odours, the Tenant shall utilize and maintain, at its cost, refrigerated facilities as required by the Landlord. The Tenant will not permit waste or garbage to be placed or accumulate within the Leased Premises or outside the Leased Premises.

7.8 Security

The Tenant shall take all reasonable security measures as are necessary to protect and safeguard the Leased Premises and its contents.

7.9 Pest Control

In order to maintain satisfactory and uniform pest control throughout the Commercial Component, the Tenant shall engage for the Leased Premises, at its sole cost and expense, a pest extermination contractor.

7.10 Cleaning

The Tenant shall, at regular intervals, cause the floors of the Leased Premises to be swept and cleaned, the furniture and the equipment of the Tenant to be cleaned, all garbage removed to the appropriate receptacles, and when necessary, the walls and windows of the Leased Premises to be cleaned, and to generally keep the Leased Premises in a neat and tidy condition, and in good order. The Landlord shall provide an area within the Development, to be accessed by the Tenant and its garbage contractor via the rear exterior access to the Development for the Tenant's recycling bins and wet garbage bins. The Landlord acknowledges that the Tenant will be removing its garbage and recycling from its Leased Premises via the exterior side door of the Leased Premises. The Landlord shall have the right to control and limit access to the back residential hallway, in its sole discretion, insofar as the transport of garbage and recycling materials are concerned.

9.11 Parking

Tenant confirms that there are only 8 parking spaces available at the Development for Tenant's use.

9.12 Continued Use in the Event of Insolvency or Bankruptcy

If the Tenant becomes insolvent or files a notice of intention to file a proposal to some or all of its creditors, or files for protection from its creditors, or a trustee in bankruptcy, liquidator or receiver is appointed, and if the Landlord has consented in writing to the occupancy of the Premises by such tenant, receiver, liquidator or trustee, the tenant, receiver, liquidator or trustee shall continue only the business operated by the Tenant from the Leased Premises in accordance with the provisions of this Lease signed by the Parties before the Commencement Date and in the same manner, with the same quality and type of inventory and on the same terms as that business was carried on prior to the insolvency, filing, receivership or bankruptcy. For certainty, in such situations, the tenant receiver or trustee may not bring merchandise onto the Premises for sale except on such terms and in such quantities as were usual and ordinary in the Tenant's business immediately prior to the insolvency, filing, receivership or bankruptcy. The provisions of this Section 9.12 may be waived in whole or in part by the Landlord, but such waiver may be unreasonably withheld or made subject to such conditions as the Landlord, in its sole discretion, may see fit.

ARTICLE VIII— SERVICES, MAINTENANCE, REPAIR AND ALTERATIONS BY LANDLORD

8.1 Operation of Development

During the Term, the Landlord shall operate and maintain the Development including, without limitation to, the Common Areas of the Development, the Tenant HVAC System, and the structural portions of the Leased Premises (but excluding the obligations of the Tenant as to the Leased Premises), in the manner as would a prudent landlord of a similar mixed-use development in a comparable area and shall do all things necessary or desirable to provide the Utilities, cleaning, maintenance, repairs, replacement, supervision, administration, management or other services and facilities, subject to any interruptions to Utility or other services during periods of repair or construction which are beyond the reasonable control of the Landlord.

8.2 Maintenance, Repair and Replacement

Subject to the provisions of Section 10.1 hereof, the Landlord shall operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Development and for provision of the Landlord's services under Section 10.1 hereof (except such as may be installed by or be the property of the Tenant), and shall be responsible for and shall maintain and repair the foundations, structure and roof of the Development, provided that:

- (a) if all or part of such systems, facilities and equipment are destroyed, damaged or impaired, the Landlord shall have a reasonable time in which to complete the necessary repair or replacement, and during that time shall be required only to maintain such services as are reasonably possible in the circumstances;
- (b) the Landlord may temporarily discontinue such services or any of them at such times as may be necessary due to causes beyond the reasonable control of the Landlord;
- (c) the Landlord shall use reasonable diligence in carrying out its obligations under this Section 10.2 and to the extent reasonably possible shall not affect access to or egress from the Leased Premises, but except as expressly provided otherwise in this Lease, there shall be no allowance to the Tenant by way of abatement or diminution of rent, or otherwise, by reason of inconvenience, annoyance or injury to the business arising from the happening of the event which gives rise to the need for any repairs, alterations, additions or improvements or from the making of any repairs, alterations, additions or improvements in or to any portion of the Development or the Leased Premises, or in and to the fixtures, appurtenances and equipment thereof;
- (d) no temporary reduction or discontinuance of such services under Section 10.2(a) and/or 10.2(b) hereof shall be construed as an eviction of the Tenant or (except as specifically provided in this Lease) release the Tenant from any obligation of the Tenant under this Lease; and
- (e) nothing contained herein shall derogate from the provisions of Article XVIII hereof.

Provided that notwithstanding the foregoing, the Landlord may slow down, interrupt, delay, or shut down any of the Utilities on account of repairs, maintenance or alterations to any equipment or other parts of the Development so long as where practical, it schedules such interruptions, delays, slowdowns, or stoppage so as to minimize any inconvenience to the Tenant. The Landlord shall not be held responsible for any direct or indirect damages, losses, or injuries caused to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any Utility or service to the Leased Premises regardless of whether the said interruption delay or shutdown to the Utilities were caused by the Landlord or a third party. If possible, the Landlord will give the Tenant at least two (2) days advance notice of any planned service interruption. The Tenant hereby acknowledges and agrees that all of the costs and/or expenses incurred by the Landlord in performing the tasks set out in this Section 10.2 shall form of Operating Expenses, unless otherwise expressly provided herein. The Landlord shall use all reasonable efforts at all times not to substantially interfere with Tenant's business operations or the public's access to the Leased Premises, except during the

making of temporary repairs or replacements to the Development or any part thereof, or for the purposes of complying with the requirements of any Governmental Authority.

8.3 Alterations by the Landlord

The Landlord may from time to time make repairs, replacements, changes, alterations or additions to the Leased Premises, the Common Areas or other parts of the Development as the Landlord determines are necessary or advisable, in its sole and absolute discretion. provided that in performing any repairs, replacements, changes, alterations and/or additions, the Landlord will at all times use reasonable commercial efforts to provide the Tenant with at least two (2) days advance written notice of any anticipated excessive noise or dust within the Development that may arise from the work described in this Section 10.5 that may have an impact on the Tenant's business operations within the Leased Premises, having regard to the Permitted Use.

8.4 Access by the Landlord

Subject to the provisions contained in Section 10.5 and otherwise subject to providing reasonable prior notice (except in the case of emergency, real or apprehended, when no such notice will be required), the Tenant shall permit the Landlord to enter the Leased Premises to examine, inspect, and show the Leased Premises to Persons wishing to purchase the Development, to provide services or make repairs, replacements, changes or alterations as set out in this Lease, and to take such steps, as the Landlord may deem necessary for the safety, improvement or preservation of the Leased Premises or the Development. No such entry shall constitute an eviction or entitle the Tenant to any abatement of Rent.

8.5 Notice of Letting and Inspection by Prospective Tenants

At any time within one hundred eighty (180) days prior to the expiry or sooner termination of this Lease:

- (a) The Landlord may place upon the Development signage indicating the Leased Premises is for rent, and the Tenant shall not remove or obscure such signage or permit the same to be removed or obscured, provided that such signage shall not interfere with the Tenant's signs for the Leased Premises; and
- (b) any prospective tenant or its representative may inspect the Leased Premises and all parts thereof after the Normal Business Hours, if accompanied by the Landlord or its agent.

8.6 Energy Conservation and Security Policies

The Landlord shall be deemed to have observed and performed those things required to be observed and performed pursuant to the terms of this Lease, including those relating to the provision of Utilities and services, if in doing so it acts in accordance with a directive, policy or request of a Governmental Authority serving the public interest in the field of energy conservation or security.

8.7 Landlord's Work

The Landlord shall be responsible, at its sole cost and expense, for providing all the work set out to be the Landlord's Work in Schedule "F" attached hereto. All other improvements to the Leased Premises constitute the Tenant's Work, and shall be performed at the sole expense of the Tenant in accordance with the terms of this Lease.

ARTICLE IX— MAINTENANCE, REPAIR, ALTERATIONS AND IMPROVEMENTS BY TENANT

9.1 Condition of Leased Premises

- (a) Except to the extent that the Landlord is specifically responsible therefor under this Lease and subject to the provisions of Article XVIII, the Tenant shall maintain the Leased Premises and all improvements therein in good order and condition and at its sole cost and expense, subject to reasonable wear and tear, including:
 - (i) all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus that supply any services to the Leased Premises only and that lie within or beyond the Leased Premises boundaries, specifically including:
 - (A) the Tenant HVAC System, subject only to Article X;
 - (B) the branch piping extending to the common pipe riders servicing the Leased Premises;
 - (C) all electrical receptacles, intercom and alarm controls (excluding only the cable servicing such controls), ventilation fan units, light fixtures lying within suspended ceilings and similar apparatus that supply any service to the Leased Premises only, regardless of whether same are installed or located within or beyond the boundaries of the Leased Premises;
 - (D) any branch piping extending to the common pipe riders but excluding the common pipe risers;
 - (E) all exterior doors and windows and any hardware (such as door and/or window handles, locks, hinges and peep holes) appurtenant thereto; and
 - (F) the entire sign band component contained within the Leased Premises boundaries and any wire or cable appurtenant to it;
 - (ii) the interior of the Leased Premises, the Leasehold Improvements within the Leased Premises or exclusively servicing the Leased Premises, the Trade Fixtures and any signage, or other fixtures, attachments or installations in any part of the Development, whether or not located in the Leased Premises permitted by this Lease to be installed by or on behalf of the Tenant provided that said fixtures, attachments or installations exclusively service the Leased Premises;
 - (iii) subject to Section 10.3, all work relating to heating, cooling, ventilation, exhaust, electrical distribution and life safety systems, including thermostatic controls, in or servicing the Leased Premises exclusively and are located within the Leased Premises (to the shut-off valve). Provided however, the Landlord may at its sole option upon prior written notice to the Tenant, elect to maintain and repair the heating, cooling, ventilation and exhaust systems in or servicing the Leased Premises exclusively, at the cost of the Tenant, and upon receipt of an invoice therefor from the Landlord, the Tenant shall pay the amount of the invoice, as Rent, concurrently with the payment of Occupancy Costs next payable. In the

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event the Landlord elects to maintain and repair the aforesaid heating, cooling, ventilation and exhaust systems, the Tenant will permit the Landlord access into the Leased Premises upon forty-eight (48) hours prior written notice to the Tenant and at a mutually convenient time thereto, and at any time and without prior written notice in the event of an emergency;

- (iv) cleaning window coverings and treatments and carpets at reasonable intervals as determined by the Tenant, acting reasonably;
 - (v) keeping the Leased Premises including glass store fronts in a clean and tidy condition, and not permit wastepaper, garbage, ashes, waste or objectionable material to accumulate thereon or in or about the Development, other than in areas designated by the Landlord. The Tenant shall retain any contractor(s) as may be required to dispose of garbage and recycling in accordance with Applicable Law. If a separate container/enclosure is not permitted due to site plan restrictions or other lawful requirements, the Tenant may use the Landlord's facilities and shall pay its share of the cost of such facilities as determined by the Landlord as part of Occupancy Costs, acting reasonably;
 - (vi) repairing all damage in the Leased Premises resulting from any misuse, excessive use or installation, alteration, or removal of Leasehold improvements, fixtures, furnishings or equipment by the Tenant or those for whom the Tenant is responsible at law; and
 - (vii) making repairs, replacements and alterations as needed, including those necessary to comply with the requirements of any Governmental Authority having jurisdiction, of all fixtures and items which at any time during the Term of this Lease are located or erected in or upon the Leased Premises (including but not limited to signs, the inside and the outside of the ground floor windows, partitions and doors, lighting, wiring, plumbing, and electrical fixtures), such repair and maintenance to be made by the Tenant when, where and so often as needed shall be, always excepting only:
 - (A) reasonable wear and tear, provided the state of repair does not affect the proper appearance, use and enjoyment of the Leased Premises and shall not be permitted to fall below the standard of a good state of repair; and
 - (B) repairs required to be made by the Landlord pursuant to Section 10.2 hereof.
- (b) Throughout the Term, the Tenant shall, at its sole cost and expense, maintain all Trade Fixtures and maintain and re-lamp all lighting fixtures. If the Tenant requires any electrical equipment which will overload the electrical facilities in the Leased Premises, the Tenant shall first submit to the Landlord plans and specifications for the work required to install and supply additional electrical equipment necessary to prevent overloading the electrical facilities in the Leased Premises, and obtain from the Landlord written approval to perform the same. All such work shall meet all governmental regulations, regulations of any other competent Governmental Authority, regulations of the Association of Insurance Underwriters and requirements as set down by the Landlord's insurers, and shall be at the sole cost

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and expense of the Tenant, and shall be carried out in a good and workmanlike manner and in accordance with this Lease.

9.2 Inspection, Entry and Notice

- (a) The Landlord, or its agents, may from time to time, upon at least two (2) days prior written notice (except in the case of emergency, real or apprehended, when no such notice will be required), enter the Leased Premises and inspect the state of maintenance, repair and decoration.
- (b) The Landlord shall give written notice to the Tenant requiring it to perform certain repairs in accordance with Section 11.1 hereof which are the Tenant's responsibility pursuant to the provisions of this Lease, and the Tenant shall rectify such repairs within the time period set out in Section 21.1(b) hereof.
- (c) If Tenant is not present to open and permit any entry into the Leased Premises when for any reason an entry shall be necessary only 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 thereof, and without affecting the obligations and covenants of this Lease.
- (d) Nothing in this Lease shall make the Landlord liable for any actions, notices or inspections as described in this Section 11.2, nor is the Landlord required to inspect the Leased Premises, give notice to the Tenant or carry out remedies on the Tenant's behalf, except as otherwise specifically provided in this Lease, nor is the Landlord under any obligation for the care, maintenance or repair of the Leased Premises, except as specifically provided in this Lease.

9.3 Failure to Maintain Leased Premises

If the Tenant fails to perform or commence to perform any obligation under this Lease including, without limitation, those set out in Sections 11.1 and 11.12 hereof, the Landlord may, without prejudice to its other rights set out herein or at law, enter the Leased Premises and perform such obligation without liability to the Landlord for any loss or damage to the Tenant thereby incurred and the Tenant shall pay the Landlord for the cost thereof, plus fifteen percent (15%) of such costs for overhead and supervision, within thirty (30) days of receipt of the Landlord's invoice therefor.

9.4 Alterations by the Tenant

- (a) The Tenant may from time to time at its own expense make changes, additions and improvements in the Leased Premises to better adapt the same to its business, provided that the Tenant obtains the Landlord's prior written consent to any such changes, additions or alterations, which consent shall (except as otherwise provided herein) not be unreasonably withheld, and that any such improvements, change, addition or improvement shall:
 - (i) comply with the requirements of the Landlord's insurer and any Governmental Authority having jurisdiction;
 - (ii) be made only by contractors that the Landlord has approved using detailed plans and specifications therefor that the Landlord has approved;
 - (iii) comply with the requirements set out in Schedule "F" attached hereto; and

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- (iv) with respect to changes, additions and improvements which may affect the structure of the Leased Premises or other portions of the Development, the base building systems and/or the Common Areas, or which relate to the heating, cooling, ventilation and exhaust systems for the Leased Premises, be made only with the prior written consent of the Landlord, which consent the Landlord may arbitrarily withhold; and
- (v) equal or exceed the then current standards for the Development.

The Tenant may, however, make any necessary minor internal improvements within the Leased Premises of a cosmetic nature which do not require a building permit, at the Tenant's own expense, without the Landlord's prior written consent and in compliance with all requirements of any Governmental Authority having jurisdiction.

- (b) If required by the Landlord, the Tenant shall deliver to the Landlord before commencement of any work related to such changes, additions and improvements in the Leased Premises as set out in Section 11.4(a)(iii), proof of workers' compensation and public liability and property damage insurance coverage in accordance with the provisions of Section 12.1 of this Lease.

9.5 Increase in Realty Taxes or Insurance

Any increase in Realty Taxes or fire or casualty insurance premiums for the Development attributable to such change, addition or improvement performed by the Tenant shall be borne by the Tenant, provided that the Landlord presents reasonable evidence to the Tenant that such increase is as a result of the Tenant's change, addition and/or improvement.

9.6 Work Done by the Landlord

- (a) In the event the Tenant requires any of the following work, it shall be carried out by the Landlord at the Tenant's sole expense pursuant to an agreement in writing:
 - (i) all approved work on the roof and to the exterior of the Development, including the installation of telecommunications equipment;
 - (ii) patching of Development standard fireproofing;
 - (iii) any drilling, cutting, coring and patching for conduit, pipe sleeves, chases, duct equipment, or openings in the floors, walls, columns or roofs of the Commercial Component and/or the Development which is approved by the Landlord; and
 - (iv) installation of approved modifications to the sprinkler system.
- (b) The Tenant shall pay the Landlord fifteen percent (15%) of the cost of any such work in Section 11.6(a) hereof as a fee for the Landlord's supervision and/or management of such work.

9.7 Trade Fixtures, Personal Property, Copyright and Trademark Rights

The Tenant may install in the Leased Premises its usual first class Trade Fixtures and personal property appropriate for the Tenant's business and the general character of the Development in a proper manner, provided that:

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- (a) no such installation shall interfere with or damage or impede access to the mechanical or electrical systems or the structure of the Development;
- (b) the charge for and the cost of any and all damages to the Development resulting from such installation will be paid by the Tenant;
- (c) such installation does not contravene the provisions of this Lease;
- (d) the Tenant will remove from the Leased Premises, immediately upon written notice from the Landlord, any safes, machinery, equipment, article or thing which has been installed by the Tenant, that by reason of its weight, size or use may, in the reasonable opinion of the Landlord, damage the Leased Premises and will not at any time overload the floors of the Leased Premises. If damage is caused to the Development or any part thereof by any machinery, equipment article or thing by overloading, or by any act, neglect or misuse on the part of the Tenant or any Person for whom the Tenant is responsible pursuant to Applicable Law, the Tenant shall forthwith repair the same; and
- (e) if the Tenant has paid the Rent hereby reserved, and performed the covenants herein contained and on its part to be performed, the Tenant shall have the right to remove its Trade Fixtures which shall include and be limited to proprietary items, tables, chairs, moveable equipment, small wares, signage and logos. The Tenant shall make good any damage or injury caused to the Leased Premises or the Development by reason of such removal, subject to reasonable wear and tear. The Tenant shall leave the Leased Premises in vacant, broom swept condition.

9.8 Construction Liens

The Tenant shall promptly pay all of its contractors and suppliers and shall do any and all things necessary so as to minimize the possibility of a lien attaching to the Lands pursuant to the CA and/or any other Applicable Law and should any such lien be registered, the Tenant shall discharge it within five (5) Business Days following the Tenant receiving notice thereof, provided however that the Tenant may contest the validity of any such lien and in so doing shall obtain an order of a court of competent jurisdiction (the "**Court**") discharging the lien from the title to the Lands by payment into Court. If the Tenant shall fail to discharge any lien as aforesaid, then in addition to any other right or remedy of the Landlord, the Landlord may, but it shall not be so obligated, discharge the lien by paying the amount claimed to be due into Court and the amount paid by the Landlord together with all costs and expenses including solicitor's fees (on a substantial indemnity basis) incurred for the discharge of the lien shall be due and payable by the Tenant to the Landlord as Additional Rent on demand.

9.9 Notify the Landlord

The Tenant covenants to immediately notify the Landlord of any defect, damage or malfunction affecting the Leased Premises or other parts of the Development of which the Tenant is aware.

9.10 Signage

Save and except as hereinafter set out, the Tenant shall not paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction on any part of the outside of the Development, nor shall the Tenant paint, display, inscribe, place or affix any signage on the outside of the Leased Premises or perimeter windows of the Leased Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. In addition to

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the foregoing, no exterior signage may be erected by the Tenant without the Landlord's prior written consent, which may not be arbitrarily withheld. In the event that the Landlord grants its consent to the installation by the Tenant of exterior or window signage, the Tenant shall be required to provide the Landlord with written evidence of (i) approval from all relevant Governmental Authorities having jurisdiction and (ii) compliance with all Applicable Laws prior to the installation or erection of any exterior or window signage by or on behalf of the Tenant. Any signage so consented to hereunder shall be hereinafter referred to as the "**Permitted Signage**". The Landlord agrees to cooperate and support any applications made by the Tenant for such Permitted Signage, at the Tenant's sole cost and expense. It is hereby understood and agreed that the Tenant shall be solely responsible for all costs and expenses related to the ongoing Utility, maintenance, repair, replacement, removal and other usual operating costs of the Permitted Signage throughout the Term, including, without limitation, any initial construction and/or capital costs relating thereto. All Permitted Signage shall be dignified in appearance and shall be removed by the Tenant on the Expiry Date or earlier termination of this Lease in accordance with the terms herein. The Tenant shall be responsible for repairing any damage caused by the installation and removal thereof. The Tenant shall indemnify the Landlord against all loss or damage caused to any Person or thing as the result of the placing or use of any Permitted Signage to the extent the Landlord bears any liability therefor. Notwithstanding anything contained herein to the contrary, the Tenant shall not, nor shall it permit its employees or agents to canvass, solicit, peddle or distribute handbills or other advertising matter or display any merchandise in or about the Development or outside of the Leased Premises, unless otherwise approved in writing by the Landlord, which approval may be arbitrarily withheld.

ARTICLE X— INSURANCE

10.1 Tenant's Insurance

The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect at all times throughout the Term the following insurance:

- (a) "all risks" insurance (including flood, earthquake and sewer back-up) upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Leased Premises or on the Lands or the Development, including, without limitation, stock-in-trade, furniture, equipment, partitions, Trade Fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time;
- (b) commercial general liability policy and property damage insurance, including personal liability, contractual liability, tenants' legal liability, plate glass insurance (if applicable), non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Leased Premises and the Common Elements, which coverage shall include the business operations conducted by the Tenant and any other Person within the Leased Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Five Million Dollars (\$5,000,000);
- (c) when applicable, broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement costs of the property outlined in Section 12.1(a) hereof, and of all boilers and machinery owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises or relating to or serving the Leased Premises;

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- (d) business interruption insurance in an amount sufficient to cover the Tenant's Base Rent and Additional Rent for a period of not less than twelve (12) months;
- (e) Tenant's legal liability insurance for the replacement cost of the Leased Premises; and
- (f) any other form of insurance as the Landlord may reasonably require from time to time in amounts and for insurance risks against which a prudent tenant would protect itself.

10.2 Policy Requirements

Each policy of insurance taken out by the Tenant in accordance with this Lease shall be taken out with reputable insurers, and shall be in such form and on such terms as are satisfactory to the Landlord acting reasonably, and each such policy shall name the Landlord and any others designated by the Landlord as additional named insured's and first loss payee, as their respective interests may appear, and each of such policies shall contain, in form satisfactory to the Landlord:

- (a) a standard mortgage clause;
- (b) a waiver by the insurer of any rights of subrogation or indemnity or any other claim over, to which such insurer might otherwise be entitled against the Landlord, its agents, employees or for whom the Landlord is responsible pursuant to Applicable Law;
- (c) an undertaking by the insurer to notify the Landlord and any mortgagee of which it has notice in writing not less than thirty (30) days prior to any proposed material change, cancellation or other termination thereof;
- (d) a provision that the Tenant's insurance is primary and shall not call into contribution any other insurance available to the Landlord; and
- (e) a severability of interests clause and a cross-liability clause, where applicable.

The Tenant shall be entitled to take out all insurance which may be required to be taken out by it under the insurance provisions of the Lease, under its blanket insurance policies as long as the Tenant's blanket insurance policies meet the insurance provisions of this Lease, from time to time in force, with such insurers and with such deductibles as are contained in the Tenant's said blanket insurance policies and for the purposes of the Lease, the Tenant shall be deemed to have met the insurance requirements under the Lease.

10.3 Proof of Insurance

The Tenant shall provide to the Landlord on demand satisfactory evidence that the policies of insurance required to be maintained by the Tenant in accordance with this Lease are in fact being maintained, which evidence shall be in the form of certificates of insurance, in form and content acceptable to the Landlord, acting reasonably.

10.4 Failure to Maintain

If the Tenant fails to take out or keep in force any insurance referred to in this Article XII and should the Tenant not rectify the situation within forty-eight (48) hours following receipt by the Tenant of written notice from the Landlord (stating, if the Landlord does not approve of such insurance, the reasons therefor), the Landlord shall have the right, without assuming any

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obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord together with a fifteen percent (15%) administration fee thereon shall be payable by the Tenant to the Landlord and shall be due on the first day of the next month following said payment by the Landlord without prejudice to any other rights and remedies of the Landlord under this Lease.

10.5 Increase in Insurance Premiums/Cancellation

The Tenant shall not do or permit anything to be done upon the Leased Premises that shall cause the premium rate of insurance on the Development and/or the Commercial Component to be increased. premium rate of insurance on the Development and/or the Commercial Component increased by reason of any use made of the Leased Premises, the Tenant shall pay to the Landlord on demand the amount of such premium increase. In the event of an actual or threatened cancellation of any insurance on the Development and/or the Commercial Component or any adverse change thereto by the insurer by reason of the use or occupation of the Leased Premises, and if the Tenant has failed to remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation or adverse change within twenty-four (24) hours after receipt of written notice thereof by the Landlord, then the Landlord may terminate this Lease by notice in writing to the Tenant or remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation or change, all at the reasonable cost of the Tenant to be paid forthwith on demand, and for such purposes the Landlord shall have the right to enter upon the Leased Premises without further notice.

10.6 Landlord's Insurance

The Landlord shall obtain such insurance in respect of the Development and its operations in respect thereof as it may determine in its sole and unfettered discretion. Notwithstanding that the Tenant shall be contributing to the Landlord's costs and premiums respecting any such insurance, the Tenant shall not have any insurable or other interest in any of the Landlord's insurance, and in any event, the Tenant shall not have any interest in, or any right to recover any proceeds under any of the Landlord's insurance policies.

10.7 Non-Liability for Loss, Injury or Damage

The Tenant acknowledges and agrees that the Landlord shall not be liable for (i) any death or injury arising from or out of any occurrence in, upon, at or relating to the Lands, the Development and/or the Commercial Component, (ii) damage to property of the Tenant or others located on the Leased Premises, (iii) 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 Development or from the water, steam or drainage pipes or plumbing works of the Development or from any other place or quarter, (iv) any damage caused by or attributable to the condition or arrangement of any electric or other wiring, (v) any damage caused by anything done or omitted to be done by the Landlord or by any other tenant of the Development, (vi) any claim or demand in connection with any injury, loss or damage to the Tenant, its agents, invitees or licensees, or to the property of the Tenant, its agents, invitees or licensees, where such injury, loss or damage arises out of the security services in force or lack thereof in the Development from time to time, and (vii) in any event, whether arising from the Landlord's negligence or otherwise, the Landlord shall not be liable for any indirect or consequential damages suffered by the Tenant. Without limiting the foregoing, the Tenant hereby releases the Landlord, and those for whom the Landlord is

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responsible pursuant to Applicable Law, from all losses, damages and claims of any kinds in respect of which the Tenant is required to maintain insurance or otherwise insured.

10.8 Indemnification of the Landlord

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 Leased Premises (save where caused by the gross negligence or wilful misconduct of the Landlord) or arising from the occupancy or use by the Tenant of the Leased Premises or the Commercial Component by the Tenant, its agents, contractors, employees, servants, licensees, concessionaires or invitees or occasioned wholly or in part by any act or omission of the Tenant, its agents, contractors, employees, servants, licensees or concessionaires whether on the Leased Premises, the Lands, the Development and/or the Commercial Component. In case the Landlord is made a party to any litigation commenced by or against the Tenant, the Tenant shall hold the Landlord harmless and shall pay all costs and legal fees (on a substantial indemnity basis) incurred or paid by the Landlord in respect of such litigation.

ARTICLE XI— ASSIGNMENT AND SUBLETTING

11.1 Assignment or Subletting

- (a) Save and except as hereinafter set out, the Tenant will not assign, transfer, sublet, part with or share possession or set over or permit the Leased Premises to be occupied or used by a licensee or concessionaire or otherwise by any act or deed permit the Leased Premises or any part of them to be assigned, transferred, set over or sublet (individually and collectively, a "**Transfer**") unto any Persons, firm, partnership or corporation whomsoever except with the consent of the Landlord, as set out in this Article XIII, which consent shall not be unreasonably withheld or unduly delayed if the Tenant has materially observed and performed all of the terms and conditions of this Lease on its part to be observed and performed and there is no Event of Default (it being acknowledged and agreed that any financial default is included in the definition of "materially"). If the Tenant desires to assign this Lease or sublet the Leased Premises or any portion thereof to a named third party (the "**Transferee**"), the Tenant shall first provide the Landlord with any information the Landlord may reasonably require (including a copy of the draft agreement to assign or sublet, evidence as to the responsibility, reputation, financial standing and business of the proposed Transferee, and a completed credit check application in the Landlord's form) together with a cheque payable to the Landlord in the sum of not less than One Thousand Five Hundred Dollars (\$1,500.00) (exclusive of harmonized sales tax), being the administration cost of responding to the Tenant's request for an assignment, or sublet, as the case may be. Notwithstanding anything to the contrary herein contained, the Landlord, in its sole and unfettered discretion, may arbitrarily withhold its consent to any assignment or sublet where the proposed use is inconsistent with the Permitted Use.
- (b) Without limiting the grounds upon which consent may be refused, the Landlord will not be deemed to be unreasonable in refusing consent when:

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- (i) the giving of such consent would place the Landlord in breach of any other tenant's lease in the Development;
- (ii) such consent is requested for a mortgage, charge, debenture (secured by floating charge or otherwise) or other encumbrance of, or in respect of, this Lease or the Leased Premises or any part of them;
- (iii) the proposed Transferee, in the reasonable opinion of the Landlord:
 - (A) does not have a history of successful business operation in the business to be conducted in the Leased Premises;
 - (B) does not have a good credit rating or sufficient net worth; and/or
 - (C) there is a history of default under other leases by the proposed Transferee or by companies or partnerships that the proposed Transferee was a principal shareholder of or a partner in at the time of the default;
- (iv) in the case of a Transfer to a subtenant of less than the entire Leased Premises, if such would result in a configuration which:
 - (A) would require access to be provided through space leased or held for lease to another tenant in the Development or improvements to be made outside of the Leased Premises; and/or
 - (B) would, in the sole opinion of the Landlord, be unreasonable to attempt to release to a third party;
- (v) the required information received from the Tenant or the proposed Transferee is not sufficient in the Landlord's reasonable opinion, to enable the Landlord to make a determination concerning the matters set out above (the Landlord agreeing to provide the Tenant with the basis underlying the Landlord's determination as regards the insufficiency of said information); and/or
- (vi) the use of the Leased Premises by the proposed Transferee, in the Landlord's opinion arrived at in good faith, could result in excessive use of the systems or services in the Development, be inconsistent with the image and standards of the Development or expose the occupants of the Development to risk of harm, damage or interference with their use and enjoyment thereof, or reduce the value of the Development.

11.2 Consent to Assignment or Subletting

Any Transfer to which the Landlord may consent or which may otherwise be permitted pursuant to Section 13.1 hereof will be conditional upon the proposed Transferee:

- (a) in the case of an assignment of this Lease, the Tenant, Transferee and Indemnifier executing and delivering an agreement (in the Landlord's form) to the Landlord agreeing to be bound by the terms of the Lease; and

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- (b) in the case of a sublease, the Tenant, Transferee and Indemnifier executing and delivering an agreement (in the Landlord's form) to the Landlord agreeing to be bound by the terms of the Lease as they relate to the subleased premises.

11.3 Improvements at the Tenant's Cost

In the event any sublease is made pursuant to this Article XIII, the Tenant shall bear the cost of all improvements (including, without limiting the generality of the foregoing, all demising walls, entrance doors, mechanical and electrical modifications) necessary to separate the area to be sublet from the remainder of the Leased Premises and the Tenant shall also be responsible for the removal of all improvements, (including, but not limited to, wiring), and restoring the Leased Premises to the condition they were in prior to the sublease if requested by the Landlord at the time it approves such alterations (if such approval is required) or at the expiry of any sublease agreement if the Tenant made such alterations without the Landlord's approval (if such approval is required).

11.4 Tenant's Obligations Continue

No assignment or disposition by the Tenant of this Lease or of any interest under this Lease shall relieve the Tenant, from the performance of its covenants, obligations or agreements under this Lease during the then current Term.

11.5 No Deemed Consent

The Landlord's consent to any Transfer shall not be effective unless given by the Landlord in writing, and no such consent shall be deemed or presumed by any act or omission of the Landlord other than consent in writing, nor shall any consent be deemed to be a consent to any future Transfer by the Tenant or by any Transferee. Without limiting the generality of the foregoing, the Landlord may collect Rent and any other amounts from any Transferee and apply the net amount collected to the Rent and other amounts payable pursuant to this Lease, and the collection or acceptance of such amounts shall not be deemed to be a waiver of the Landlord's rights under this Section 13.5 nor an acceptance of or consent to any such Transfer.

11.6 Subsequent Assignments

The Landlord's consent to an assignment, transfer or subletting (or use or occupation of the Leased Premises by any other Person) shall not be deemed to be consent to any subsequent assignment, transfer, subletting, use or occupation.

11.7 Change in Corporate Control

- (a) If the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of the Tenant shall result in changing the control of the Tenant such sale, assignment, transfer or other disposition shall be deemed a Transfer and shall be subject to all of the provisions of this Lease with respect to Transfers by the Tenant.
- (b) For the purpose of Section 13.7(a) hereof, "control" of any corporation shall be deemed to be vested in the Person or Persons owning more than fifty (50%) percent of the voting power for the election of the board of directors of such corporation. The provisions of Section 13.7(a) hereof shall not apply in respect of any initial public offering of securities or trading or issuance of securities listed on any recognized security exchange in Canada or the United States of America.

11.8 Unamended Lease Terms

If the Tenant receives the Landlord's prior written consent to a Transfer under the provisions of this Article XIII, the Tenant, the Landlord and the proposed Transferee specifically agree that notwithstanding anything to the contrary contained herein, all terms, covenants and conditions of this Lease shall remain as herein specified save and except for the provisions of this Lease relating to the use, business name and character of the business.

11.9 No Advertising

The Tenant shall not advertise the whole or any part of the Leased Premises or this Lease for the purpose of a Transfer and shall not print, publish, post, display or broadcast any notice or advertisement to that effect and shall not permit any broker or other Person to do any of the foregoing.

ARTICLE XII— SURRENDER

12.1 Possession

At the expiration or earlier termination of the Term, the Tenant shall peaceably surrender and yield up to the Landlord the Leased Premises and all Leasehold Improvements made, constructed, erected or installed in the Leased Premises in good and substantial repair and condition in accordance with its covenants to maintain and repair the Leased Premises. The Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for payment of Rent (or as otherwise directed by the Landlord), and shall inform the Landlord of all combinations of locks, safes and vaults, if any, in the Leased Premises.

12.2 Removal of Leasehold Improvements and Trade Fixtures

- (a) The Tenant shall, at its sole cost and expense, at the expiration or earlier termination of the Lease, at Landlord's option and direction, remove all Non-Standard Leasehold Improvements, fixtures (including all Trade Fixtures), equipment and personal property and restore the Leased Premises to Landlord's base building standard. Tenant shall repair and make good any damage to the Leased Premises or to the Development caused either in the installation or removal of Leasehold Improvements. Trade Fixtures, and Tenant's property. **"Non-Standard Leasehold Improvements"** shall include shall not be limited to the following: all wiring and cabling; non-standard ceiling treatments; and non-standard flooring treatments. Each time Tenant submits alteration plans to Landlord, Landlord shall, within ten (10) days of receipt of such plans, provide written notice to Tenant of any item that is determined by the Landlord as non-standard, and suggest materials or other Leasehold Improvements that Landlord designates as not non-standard. Tenant shall not be required to remove Leasehold Improvements suggested by Landlord as not non-standard in this manner. The determination of non-standard Leasehold Improvements shall be at the Landlord's discretion, acting reasonably, and the term **"Leasehold Improvements"** shall include both Non-Standard Leasehold Improvements and all other leasehold improvements.
- (b) Upon the expiration or earlier termination of the Term and at the Tenant's sole cost, the Tenant shall remove all of the Trade Fixtures (including signage), goods or chattels of any kind installed by it or on behalf of it and shall make good any damage caused by reason of the installation and removal of such Trade Fixtures,

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goods and/or chattels. Notwithstanding the foregoing, the Tenant shall not remove any Trade Fixtures, goods and/or chattels of any kind from the Leased Premises until all Rent and other money due by the Tenant to the Landlord is paid unless otherwise directed by the Landlord. Any removal of Trade Fixtures, goods and/or chattels and repairs required as a result of such removal, which is undertaken pursuant to this Section 14.2, shall be completed prior to the expiry of the Term.

12.3 Tenant's Failure to Remove and Repair

Should the Tenant fail to remove any Leasehold Improvements, Trade Fixtures, goods or chattels of any kind that it is required to be removed in accordance with the provisions of this Lease, from the Leased Premises or to repair the Leased Premises prior to the expiry or earlier termination of the Term of this Lease then such Leasehold Improvements, Trade Fixtures, goods and chattels shall be deemed to have been abandoned by the Tenant and the Landlord may, at its option, remove, appropriate, sell, destroy or otherwise dispose of same, without compensation of any kind whatsoever to the Tenant, and repair any damage caused to the Leased Premises by their removal at the Tenant's expense, all in accordance with Section 21.2(c) hereof.

12.4 Merger

The voluntary or other surrender of this Lease by the Tenant or the cancellation of this Lease by mutual agreement of the Tenant and the Landlord shall not constitute a merger, and shall at the Landlord's option terminate all or any subleases. The Landlord's option hereunder shall be exercised by notice to the Tenant and all known sublessees or subtenants in the Leased Premises or any part thereof.

12.5 Payments After Termination

No payments of money by the Tenant to the Landlord after the expiration or earlier termination of the Term or after giving of any notice (other than a demand for payment of money) by the Landlord to the Tenant, shall reinstate, continue or extend the Term or make ineffective any notice given to the Tenant prior to the payments of such money. After the service of notice or the commencement of a suit, or after final judgment granting the Landlord possession of the Leased Premises, the Landlord may receive and collect any sums of Rent due under this Lease, and the payment thereof shall not make ineffective any notice, or in any manner affect any pending suits or any judgment therefor obtained.

ARTICLE XIII— HOLDING OVER

13.1 Month to Month Tenancy

If, with or without the Landlord's prior written consent, the Tenant remains in possession of the Leased Premises after the expiration or other termination of the Term, with or without the consent of the Landlord and without any further written agreement, the Tenant shall be deemed to be occupying the Leased Premises on a month to month tenancy only, and the base monthly rental payable pursuant to Section 5.1 hereof shall be equal to 200% of the Base Rent payable by the Tenant in the last month of the Term or such other rental as is stated in such prior written consent, and such month to month tenancy may be terminated by the Landlord or the Tenant on the last day of any calendar month by delivery of at least thirty (30) days' advance written notice of termination to the other.

13.2 General

Any month-to-month tenancy hereunder shall be subject to all other terms and conditions of the Lease, except any right of renewal and nothing contained in this Article XV shall be construed to limit or impair any of the Landlord's rights of re-entry or eviction or constitute a waiver thereof.

ARTICLE XIV— RULES AND REGULATIONS

14.1 Purpose

The rules and regulations set forth in Schedule "C" attached hereto have been adopted by the Landlord for the safety, benefit and convenience of all tenants and other Persons in the Development. The rules and regulations may differentiate between different types of businesses in the Development, but the Landlord shall not discriminate against the Tenant in the establishment or enforcement of the rules and regulations. All such rules and regulations shall be deemed to be incorporated into and form part of this Lease, provided that if there is a conflict between such rules and regulations and the other provisions of this Lease, such other provisions of this Lease shall in all cases prevail.

14.2 Observance

The Tenant shall, at all times, comply with, and shall cause its employees, agents, licensees and invitees to comply with, such rules and regulations attached as Schedule "C" hereto and such further and other reasonable rules and regulations and amendments and changes thereto as may be made by the Landlord and notified to the Tenant by mailing a copy thereof to the Tenant. All such rules and regulations now or hereafter in force shall be read as forming part of this Lease, provided that if there is a conflict between such rules and regulations and the other provisions of this Lease, such other provisions of this Lease shall in all cases prevail.

14.3 Loading and Unloading

The delivery and shipping of merchandise, supplies, fixtures, and other materials or goods of whatsoever nature to or from the Leased Premises and all loading, unloading, and handling thereof shall be done only at such times, in such areas, by such means, and through such elevators, entrances, malls and corridors as are designated by the Landlord and in accordance with the rules and regulations set forth in Schedule "C" attached hereto, as may be amended from time to time. Notwithstanding anything in this agreement, including Schedule "C", Tenant shall be permitted to receive and dispatch deliveries from the exterior entrance at the side of the Premises at any time permitted by law, provided that the Tenant shall take all reasonable steps to ensure that said deliveries and usage of such access do not cause any disturbance of or nuisance to the tenants or occupants of the Development.

ARTICLE XV— EXPROPRIATION

15.1 Taking of Leased Premises

If during the Term or any renewal thereof all of the Leased Premises shall be taken for any public or quasi-public use under any Applicable Law or by right of expropriation, or purchases under threat of such taking, this Lease shall automatically terminate on the date on which the expropriating authority takes possession of the Leased Premises (the "**Date of Such Taking**").

15.2 Partial Taking of Development

- (a) If during the Term only part of the Development is taken or purchased as set out in Section 17.1 hereof, then:
 - (i) if in the reasonable opinion of the Landlord substantial alteration or reconstruction of the Development is necessary or desirable as a result thereof, whether or not the Leased Premises is or may be affected, the Landlord shall have the right to terminate this Lease by giving the Tenant at least ninety (90) days' written notice of such termination: and
 - (ii) if more than one third of the number of square feet in the Leased Premises is included in such taking or purchase, the Landlord and the Tenant shall each have the right to terminate this Lease by giving the other at least ninety (90) days' written notice thereof.
- (b) If either Party exercises its right of termination hereunder, this Lease shall terminate on the date stated in the notice, provided however, that no termination pursuant to notice hereunder may occur later than sixty (60) days after the Date of Such Taking.

15.3 Surrender

On any such date of termination under Sections 17.1 or 17.2 hereof, the Tenant shall immediately surrender to the Landlord the Leased Premises and all interest therein under this Lease, and if it fails to do so, the Landlord may re-enter and take possession of the Leased Premises and remove the Tenant therefrom, and the Rent shall abate on such date in respect of the portion taken. After such termination, and on notice from the Landlord stating the Rent then owing for the period prior to the termination date, the Tenant shall forthwith pay the Landlord such Rent.

15.4 Partial Taking of Leased Premises

If any portion of the Leased Premises (but less than the whole thereof) is so taken, and no rights of termination herein conferred are timely exercised, the Term of the Lease shall expire with respect to the portion so taken on the Date of Such Taking. In such event the Rent payable hereunder with respect to such portion so taken shall abate on such date, and the Rent thereafter payable with respect to the remainder not so taken shall be adjusted pro rata by the Landlord in order to account for the resulting reduction in the number of square feet in the Leased Premises.

15.5 Awards

Upon any such taking or purchase, the Landlord shall be entitled to receive and retain the entire award or consideration for the affected interest in the Lands and improvements, and the Tenant shall not have nor advance any claim against the Landlord for the value of its property or its leasehold estate or the unexpired Term, or for costs of removal or relocation, or business interruption expense or any other damages arising out of such taking or purchase. Nothing herein shall give the Landlord any interest in or preclude the Tenant from seeking and recovering on its own account from the condemning Governmental Authority any award or compensation attributable to the taking or purchase of the Tenant's improvements, chattels or Trade Fixtures, or the removal or relocation of its business. If any such award made or compensation paid to either Party specifically includes an award or amount for the other, the Party first receiving the same shall promptly account therefor to the other.

ARTICLE XVI— DAMAGE BY FIRE OR OTHER CASUALTY**16.1 Limited Damage to Leased Premises, Access or Services**

If during the Term, the Leased Premises or any part thereof, or other portions of the Development providing access to services essential to the Leased Premises, shall be destroyed or damaged by any hazard against which the Landlord is obligated to insure pursuant to the provisions of this Lease, the Landlord, if permitted by Applicable Law to do so, shall oversee with reasonable diligence the rebuilding, restoration and/or repair of the Leased Premises to base building standards or such access routes or service systems, as the case may be, in conformance with current Applicable Law to the extent of insurance proceeds received. For greater certainty, it is understood and agreed that, upon substantial completion of the Landlord's repair work, the Tenant shall repair or restore the Leasehold Improvements to the state existing prior to the destruction or damage and consistent with its obligations in to Section 11.1 hereof. In the event that damage to the Leased Premises or any part thereof or to other portions of the Development providing access or services essential to the Leased Premises is such that the Leased Premises cannot be occupied by the Tenant for a period of five (5) Business Days or more:

- (a) Rent payable by the Tenant shall abate from the date of such damage or destruction to the date of substantial completion of the rebuilding, restoration and/or repair of the Leased Premises by the Landlord as determined by the Architect or restoration of access or services, as the case may be; and
- (b) if less than all of the Leased Premises is destroyed or damaged as contemplated in this Section 18.1, Rent payable by the Tenant shall abate from the date of such damage or destruction to the date of substantial completion of the rebuilding, restoration and/or repair of the Leased Premises by the Landlord in the same proportion as the Rentable Area of the Leased Premises so damaged or destroyed is of the total Rentable Area of the Leased Premises.

16.2 Major Damage to Leased Premises

- (a) If all or part of the Leased Premises is rendered untenable by damage from fire or other casualty which, in the reasonable opinion of the Architect, cannot be substantially repaired under Applicable Law and governmental regulations within three hundred and sixty (360) days from the date of such casualty (employing normal construction methods without overtime or other premium), then the Landlord or the Tenant may elect to terminate this Lease as of the date of such casualty by written notice delivered to the other not more than ten (10) Business Days after receipt of the Architect's opinion, failing which the Landlord, as the case may be, according to the nature of the damage and their respective obligations under this Lease (including the original Landlord's Work and the Tenant's Work), shall oversee the repair of such damage with all reasonable diligence in the event that neither Party terminates the Lease.
- (b) Notwithstanding any other right of termination contained herein, if all or part of the Leased Premises shall be damaged or destroyed by any hazard against which the Landlord is obligated to insure pursuant to the provisions of this Lease, and if in the opinion of the Architect, given within thirty (30) days of the happening of said damage or destruction, such damage and/or destruction shall be incapable of being repaired or restored with reasonable diligence within nine (9) months after the occurrence of such damage or destruction, then the Landlord or the Tenant may, at its option, terminate this Lease by notice in writing to the other. If such

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notice is given under this Section 18.2, then this Lease shall terminate on the date of such notice and the Tenant shall immediately surrender the Leased Premises and all interest therein to the Landlord and Rent shall be apportioned and shall be payable by the Tenant only to the date of such damage or destruction and the Landlord may thereafter re-enter and repossess the Leased Premises. For greater certainty, it is understood and agreed that if the Landlord or the Tenant does not elect to terminate this Lease as aforesaid, upon substantial completion of the rebuilding, restoration and/or repair of the Leased Premises by the Landlord, the Tenant shall repair or restore the Leasehold Improvements to the state existing prior to the destruction or damage and consistent with its obligations pursuant to Section 11.1 hereof and in accordance with the Tenant's then current layout of its other locations, at the Tenant's sole option.

16.3 Major Damage to Development

If, during the Term of this Lease or any renewal thereof, "substantial damage" (which for the purposes hereof shall mean damage to fifty percent (50%) or more of the Commercial Component) occurs to the Development, then the Landlord may, by notice in writing to the Tenant, elect either to oversee the repair or repair, as applicable, such damage or destruction (including any such demolition and reconstruction as the Architect may recommend in the overall interests of the Development) or to terminate this Lease, in which event the Tenant shall deliver up possession of the Leased Premises to the Landlord within thirty (30) days after delivery of the notice of termination, and Rent shall be apportioned and paid to the date upon which possession has been delivered up.

16.4 Limitation on Landlord's Liability

Except as expressly provided in this Lease, there shall be no reduction of Rent and the Landlord shall have no liability to the Tenant by reason of any injury to or interference with the Tenant's business or property arising from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom in or to any portion of the Development.

ARTICLE XVII— TRANSFERS BY LANDLORD

17.1 Sale, Conveyance and Assignment

Nothing in this Lease shall restrict the right of the Landlord to sell, convey, assign or otherwise deal with the Development, subject only to the rights of the Tenant under this Lease.

17.2 Effect of Sale, Conveyance or Assignment

A sale, conveyance or assignment of the Development shall operate to release the Landlord of liability to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord, from after the effective date thereof, upon all of the covenants, terms and conditions of this Lease, express or implied, except as such may relate to the period prior to such effective date. This Lease shall not be affected by any such sale, conveyance or assignment, and the Tenant shall attorn to the Landlord's successor in interest thereunder.

17.3 Subordination

This Lease is and shall be subject and subordinate in all respects to any and all mortgages and security interests now or hereafter placed on the Development, and to all renewals, modifications, consolidations, replacements and extensions thereof. The Tenant shall postpone and subordinate its rights under this Lease to any mortgage or mortgages, or any lien resulting from any other

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method of financing or refinancing, now or hereafter in force against the Development 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. Notwithstanding the foregoing, the subordination of this Lease to a mortgagee which would otherwise have priority over this Lease shall be subject to the condition precedent that the Landlord obtain from the mortgagee a non-disturbance agreement in registerable form which provides that in the event of any foreclosure, sale under a power of sale, or the exercise of any other remedy pursuant to any such mortgage, the Tenant's use, possession and enjoyment of the Leased Premises shall not be disturbed and this Lease shall continue in full force and effect so long as the Tenant is not in default hereunder.

17.4 Attornment

If proceedings are brought for foreclosure, or if there is exercise of the power of sale or if there is an entry into possession of the Development or any part thereof pursuant to any mortgage, charge, deed of trust or any lien resulting from any other method of financing or refinancing made by the Landlord covering the Leased Premises and/or the Development, the Tenant shall attorn to the mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser upon any such foreclosure or sale and recognize such mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser as the Landlord under this Lease.

17.5 Effect of Attornment

Upon such attornment, this Lease shall continue in full force and effect as a direct lease between the mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser and the Tenant, upon all of the same terms, conditions and covenants as are set out in the Lease.

ARTICLE XVIII— NOTICES, ACKNOWLEDGEMENTS, AUTHORITIES FOR ACTION

18.1 Notices

Any notice from one Party to the other hereunder shall be in writing and shall be deemed duly served if delivered personally to a responsible employee of the Party being served or if delivered by courier addressed to the Landlord or the Tenant at the address or addresses for such Party set forth in Sections 1.1 and 1.2 hereof. Any notice shall be deemed to have been given at the time of personal delivery. Either Party shall have the right to designate by notice, in the manner above set forth, a different address to which notices are to be delivered.

18.2 Acknowledgement

The Tenant shall at any time and from time to time upon not less than ten (10) Business Days' prior written notice from the Landlord, acknowledge and deliver a written statement, certifying:

- (a) that this Lease is in full force and effect, subject only to such modification (if any) as may be set out therein;
- (b) that the Tenant is in possession of the Leased Premises and paying Rent as provided in this Lease;
- (c) the dates (if any) to which Rent is paid in advance;
- (d) that there are not, to the Tenant's knowledge any uncured Events of Default on the part of the Landlord hereunder, or specifying such Events of Default if any are claimed; and

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- (e) such other matters as may be reasonably requested by the Landlord or its mortgagee.

Any such statement may be relied upon by the Person to whom such statement is addressed.

18.3 Authorities for Action

The Landlord may act in any matter provided for herein by its property manager and any other Person who shall from time to time be designated by the Landlord by notice to the Tenant. The Tenant shall designate in writing one or more Persons to act on its behalf in any matter provided for herein and may from time to time change, by notice to the Landlord, such designation.

ARTICLE XIX— DEFAULT

19.1 Events of Default

Any of the following constitutes an “Event of Default” under this Lease, as is hereby defined accordingly:

- (a) the Tenant has failed to pay, when due, any Rent or Rental Taxes, from time to time, or any part thereof for a period of five (5) consecutive days following its due date, regardless of whether demand for payment has been made by the Landlord or not;
- (b) the Tenant has breached any of its obligations in this Lease, other than the obligation to pay Rent or Rental Taxes, and, if such breach is capable of being remedied and is not otherwise listed in this Section 21.1, after notice in writing from the Landlord:
 - (i) the Tenant fails to remedy or commence to take any action to remedy and such breach within fifteen (15) days (or such shorter period as may be provided in this Lease); or
 - (ii) if such breach cannot reasonably be remedied within fifteen (15) days or such shorter period, the Tenant fails to commence to remedy such breach within such fifteen (15) days or shorter period or thereafter fails to proceed diligently and continuously to remedy such breach;
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any Applicable Law for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings are commenced for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager, or a Person acting in a similar capacity is appointed with respect to the business or assets of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a sale, assignment or other transfer approved by the Landlord;
- (f) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within ten (10) days after the date of such taking;

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- (g) the Tenant makes a Transfer other than in compliance with the provisions of this Lease or fails to continuously operate in accordance with this Lease;
- (h) the Tenant abandons or attempts to abandon the Leased Premises;
- (i) the Tenant moves or commences, attempts or threatens to move its Trade Fixtures, goods, chattels and/or equipment out of the Leased Premises, other than in the routine course of its business;
- (j) the Tenant has committed any act or neglected to do anything with the result that a construction lien or other encumbrance is registered against the Leased Premises and/or the Development;
- (k) any insurance policy covering any part of the Lands, the Development, and/or the Commercial Component is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any action or omission by the Tenant or any Person for whom it is legally responsible; and/or
- (l) the Leased Premises or any portion thereof shall, without the prior written consent of the Landlord, be used or occupied by any other Persons for any purpose other than that for which they were leased or occupied or by any Persons whose occupancy is prohibited by this Lease.

19.2 Default and Remedies

if and whenever an Event of Default occurs, then without prejudice to any other rights which it has pursuant to this Lease or pursuant to Applicable Law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Leased Premises and repossess them and, in either case, enjoy them as of its former estate, and the Landlord may remove all Persons and property from the Leased Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;
- (b) to enter the Leased Premises as agent of the Tenant and to relet the Leased Premises for whatever length, and on such terms as the Landlord in its sole and unfettered discretion may determine and to receive the rent therefore and as agent of the Tenant to take possession of any property of the Tenant on the Leased Premises, to store such property at the expense and risk of the Tenant or to sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant; to make alterations to the Leased Premises to facilitate their reletting; and to apply the proceeds of any such sale or reletting first, to the payment of any expenses incurred by the Landlord with respect to any such reletting or sale second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it becomes due and payable; provided that the Tenant shall remain liable for any deficiency to the Landlord;
- (c) to remedy or attempt to remedy any Event of Default of the Tenant under this Lease for the account of the Tenant and to enter upon the Leased Premises for such purposes; and no notice of the Landlord's intention to remedy or attempt to

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remedy such Event of Default need be given the Tenant unless expressly required by this Lease; and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such Event of Default and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith;

- (d) to recover from the Tenant all damages, reasonable costs and expenses incurred by the Landlord as a result of any Event of Default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Leased Premises;
- (e) to recover from the Tenant the full amount of the current month's Rent together with the next three (3) months' instalments of Rent, all of which shall accrue on a day to day basis and shall immediately become due and payable as accelerated rent; and/or
- (f) to suspend the supply to the Leased Premises of any benefit or service furnished by the Landlord, except utilities.

19.3 Distress

Notwithstanding any provision of this Lease or any provision of Applicable Law, none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

19.4 Security Interest

- (a) The Tenant hereby grants to the Landlord a security interest (in this section called the "**Security Interest**") in all of the Tenant's personal property of every kind, including, without limitation, all goods, chattels, trade fixtures, furniture, equipment, inventory, stock-in-trade, chattel paper, accounts, instruments, money, documents of title, supplies, securities, accounts receivable, book debts and intangibles (in this section collectively called the "**Collateral**") which are or may at any time hereafter be on the Leased Premises from time to time, to secure the payment of all Rent and the fulfilment of all other obligations of the Tenant under this Lease. The parties agree that the Security Interest shall attach to the Collateral immediately upon the Tenant acquiring any rights in the Collateral from time to time. Except for the Security Interest, the Tenant will keep the Collateral free and clear of all other security interests and encumbrances. The Tenant acknowledges and agrees that this section is intended to constitute a security agreement as defined in the *Personal Property Security Act* (Ontario). This security agreement is separate from and shall survive the termination, expiry or disclaimer of this Lease.
- (b) Upon the occurrence of an Event of Default, the Landlord, by itself or by a receiver or any replacement thereof appointed in writing by the Landlord, may take possession of the Collateral and will have all the rights of a secured party under the *Personal Property Security Act* (Ontario). The Landlord shall be entitled to

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recover the reasonable expenses of retaking, holding, repairing, processing, repairing for disposition and disposing of the Collateral and all other reasonable expenses, including, without limitation, legal costs, incurred by the Landlord. The Landlord may exercise any rights provided by this Section on the Leased Premises and for such purpose may lock the Leased Premises, change any locks on the Leased Premises and by any means exclude the Tenant from all or any part of the Leased Premises and the Landlord shall not thereby be terminating this Lease in the absence of express written notice terminating this Lease.

- (c) This Security Interest shall not be deemed to have been satisfied, discharged or redeemed by reason of the Tenant not being indebted to the Landlord at any time or from time to time and no payments shall reduce the amount secured by this Security Interest except to the extent expressly approved by the Landlord in writing.
- (d) This Security Interest and the rights of the Landlord under this Section are additional security to the Landlord to secure the Tenant's obligations under this Lease and are given in addition to and may be exercised by the Landlord without prejudice to any other rights of the Landlord under this Lease or at law, including, without limitation, the Landlord's right of distress.

19.5 Costs

The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord.

19.6 Remedies Cumulative

The rights and remedies given to the Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by the Landlord shall be deemed to be in exclusion of any other rights or remedies provided in this Lease or pursuant to Applicable Law or in equity.

19.7 Landlord May Follow Chattels

In case of removal by the Tenant of the goods or chattels of the Tenant from the Leased Premises, the Landlord may follow the same for thirty (30) days in the same manner as is provided for in the *Commercial Tenancies Act* (Ontario), or any other Applicable Law.

19.8 Acceptance of Rent Non-Waiver

No receipt of money by the Landlord from the Tenant after the termination of this Lease shall reinstate, continue or extend the Term, or affect any notice previously given 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 Leased Premises by proper action, proceeding 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 action, proceeding or other remedy, or after a final order or judgment for possession of the Leased Premises, the Landlord may demand, receive and collect any money due, or thereafter falling due without in any manner affecting such notice, action, proceeding, order or judgment; and any and all such money so

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collected shall be deemed payments on account of the use and occupation of the Leased Premises or at the election of the Landlord on account of the Tenant's liability hereunder.

ARTICLE XX— HAZARDOUS SUBSTANCES

20.1 Tenant's Covenants

The Tenant covenants and agrees that it, its agents, suppliers and customers, will:

- (a) not bring or allow any Hazardous Substance to be brought onto the Lands, the Development, the Commercial Component and/or the Leased Premises except in compliance with Environmental Law;
- (b) comply at all times with Environmental Law as it affects the Lands, the Development, the Commercial Component and/or the Leased Premises;
- (c) give notice to the Landlord of the presence at any time during the Term of any Hazardous Substance on the Lands, the Development, the Commercial Component and/or the Leased Premises together with such information which the Tenant has in its possession concerning such Hazardous Substance and its presence on the Lands, the Development, the Commercial Component and/or the Leased Premises as the Landlord may reasonably require;
- (d) give notice to the Landlord of any occurrence of which the Tenant is aware or ought to have been aware which might give rise to a duty under Environmental Law by either the Tenant or the Landlord with respect to the presence of any Hazardous Substance on the Lands, the Development, the Commercial Component and/or the Leased Premises including, without limitation, notice of any discharge, release, leak, spill or escape into the environment of any Hazardous Substance at, to or from the Lands, the Development, the Commercial Component and/or the Leased Premises;
- (e) at the Landlord's request, provide the Landlord with copies of all of the Tenant's records with respect to the presence, storage, handling and disposal of Hazardous Substances on the Lands, the Development, the Commercial Component and/or the Leased Premises (including tank measurements, policies and procedures and evidence of compliance therewith);
- (f) in any case where the Tenant has given notice as to the presence of a Hazardous Substance at the Lands, the Development, the Commercial Component and/or the Leased Premises, where such Hazardous Substance has been brought to the Lands, the Development, the Commercial Component and/or the Leased Premises by the Tenant or the Lands, the Development, the Commercial Component and/or the Leased Premises, to commission an environmental audit at the Tenant's expense when required by the Landlord to do so;
- (g) comply with any investigative, remedial or precautionary measures required under Environmental Law or as reasonably required by the Landlord, be fully and completely liable to the Landlord for any and all investigation, clean up, remediation, restoration or monitoring costs or any costs incurred to comply with Environmental Law or any request by the Landlord that such measures be taken as a result of Hazardous Substances brought to the Lands, the Development, the

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Commercial Component and/or the Leased Premises by the Tenant or any Person for whom the Tenant is responsible pursuant to Applicable Law; and

- (h) protect, indemnify and save each of the Landlord and its directors, officers, employees, agents, successors and assigns completely harmless from and against any Environmental Claim, directly or indirectly incurred, sustained or suffered by or asserted against the Landlord and/or its directors, officers, employees, agents, successors and assigns caused by or attributable to, either directly or indirectly, any act or omission of the Tenant and/or any Person for whom the Tenant is responsible pursuant to Applicable Law.

20.2 Inquiries by the Landlord

The Tenant hereby authorizes the Landlord to make inquiries from time to time of any Governmental Authority with respect to the Tenant's compliance with the Environmental Law at the Leased Premises, and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information. The Landlord or its agent may inspect the Leased Premises from time to time upon reasonable notice to the Tenant, in order to verify the Tenant's compliance with the Environmental Law and the requirements of this Lease respecting Hazardous Substances. If the Landlord reasonably suspects that the Tenant is in breach of any of its covenants herein, the Landlord and its agent shall be entitled to conduct an environmental audit immediately, and the Tenant shall provide access to the Landlord and its agent for the purpose of conducting an environmental audit. Such environmental audit shall be at the Landlord's expense (but if it is determined as a result of such audit that the Tenant is in breach of any of its environmental covenants in this Article XXII, then the Tenant shall reimburse the Landlord for the costs of such audit), and the Tenant shall forthwith remedy any problems identified by the environmental audit, and shall ensure that it complies with all of its covenants herein.

20.3 Ownership of Hazardous Substances

In the event that the Tenant shall bring or create upon the Lands, the Development, the Commercial Component and/or the Leased Premises any Hazardous Substance or if the conduct of the Tenant's business shall cause there to be any Hazardous Substance upon the Lands, the Development, the Commercial Component and/or the Leased Premises then, notwithstanding any rule of Applicable Law to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Lands, the Development, the Commercial Component and/or the Leased Premises and notwithstanding the expiry or earlier termination of this Lease.

20.4 Landlord's Remedies upon Default

Upon the occurrence of an Event of Default under this Article XXII and in addition to the rights and remedies set forth elsewhere in this Lease, the Landlord shall be entitled to the following rights and remedies:

- (a) after providing the Tenant with fifteen (15) days prior written notice of the Event of Default, and the Tenant fails or neglects to cure, at the Landlord's option, to terminate this Lease; and/or
- (b) to recover any and all damages associated with the Event of Default, including without limitation, in addition to any rights reserved or available to the Landlord in

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respect of an early termination of this Lease, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by the Landlord and other tenants of the Lands, the Development and/or the Commercial Component, any and all damages and claims asserted by third parties and the Landlord's solicitors' fees (on a substantial indemnity basis) and costs.

ARTICLE XXI— MISCELLANEOUS

21.1 Relationship of Parties

Nothing contained in this Lease shall create any relationship between the Parties hereto other than that of landlord and tenant, and it is acknowledged and agreed that the Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or a joint venturer or a member of a joint or common enterprise with the Tenant.

21.2 Applicable Law and Construction

This Lease unless otherwise agreed by the Parties shall be governed by and construed under the Applicable Law of the Province of Ontario and the Parties attorn to the exclusive jurisdiction of the Courts of such Province. The provisions of this Lease shall be construed as a whole according to their common meaning and not strictly for or against the Landlord or the Tenant. The words the Landlord and the Tenant shall include the plural as well as the singular. Time is of the essence of the Lease and each of its provisions. The captions of the Articles are included for convenience only, and shall have no effect upon the construction or interpretation of this Lease.

21.3 Entire Agreement

There are no terms and conditions which at the date of execution of this Lease are additional or supplemental to those set out on the pages of this Lease, and in the Schedules which are attached hereto and which form part of this Lease. This Lease contains the entire agreement between the Parties hereto with respect to the subject matter of this Lease. The Tenant acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except such as is set out in this Lease. Delivery of an unsigned copy of this Lease to the Tenant, notwithstanding insertion of all particulars in the Lease and presentation of any cheque or acceptance of any monies by the Landlord given by the Tenant as a deposit, does not constitute an offer by the Landlord, and no contractual or other legal right shall be created between the Parties hereto until this Lease has been fully executed by both Parties and delivery has been made of an executed copy of this Lease to the Tenant.

21.4 Amendment or Modification

Unless otherwise specifically provided in the Lease, no amendment, modification, or supplement to this Lease shall be valid or binding unless set out in writing and executed by the Parties hereto in the same manner as the execution of this Lease.

21.5 Construed Covenants and Severability

All of the provisions of the Lease are to be construed as covenants and agreements as though the word importing such covenants and agreements were used in each separate Article hereof. Should any provision of this Lease be or become invalid, void, illegal or not enforceable, it shall be considered separate and severable from the Lease and the remaining provisions shall remain in force and be binding upon the Parties hereto as though such provision had not been included.

21.6 No Implied Surrender or Waiver

No provisions of this Lease shall be deemed to have been waived by the Landlord or the Tenant, unless such waiver is in writing signed by the waiving Party. The waiver of a breach of any term or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a breach, from having all the force and effect of any original breach. Failure of either Party to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right. The Landlord's receipt of Rent with knowledge of a breach by the Tenant of any term or condition of the Lease shall not be deemed a waiver of such term or condition. No act or thing done by the Landlord or those for whom the Landlord is responsible pursuant to Applicable Law during the Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid, unless in writing and signed by the Landlord. The delivery of keys to any of the Landlord's agents shall not operate as a termination of the Lease or a surrender of the Leased Premises. No payment by the Tenant, or receipt by the Landlord, of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque, or payment as Rent, be deemed an accord and satisfaction, and the Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy available to the Landlord.

21.7 Joint/Several Liability

In the event there is more than one entity or Person which or who are Parties constituting the Tenant under this Lease, the obligation imposed upon the Tenant under this Lease shall be joint and several.

21.8 Registration

The Tenant shall not register this Lease or any notice thereof on the title to the Lands. If the Tenant wishes to register a short form of this Lease against the title to the Development only, the Tenant shall deliver the form of short form of Lease to the Landlord for its prior approval and shall pay the Landlord's reasonable third party costs incurred in connection with the review of same. Provided that any such short form of this Lease shall not disclose any business terms and/or confidential terms herein, as the Landlord shall determine in its sole and unfettered discretion. The Tenant agrees that it will, at its sole expense, discharge and withdraw from title any such registration within thirty (30) days after the expiration or sooner termination of this Lease. If such registration is not discharged and withdrawn during the aforesaid time, the Landlord shall have the right and is hereby appointed by the Tenant as its agent to prepare, execute and register such documentation as is required to discharge and withdraw any such registration.

21.9 Unavoidable Delay

Save and except for the obligations of the Tenant as set forth in this Lease to pay Base Rent, Additional Rent, increased rent or other monies to the Landlord, if either Party shall fail to meet its obligations hereunder within the time prescribed and such failure shall be caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such Party hereunder and neither Party shall be entitled to compensation from the other for any inconvenience, nuisance or discomfort thereby occasioned, provided that the Party claiming Force Majeure shall use reasonable diligence to put itself in a position to carry out its obligations hereunder. For clarity, the Tenant shall not be excused from paying Base Rent, Additional Rent, increased rent or other monies to the Landlord as a result of the current Covid-19 pandemic,

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notwithstanding any restrictions and/or shut-downs placed upon the Tenant's business operations by any Governmental Authority with jurisdiction.

21.10 Planning Act

This Lease is conditional upon compliance with the *Planning Act* (Ontario) and any amendments thereto.

21.11 Survival of Obligations

If the Tenant has committed an Event of Default hereunder in respect of any of its obligations under this Lease beyond any applicable notice and cure periods at the time this Lease expires or is terminated:

- (a) the Tenant shall remain fully liable for the performance of such obligations; and
- (b) all of the Landlord's rights and remedies in respect of such failure shall remain in full force and effect;

all of which shall be deemed to have survived such expiration or termination of this Lease. Every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease or in any of the Tenant's or the Landlord's insurance policies shall survive the expiration or termination of this Lease.

21.12 No Option

The submission of this Lease for examination does not constitute a reservation of or option to lease for the Leased Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by the Landlord and the Tenant.

21.13 References to Statutes

Any reference to a statute in this Lease includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.

21.14 Confidentiality

The Parties hereby covenant and agree that the contents, terms and conditions of this Lease shall be kept strictly confidential. Accordingly, it is understood that the Tenant and the Landlord and their partners, officers, directors, employees and attorneys, will not, without the prior written consent of the other Party, intentionally or voluntarily disclose, by public filings or otherwise, the terms of this to any third party that is not engaged by either Party for its normal business purposes, without the written consent of the other Party, save and except for the legal and financial advisors of the Tenant and the Landlord.

21.15 Counterparts and Execution

This Lease may be executed by the Parties in separate counterparts each of which when so executed and delivered to all of the Parties shall be deemed to be and shall be read as a single Lease among the Parties. In addition, execution of this Lease by any of the Parties may be evidenced by way of a faxed and/or electronic transmission of such Party's signature (which signature may be by separate counterpart), or a photocopy of such faxed and/or electronic

21.16 Interpretation

21.17 Binding Effect

IN WITNESS WHEREOF the Landlord and the Tenant have executed this Lease as of the date first above written.

Per:

Name: Kasey Wong

Title: ASO

I/We have the authority to bind the corporation

Per:

Name: Jack Provan

Title:

I have the authority to bind the corporation

SCHEDULE "A" — OPERATING EXPENSES

In this Lease, "**Operating Expenses**" means the aggregate amount of all expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord determined for each Landlord Fiscal Year on either a cash or an accrual basis in the complete maintenance, repair, replacement, operation and management of the Development, including the Common Areas, without duplication, excluding any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development and do not in any way benefit the Leased Premises or the Common Areas. Operating Expenses include, without limitation, the following:

- (a) the total annual net costs and expenses of any insurance placed and maintained by the Landlord pursuant;
- (b) landscaping, gardening, snow removal, pest control, garbage and waste collection and disposal and cleaning, janitorial and similar services supplied to the Development, if any, including without limitation, the cost of all supplies;
- (c) the total of the costs and amounts paid for all Utilities supplied to the Development, but not including any Utilities consumed within the residential units in the Development;
- (d) the total of the costs and amounts paid (i) for the operation, maintenance, alteration, repair, replacement and/or maintenance of the Development, or any part thereof, and the systems, facilities and equipment servicing the Development including, without limitation, the cost of the rental of any equipment and signs and the cost of supplies used in connection therewith, and (ii) to observe and comply with the requirements of any Governmental Authority in respect of the Development, which costs and amounts so paid may be expensed in the year incurred, or at the Landlord's option amortized over a reasonable period as determined by the Landlord acting reasonably in accordance with GAAP, excluding any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development;
- (e) policing, security, supervision and traffic control;
- (f) salaries and benefits of on-site personnel including supervisory personnel, to the extent that the personnel are employed to carry out the day to day maintenance and operation of the Development, including contributions and premiums towards reasonable fringe benefits, unemployment and workers' compensation insurance, workers' wage protection program contributions, pension plan contributions and similar premiums and contributions and the cost of all uniforms of employees and agents or the cost of all independent contractors engaged in performing any of the above activities;
- (g) the cost of operating, servicing, maintaining, repairing (including major repairs), improving, replacing and acquiring all machinery, equipment, systems, facilities and fixtures used in or kept on or about the Development which by their nature require periodic replacement or substantial replacement, including, without limitation, heating, ventilating and air conditioning systems and equipment, plumbing, electrical (including light fixtures, pylon signs and sound equipment and

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systems), garbage room equipment and machinery, communication and transportation equipment and systems (including escalators and elevators), fire alarms, signs, locks and key equipment and systems, doors, glass, maintenance, janitorial and cleaning equipment and machinery), excluding any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development;

- (h) the cost of providing janitorial services, window cleaning and garbage removal and the cost of supplies and materials for all Common Areas and the non-residential portions of the Development;
- (i) cost of sewer charges;
- (j) except as otherwise provided in this Lease, depreciation for all structures, improvements, furnishing, fixtures, equipment, machinery, facilities, systems, and property which is part of or installed in or used in connection with the Development, including those which, by their nature require periodic or substantial repair or replacement, or which are installed or used primarily to reduce the cost or consumption of other items included in Operating Expenses (whether or not such costs in respect of the same are, in fact, reduced), unless they are pursuant to this Schedule "B" charged fully in the Landlord Fiscal Year in which they are incurred in accordance with GAAP;
- (k) intentionally deleted;
- (l) a charge for interest calculated at a rate per annum equal to two (2%) percent above the prime interest rate of the Landlord's bank, as determined from time to time, on the undepreciated or unamortized part of the costs referred to in Sections (d), (g) and (j) of this Schedule "A" which have not been recovered by the Landlord during the Landlord Fiscal Year or any prior Landlord Fiscal Year;
- (m) legal, audit, consulting, engineering and accounting fees and disbursements incurred in connection with the operation and maintenance of the Development, including the determination and apportionment of Operating Expenses, excluding any legal, audit, consulting, engineering and accounting fees and disbursements paid or incurred by the Landlord that are only for the benefit of one or more residential units in the Development; and
- (n) intentionally deleted.

Notwithstanding anything contained herein to the contrary, Operating Expenses shall not include:

- (o) any income tax or taxes, large corporation taxes, business taxes and capital taxes (other than those business taxes payable by the Tenant) unrecoverable taxes or land transfer taxes or any other similar taxes personal to the Landlord and/or imposed or levied by any Governmental Authority whatsoever, penalties relating to late payment of taxes (provided such penalties are not a result of the Tenant's actions or omissions) and any principal, interest or other carrying charges on mortgages, debt or other financing or refinancing with respect to the Development or the Development lands;

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- (p) all fines, suits, claims, demands, actions, costs, charges and expenses of any kind or nature for which the Landlord is or may become liable by reason of any neglect or wilful act or omission on the part of the Landlord or those for whom it is in law responsible or by reason of any breach, violation or non- performance by the Landlord of any of the covenants, terms or provisions contained in this Lease or with other tenants' leases;
- (q) all costs or expenses arising from or occasioned by the default or negligence of any person other than the Tenant or those for whom the Tenant is responsible for at law;
- (r) all costs incurred by the Landlord as a result of a default or dispute by any tenant in enforcing the terms of their respective leases;
- (s) all costs and expenses which are considered to be capital expenses in their totality in the year incurred (provided it being agreed that capital costs and expenses may be included in Operating Expenses so long as they shall be amortized over the useful life of the item replaced on a straight-line basis as determined by the Landlord and the amortized portion of such costs and expenses, together with interest calculated at the annual rate of interest charged by the Landlord's bank from time to time, together with two percent (2%) on the unamortized portion, shall be included in each year's Operating Expenses);
- (t) all contributions by the Landlord to any merchants' association, advertising fund and/or promotion fund;
- (u) all costs or expenses which relate to leasing individual rentable premises in the Development, including leasing commissions, legal costs, tenant inducements, tenant allowances and the cost of rental advertising;
- (v) all costs of repairs or replacements of structural portions of the Development (including without limitation, the structural portion of the roof deck of the Development and the Leased Premises) save and except where caused by or resulting from any act or omission of the Tenant or those for whom it is responsible at law;
- (w) HST paid by the Landlord for which the Landlord has received or is entitled to receive an input tax credit;
- (x) all costs or expenses incurred in enforcing the collection of rents or any other obligations or dispute of any other tenants in the Development;
- (y) any increase in insurance premiums resulting from the business carried on by other tenants in the Development or any repairs and replacements paid for by the Landlord's insurance or any item that the Landlord is compensated by insurance; and
- (z) any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development.

SCHEDULE "B" — RULES AND REGULATIONS

The Tenant shall observe the following rules and regulations (as amended, modified or supplemented from time to time by the Landlord as provided in this Lease):

1. In these rules and regulations, "**Tenant**" includes the employees, servants, agents, invitees (while in the Leased Premises), subtenants and licensees of the Tenant and others over whom the Tenant can reasonably be expected to exercise its control.
2. Smoking is not permitted in the Development or in any area outside of the Development and on the Lands which has not been designated by the Landlord as a smoking area.
3. The sidewalks, driveways, entrances, vestibules, passages, corridors, halls, elevators and stairways shall not be encumbered or obstructed by the Tenant or be used by it for any purpose other than for entrance from the Leased Premises.
4. The Tenant shall not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area or entrances. The Tenant shall ensure that deliveries of materials and supplies to the Leased Premises are made through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in or to the Development caused by any Person making such deliveries. The Tenant shall also abide by loading and unloading requirements including weight restrictions, as may be introduced from time to time by the Landlord. The Landlord reserves the right to remove at the expense and risk of the owner a vehicle not using designated "vehicle standing" areas.
5. The Landlord may from time to time adopt appropriate systems and procedures for the security and safety of the Development, including restricting access other than those set out in previously in the Lease and the Tenant shall comply with the Landlord's reasonable requirements relating thereto.
6. No additional locks or bolts of any kind shall be placed by the Tenant upon any of the doors or windows of the Leased Premises, nor shall any changes whatsoever be made to existing locks or the mechanics thereof except by the Landlord at its option. The Tenant shall not permit any duplicate keys to be made, but additional keys as reasonably required shall be supplied by the Landlord when requested by the Tenant in writing and at the Tenant's sole expense. Upon termination of this Lease, the Tenant shall surrender to the Landlord all keys to the Leased Premises and any other parts of the Development together with any parking passes or other devices permitting entry.
7. The Tenant shall not mount or place an antenna or aerial of any nature on the exterior of the Leased Premises and/or the Development or, unless it first obtains the Landlord's prior written consent, as applicable.
8. The handling and disposal of garbage shall comply with arrangements prescribed by the Landlord from time to time. No disproportionate or abnormal quantity of waste material shall be allowed to accumulate in the Leased Premises and the cost of removal or clearing of quantities in excess of such normally provided service may be charged to the Tenant.
9. The Tenant shall participate in all recycling, energy reduction and water conservation programs as may be determined by the Landlord from time to time.

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10. The Tenant shall carry out repairs, maintenance, alterations and improvements in the Leased Premises only during times agreed to in advance by the Landlord and in a manner which will not interfere with the rights of other tenants of the Development.
11. The Tenant shall provide adequate facilities and means to prevent the soiling of walls, floors and carpets in and abutting the Leased Premises whether by shoes, overshoes, any acts or omissions of the Tenant or otherwise.
12. The Tenant shall not mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Leased Premises and the Development except with the prior written consent of the Landlord and as it may direct. If the Tenant desires electrical or communications connections, the Landlord reserves the right to direct qualified Persons as to where and how the wires should be introduced, and without such directions, no boring or cutting for wires will be permitted. No gas pipe or electric wire will be permitted which has not been ordered or authorized in writing by the Landlord.
13. The Tenant shall not attempt any repairs, alterations or modifications to the heating, air conditioning or plumbing systems, save and except as otherwise expressly permitted pursuant to the provisions of this Lease.
14. The Tenant shall not use the plumbing facilities for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the Tenant shall pay the cost of any breakage, stoppage or damage resulting from a violation of this provision.
15. The Leased Premises shall not be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes as permitted under this Lease:
16. The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling on the Lands.
17. The Tenant shall not, in the Leased Premises and/or the Development, bring in, take out, position, construct, install or move anything liable to injure or destroy any part of the Development including, without limiting the generality of the foregoing, any safe, business machinery or other heavy machinery or equipment without the prior written consent of the Landlord. In giving such consent, the Landlord shall have the right, in its sole and unfettered discretion, to prescribe the permitted weight and the position thereof, and the use and design of planks, skids or platforms required to distribute the weight thereof. All damage done to the Development by moving or using any such heavy equipment or machinery shall be repaired at the expense of the Tenant. The moving of all heavy equipment or other machinery shall occur only by prior arrangement with the Landlord.
18. The Tenant shall not bring any animals into the Development and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Development, except in areas designated from time to time by the Landlord for such purposes.
19. The Tenant shall ensure that furniture, equipment and fixtures being moved into or out of the Leased Premises are moved through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord, and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in the Development caused thereby.

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20. The Tenant shall not use any means of heating or cooling the Leased Premises other than that provided by or specifically otherwise permitted in writing by the Landlord.
21. No material or equipment which could cause undue loads on electrical circuits or undue vibration, heat or noise or which could interfere with wireless or other communications shall be brought into the Development or used therein by or on behalf of the Tenant and no machinery or tools of any kind shall be affixed to or used in the Leased Premises without the prior written consent of the Landlord.
22. The Tenant shall not do or permit anything to be done in the Leased Premises or bring or keep anything therein which will in any way increase the risk of fire, or obstruct or interfere with the rights of other tenants of the Development, or violate or act at variance with the Applicable Law relating to fires or with the regulations of the local fire department or the board of health. The Tenant shall cooperate in any fire drills and shall participate in all fire prevention or safety programs designated by the Landlord.
23. No flammable oils or other flammable, dangerous or explosive materials shall be kept or permitted to be kept in the Leased Premises.
24. Intentionally deleted.
25. The Tenant shall give immediate notice to the Landlord in case of fire or accident in the Leased Premises and/or in the Development. or in case of defects therein or in any fixtures or equipment thereof, notwithstanding the Landlord may have no obligations with respect thereto.
26. The Tenant shall provide its own janitorial service to the Leased Premises at its sole cost and expense, subject to the Landlord's prior written approval of the Tenant's janitor or janitorial contractor, such approval not to be unreasonably withheld.
27. The Tenant shall not make any use of the Leased Premises which could result in risk or injury to any Person, nor shall the Leased Premises be used any immoral or criminal purpose.
28. The Tenant shall not perform any acts or carry on any practice which may damage the Common Areas or be a nuisance to any other tenant of the Development.
29. The Landlord shall be entitled, during such time as there is a health emergency, to require all occupants of the Development to comply with reasonable measures imposed in respect thereof by the Landlord, including health screening, the use of hand washing and other sanitation products directly related to the management of the health emergency, attendance at mandatory training sessions, and the use of additional protective clothing by all tenants, invitees or visitors of the Development such as protective barriers, gloves and masks.
30. During a health emergency, the Landlord shall be entitled to specify modes of ingress and egress from and to the Lands for tenants generally, or for specific tenants, occupants or invitees who may have a heightened risk of either exposure to a health threat or a heightened risk of transfer of unhealthy condition to other tenants, invitees or visitors of the Development.
31. The Tenant shall take reasonable steps to inform the Landlord of any outbreak of an infectious disease amongst its employees where such outbreak may impact the health and/or safety of other tenants of the Development or lead to a health emergency.

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32. The Tenant shall participate in any fire or health emergency drill that the Landlord shall choose to implement, acting reasonably, in preparation for a fire or health emergency.
33. The Tenant shall not keep or display any merchandise on or otherwise obstruct sidewalks or other areas adjacent to the Leased Premises.
34. The Tenant and the Tenant's employees and agents shall not solicit business in the Common Areas, nor shall the Tenant distribute any handbills or other advertising material in the Common Areas or any other part of the Development.

SCHEDULE "C" — OPTION TO RENEW

It is understood and agreed between the Landlord and the Tenant as follows:

1. Provided that an Event of Default has not been committed by the Tenant, the Tenant shall have the option of renewing this lease for two (2) further terms of five (5) years each (each, a "**Renewal Term**"), with no further right of renewal after the second Renewal Term on the same terms and conditions as the Lease, except for any inducement, improvement allowance, fixturing or free rent period provided to the Tenant, and except for this option to renew. The Tenant shall be required to give written notice to the Landlord of its intention to renew the Lease (the "**Renewal Notice**") not more than twelve (12) months and not less than three (3) months prior to the Expiry Date or expiration of the then-current Renewal Term, as applicable. The Base Rent for each of the first (1st) and second (2nd) Renewal Term shall be at the fair market rent for premises of similar size, quality and geographical area at the time of renewal, and in the event that the Landlord and the Tenant fail to agree upon the amount of the Base Rent for the first (1st) or second (2nd) Renewal Term at least sixty (60) days prior to the commencement of the first (1st) and second (2nd) Renewal Term, the determination of the rental shall be subject to arbitration as set out hereinafter, provided, however, that the Base Rent for the first (1st) Renewal Term shall not be less than the Base Rent payable under this Lease for the initial Term and the Base Rent for the second (2nd) Renewal Term shall not be less than the Base Rent payable under this Lease for the first (1st) Renewal Term.
2. If any disputes arise between either Party hereto as to fair market rent which cannot be settled in accordance with the provisions of paragraph 1 hereof, arbitration proceedings shall be commenced by the Initiating Party who shall clearly identify the question to be submitted to arbitration and the following principles shall apply to such arbitration:
 - (a) upon notice from the Initiating Party (the "**Initiating Party**") to the responding party, the Parties shall meet and shall attempt to appoint a single arbitrator. If the Parties are unable to agree on a single arbitrator, then either Party shall be entitled to apply under the *Arbitration Act, 1991* (Ontario) for the appointment of an arbitrator. Neither Party shall nominate an arbitrator to act hereunder unless such Person is a qualified by education and/or training to pass upon the particular question in dispute and is independent of the Initiating Party;
 - (b) the arbitrator so chosen shall proceed immediately to hear and determine the question or questions in dispute. The decision and reasons therefor of the arbitrator shall be made within fifteen (15) Business Days after the appointment of the arbitrator, subject to any reasonable delay due to unforeseen circumstances. Notwithstanding the foregoing, in the event that the arbitrator fails to make a decision within fifteen (15) Business Days after his appointment, then either Party may elect to have a new arbitrator or arbitrators chosen in like manner as if none had previously been selected;
 - (c) the decision and reasons therefor of the arbitrator shall be drawn up in writing and signed by the arbitrator and shall be final and binding upon the Parties as to any question or questions so submitted to arbitration and the Parties shall be bound by such decision and perform the terms and conditions thereof;
 - (d) the compensation and expenses of the arbitrator (unless otherwise determined by the arbitrator at the request of either Party) shall be paid equally by each Party;

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- (e) neither Party shall be deemed to be in default of any matter being arbitrated until fourteen (14) Business Days after the decision of the arbitrator is delivered to each Party hereto provided that:
 - (i) if the decision of the arbitrator is capable of being complied with by payment of money by either Party, such payments shall bear interest at the Interest Rate from the date payable pursuant to the terms of this Lease to and including the date of actual repayment, such interest to be calculated and payable monthly with interest on overdue interest at the Interest Rate;
 - (ii) if the decision of the arbitrator is not capable of being complied with by payment of money and if a period of more than fourteen (14) Business Days is reasonably required to remedy such default then the Party required to remedy such default shall not be deemed to be in default so long as such Party commences to remedy the same and prosecutes the same to completion diligently, expeditiously and continuously; and
 - (iii) the arbitrator shall be entitled to award interest and grant injunctive relief;
- (f) until a decision of the arbitrator has been rendered, the Tenant shall continue to pay Base Rent at the same rental rate paid under this Lease for the initial Term and the Base Rent paid under this Lease for the first (1st) Renewal Term, as applicable, and Base Rent adjustments shall be paid as set out in Subparagraph 2(e).

SCHEDULE "D" — TENANT'S WORK AND GUIDELINES

1. Definitions:

For the purpose of this Lease, and except as specified in the Lease:

- (a) the term "**Landlord's Work**" shall mean finishing the Leased Premises in a manner and only to the extent set out in Schedule "E" attached hereto; and
- (b) the term "**Tenant's Work**" shall mean the work described as Tenant's Work in this Schedule "E" to this Lease and all work other than the Landlord's Work required to be done to complete the Leased Premises for occupancy by the Tenant to meet all building code requirements and Applicable Law. The Tenant's Work shall not be undertaken or commenced by the Tenant until:
 - (i) all permits necessary for the installation of the Tenant's Leasehold Improvements and approval have been obtained by the Tenant from applicable municipal and other government departments, prior to the commencement of the installation by the Tenant, and copies provided to the Landlord;
 - (ii) a certificate of insurance has been provided to the Landlord showing that a valid insurance policy is in place naming the Landlord as an additional insured for minimum general liability of no less than Five Million Dollars (\$5,000,000); and
 - (iii) proper documentation has been provided by the Tenant to the Landlord verifying that provisions have been made by the Tenant for payment in full of all costs of the Tenant's Work.

2. Installation of Leasehold Improvements and Fixtures:

- (a) All Leasehold Improvements to the Leased Premises shall conform to the quality standards of the Development. The Tenant shall use an Architect and other necessary consultants who may be required from time to time, to design and prepare working drawings and specifications of the Tenant's Work and shall submit same for the Landlord's prior written approval.
- (b) All work including changes to the structure or the systems employed in the Development necessitated by the Tenant's Work shall be first approved by the Landlord.
- (c) The preparation of all design and working drawings and specifications relating to completion of the Leased Premises for occupation by the Tenant and the calling of tenders and letting of contracts relating to the Tenant's Work and the supervision and completion of the Tenant's Work and payment therefore shall be the responsibility of the Tenant.
- (d) Approvals must be obtained by the Tenant for its work from the municipal building department and all Governmental Authorities having jurisdiction and the Tenant must submit evidence of these approvals to the Landlord before commencing work and post such approvals on the job site prior to the commencement of the work. The Tenant shall be responsible for payment of all fees and charges incurred in obtaining such approvals to the Landlord before commencing work. The Tenant

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shall be responsible for payment of all fees and charges incurred in obtaining such approvals and for obtaining an occupancy permit prior to opening.

- (e) All Tenant's Work required by the Tenant to complete the Leased Premises for occupancy shall be carried out with good workmanship and shall not be in contravention of the codes or regulations of any Governmental Authority having jurisdiction.
- (f) Before commencing any work, the Tenant shall furnish the Landlord with written proof of all contractors' comprehensive general liability insurance for limits not less than those to be maintained by the Tenant under the Lease. The Landlord shall be named as an additional named insured in the Tenant's insurance policy.
- (g) Before commencing any work, the Tenant must furnish the Landlord with written proof of all contractors' Workplace Safety and Insurance Board clearances as well as a list of all trades, which must be approved by the Landlord. All contractors shall abide by all Workplace Safety and Insurance Board rules and regulations on site.
- (h) The Tenant shall at all times keep the Leased Premises and all other areas clear of waste materials and refuse caused by itself, its suppliers, its contractors or by their work.
- (i) The Landlord may require the Tenant to clean up on a daily basis and be entitled to clean up at the Tenant's expense if the Tenant shall not comply with the Landlord's reasonable requirements.
- (j) All Tenant's Work including the delivery, storage and removal of materials shall be subject to the reasonable supervision of the Landlord and shall be performed in accordance with any reasonable conditions or regulations imposed by the Landlord including, without limitation, payment on demand of a reasonable fee of the Landlord for such supervision and adherence to all building rules and regulations, the Landlord confirming, however, that no such fee shall be payable by the Tenant in respect of the Tenant's Work to be carried out during, the Fixturing Period.
- (k) In no event shall the Tenant alter or interfere with window coverings (if any) or other light control device (if any) installed in the Development. Window coverings must be bagged or otherwise protected during construction at the Tenant's cost.
- (l) The Landlord may require that the Landlord's contractors and sub-contractors be engaged for any mechanical or electrical work, work conducted on the roof or the fire and sprinkler systems, or other work which may be under warranty.
- (m) No locks shall be installed on the entrance doors or in any doors in the Leased Premises that are not keyed to the Development master key system.
- (n) The Landlord shall not in any way be responsible for or liable with regard to any work carried out or any materials left or installed in the Leased Premises and shall be reimbursed for any additional cost and expense caused which may be occasioned to it by reason thereof and for any delays which may be directly or indirectly caused by the Tenant or its contractor.
- (o) Any damages caused by the Tenant, the contractors or subtrades employed on the work to any of the structures or the systems employed in the Development or to any property of the Landlord or of other tenants, shall be repaired by the

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Landlord's contractor to the satisfaction of the Landlord and the Landlord may recover the costs incurred from the Tenant plus a fifteen percent (15%) administration fee on account of supervision.

- (p) If the Tenant's contractor neglects to carry out the work properly or fails to perform any work required by or in accordance with the approved plans and specifications, the Landlord, after thirty (30) days' written notice to the Tenant may, without prejudice to any right or remedy, complete the work, remedy the default or make good any deficiencies and recover the costs incurred from the Tenant.
- (q) The Tenant shall maintain and keep within the Leased Premises at all times during construction and the Term, a suitable portable fire extinguisher for Class A, B and C fires.
- (r) The Tenant shall perform its work expeditiously and efficiently and shall complete the same within the period stipulated in this Lease subject only to circumstances over which the Tenant has no control and which by the exercise of due diligence could not have been avoided.
- (s) On completion of the Tenant's Work, the Tenant shall forthwith furnish to the Landlord a statutory declaration in a form provided by the Landlord standing that there are no construction or builders' liens outstanding against the Leased Premises or the Development on account of the Tenant's Work and that all accounts for work, service and materials have been paid in full with respect to all of the Tenant's Work, together with evidence in writing satisfactory to the Landlord that all assessments under the *Workplace Safety and Insurance Act* (Ontario) have been paid.
- (t) The Tenant shall not suffer or permit any construction or builders' liens or other liens for work, labour, services or materials to be filed against or attached to the Development or any other portion of the Development. The Tenant agrees that if any builders' lien is filed, as aforesaid as a result of its occupancy or possession, the Tenant shall have the lien removed within fifteen (15) Business Days of becoming aware of such lien. This includes, but shall not be limited to, payment of money into Court and/or any other remedy which would result in the lien being removed from the title to the Lands forthwith.
- (u) No work shall be commenced by the Tenant until all drawings and specifications have been approved in writing by the Landlord and until the Tenant has secured approval and permits from all Governmental Authorities having jurisdiction and submitted proof of same to the Landlord. In this regard, the Landlord will provide its approval of the Tenant's drawing and specifications or advise that such approval shall not be granted, as applicable, within ten (10) days of receipt of such drawings and specifications from the Tenant. The Tenant shall complete all work in a good and workmanlike manner, and in strict accordance with the drawings and specifications approved by the Landlord. The Tenant agrees to indemnify and save the Landlord harmless from any and all loss, damage or injury which may result from the Tenant's activities in the Leased Premises or the Development in completing the Leased Premises as aforesaid. The Tenant acknowledges and agrees that there may be inconvenience associated with completing either the Landlord's Work or the Tenant's Work.

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- (v) If the Tenant does not comply with the provisions of the Lease or any other agreement relative to the construction or occupation of the Leased Premises, including, without limitation, this Schedule "D", the Landlord, in addition to and not in lieu or by other rights or remedies, shall have the right in its sole and unfettered discretion to declare and treat the Tenant's non-compliance as an Event of Default under the Lease and exercise any right available under the provisions of the Lease, including the right of termination (subject to delivering notice of such Event of Default and an opportunity to cure as set out in this Lease).
- (w) The Tenant shall ensure that in undertaking any work to the Leased Premises including, without limitation, the installation of Leasehold Improvements, access to the systems, facilities and equipment serving the Leased Premises shall not be unreasonably impeded either temporarily or permanently.

3. Additional Tenant's Work Requirements:

The following provisions shall apply in respect of the Tenant's Work and shall take precedence, to the extent required, in the event that any of the following contradict the provisions of Section 2 of this Schedule "D":

- (a) Without in any way limiting its construction obligations in respect of Tenant's Work, the Tenant shall provide for an ecology system for its kitchen exhaust and grease traps, and will require Landlord's approval of the termination point and direction of such exhaust and traps. Further, upon the Landlord's request, the Tenant shall, at its sole cost, implement any additional odour mitigation methods which the Landlord, acting reasonably requires, including, without limitation, creating a negative air pressure within the Leased Premises and/or purchasing air purification and/or air curtain systems. The Parties hereby expressly agree that Landlord's exercise or non-exercise of its right to review or approve all of Tenant's plans in no way constitutes: (i) an acceptance or approval by Landlord of the Leased Premises' construction and the steps taken to prevent odours, smells, rats or vermin originating from the Leased Premises from affecting the other areas of the Development; or (ii) a waiver or renunciation by the Landlord of its rights as otherwise set forth herein. Tenant shall construct the Leased Premises in accordance with the approved plans and specifications and use the garbage holding area and otherwise comply with the Lease with respect to the treatment and disposal of garbage and creation of odours. Any default by Tenant in respect of its obligations set forth in this Section shall entitle Landlord to exercise its rights set forth in this Lease.
- (b) The Tenant will provide and carry out, at its expense, all equipment and work required to be provided and performed in order to make the Leased Premises complete and ready for the proper conduct of the Tenant's permitted business and suitable to open the Leased Premises for business to the public.
- (c) The Tenant shall be responsible, at its expense, for obtaining all permits and approvals related to Tenant's Work, including without limitation, any licenses, approvals or permits required for use, change of use and/or occupancy.
- (d) All Tenant's Work must comply with all plans approved by the Landlord, Applicable Laws, building codes, permits and approvals for the work and with the requirements of Landlord's insurers. If Tenant is in default of this obligation and does not cure such default within the time period required by the Governmental

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Authority, Landlord's insurers or Landlord, Landlord may, but will not be obligated to, cure such default, and all charges and costs incurred by Landlord will be paid to Landlord by Tenant, together with an administrative fee equal to fifteen percent (15%) of those charges and costs.

- (e) The Tenant will, after satisfying all of its requirements set out in this Lease, complete Tenant's Work in a good and workmanlike manner, using new materials, to Landlord's satisfaction and in conformity with the plans, drawings and specifications approved by Landlord. Deficient or inferior materials or workmanship will be replaced by Tenant at its expense by materials or workmanship of high quality, in accordance with Landlord's reasonable satisfaction. One set of the plans, drawings and specifications with Landlord's consent endorsed on them will remain on the Leased Premises at all times during completion of Tenant's Work.
- (f) The Tenant, its contractors, and their employees and agents will: (i) abide by all safety regulations; (ii) provide adequate fire protection including, without limitation, fire extinguishers; (iii) deliver and store materials and tools as directed by Landlord; (iv) stop immediately, if requested by Landlord, any work which, in the opinion of Landlord, by reason of public hazard, noise or otherwise, is likely to affect the normal operation of the Development or any part of it; (v) be responsible for waste removal; and (vi) abide by all other reasonable requirements of Landlord. Tenant authorizes Landlord and Landlord's consultants to enter the Leased Premises, without warning, throughout and following Tenant's construction activities to ascertain compliance with requirements.

SCHEDULE "E" — LANDLORD'S WORK

Prior to the Possession Date only those items enumerated below as the Landlord's Work will be provided and installed by the Landlord in the Leased Premises on a "once only" basis at the Landlord's expense in accordance with the Landlord's choice of new, first class materials. All other work required for the Leased Premises will be provided and installed by the Tenant, at the Tenant's sole cost and expense. Excepting the items set out below as the Landlord's Work, it is hereby agreed that the Leased Premises is leased on an "as is, where is" basis, and there are no representations or warranties concerning the Leased Premises except as contained herein.

None.

SCHEDULE "F" — INDEMNITY

THIS INDEMNITY, dated December 6, 2023

•
(the "Indemnifier")

- in favour of -

CACOELI WHITBY LP

(the "Landlord"),

WHEREAS the Indemnifier and the Tenant have requested the Landlord to enter into a lease (the "**Lease**") dated December 6, 2023 between it as landlord and Jacked Up Coffee Roasting Corp. as tenant (the "**Tenant**") relating to premises in the Commercial Component of the Development municipally known as 132 Brock Street North, Whitby, Ontario and the Landlord has agreed to do so only if the Indemnifier executes and delivers this indemnity in favour of the Landlord;

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Indemnifier), the Indemnifier hereby covenants in favour of the Landlord as follows:

- (a) the Indemnifier shall indemnify and save the Landlord harmless from all damages and costs incurred by the Landlord if, during the period which is expressed by Section 4.1 of the Lease to be its term, or any renewal thereof, the Landlord does not receive any amount on account of Base Rent payable by the Tenant under the Lease (collectively the "**Indemnity Amount**") for such period which, if the Lease were in full force and effect and good standing, would be payable under the Lease;
- (b) if the Tenant defaults in the payment of any of the Indemnity Amount, the Indemnifier shall forthwith upon demand by the Landlord pay to the Landlord any amount so payable and all damages that may arise upon the default by the Tenant in the payment thereof or in the due performance of any such obligation;

- (c) the Indemnifier shall be jointly and severally bound with the Tenant to the Landlord for the payment of the Indemnity Amount, and its liability shall be that of a direct and primary obligor and not merely that of a surety;
- (d) if the Tenant defaults under the Lease in respect of the payment of any of the Indemnity Amount, the Landlord may proceed against the Indemnifier as if it were the Tenant, without waiving any of its rights against the Tenant and without any requirement that the Landlord shall first have proceeded against the Tenant or had recourse to or exhausted any of its remedies against the Tenant;
- (e) the obligations of the Indemnifier and the rights of the Landlord hereunder shall not be affected or in any way prejudiced or impaired by any delay, neglect or forbearance by the Landlord in enforcing performance by the Tenant of its obligations under the Lease or by the granting by the Landlord to the Tenant of any extension of time or by any waiver by the Landlord of any of the Tenant's obligations or by any assignment or sublease or other dealing by the Tenant with the Lease or the Premises whether with or without the consent of the Landlord or by any want of notice to the Indemnifier or by any dealing between the Landlord and the Tenant with or without notice to the Indemnifier whereby the respective obligations and rights of either the Landlord or the Tenant are amended or by any other act or failure to act by the Landlord which would release, discharge or affect the obligations of the Indemnifier if it were a mere surety, and with the intent that this indemnity shall not be released or affected or the rights of the Landlord hereunder in any way impaired until such time as all the obligations of the Tenant under the Lease have been fully performed and satisfied;
- (f) the obligations of the Indemnifier hereunder shall not be released, discharged or affected by the bankruptcy or insolvency of the Tenant or any proposal made by it to its creditors or any disclaimer of the Lease pursuant to the *Bankruptcy and Insolvency Act* (Canada) or any successor or similar legislation, or any disclaimer by any trustee in bankruptcy of the Tenant or by the Tenant ceasing to exist (whether by winding-up, forfeiture, cancellation or surrender of charter, or any other circumstance) or by any event terminating the Lease including a re-entry or termination pursuant to Section 21.2(a) of the Lease. All debts, obligations and liabilities ("**Liabilities**") of the Tenant to the Indemnifier (or any other entity controlled by the Indemnifier or under common control with the Indemnifier), present and future, are hereby assigned to the Landlord and postponed to all of the obligations of the Tenant to the Landlord. All money, property and other benefits received by the Indemnifier from the Tenant shall be received in trust for the Landlord and, forthwith upon receipt, the Indemnifier shall pay the same to the Landlord on account of any outstanding obligations of the Tenant to the Landlord;
- (g) the obligations of the Indemnifier hereunder may be assigned by the Landlord, will benefit and be enforceable by the successors and assigns of the Landlord and shall bind the heirs, executors and legal representatives and the successors and assigns of the Indemnifier;
- (h) the grammatical changes required to make the provisions of this indemnity apply in the plural sense where the Indemnifier comprises more than one Person and to corporations, firms, partnerships, or individuals male or female, will be assumed as though in each case fully expressed, and if the Indemnifier consists of more than one Person, the covenants of the Indemnifier shall be deemed to be joint and several covenants of each such Person; and

- (i) this indemnity shall be governed by the laws of the Province of Ontario.

The Indemnifier acknowledges receipt of a copy of the Lease and covenants, represents and warrants that it has full power, capacity and authority to execute this indemnity in favour of the Landlord and to perform its obligations hereunder and that the Person(s) who have executed this indemnity on behalf of the Indemnifier have the authority to bind the Indemnifier. Whenever any reference is made herein to the Lease or the obligations of the Tenant thereunder, such reference shall be deemed to include all amendments and modifications to the Lease and any change of or increase in the Tenant's obligations thereunder, including without limitation those which result from the exercise by the Tenant of any option to lease additional premises or the exercise by the Tenant of any right to extend or renew the term of the Lease as provided therein, any and all agreements and instruments executed by the Tenant concurrently with the Lease or pursuant thereto and which relate to the Premises, and shall be deemed to include the Tenant's obligations under such agreements and instruments, including without limitation any agreement with respect to the work to be performed by the Tenant or by the Landlord on its behalf with respect to the construction of leasehold improvements and fixtures in the Premises, any parking agreement, any agreement with respect to storage facilities and any agreement with respect to the assumption by the Landlord of the Tenant's existing lease obligations elsewhere.

In witness whereof the Indemnifier has executed this indemnity.

)
)
)
)
)
)
)
)
)

Company Name

Per: _____

Name: Name

Title: Title

I/We have the authority to bind the corporation

SIGNED, SEALED AND DELIVERED
in the presence of

)
)
)
)
)
)
)
)





I.s.

Witness

Name

Title	Lease - 132 Brock Street North
File name	Jacked_Up_Coffee_2024.pdf
Document ID	194797551a3679ed111c96a4c188468a7500a532
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History

 SENT	04 / 30 / 2024 15:53:10 UTC	Sent for signature to Jack Provan (jack.provan@gmail.com) from admin@cacoeli.com IP: 69.157.194.114
 VIEWED	05 / 02 / 2024 23:55:07 UTC	Viewed by Jack Provan (jack.provan@gmail.com) IP: 70.30.4.55
 SIGNED	05 / 03 / 2024 00:00:09 UTC	Signed by Jack Provan (jack.provan@gmail.com) IP: 70.30.4.55
 COMPLETED	05 / 03 / 2024 00:00:09 UTC	The document has been completed.

SCHEDULE "D"

LEASE

**146 BROCK STREET NORTH
WHITBY, ONTARIO**

LANDLORD:	11250493 CANADA INC
TENANT:	Larry Stevenson
LEASED PREMISES:	146 Brock Street North, Whitby, Ontario

THIS LEASE is made as of the 1st day of March, 2024

ARTICLE I – SUMMARY PROVISIONS

1.1 Landlord:

11250493 CANADA INC. (hereafter called the “**Landlord**”) having an address for the purposes of this Lease as follows:

11250493 Canada Inc.
2 Sheppard Avenue East, Unit 901
North York, Ontario M2N 5Y7

Attention: Carolyn Humphries or Kasey Wong
Phone: (647) 326-0239 / (416) 419-9634
Email: admin@cacoeli.com

1.2 Tenant:

LARRY STEVENSON. (hereafter called the “**Tenant**”) having an address for the purposes of this Lease as follows:

Larry Stevenson
15 Mapson Crescent
Ajax, ON L1T 3N2

Phone: (416) 529-9884
Email: discount416@hotmail.com

1.3 Leased Premises:

Those portions of the Commercial Component municipally known as 146 Brock Street North, in the Town of Whitby (the “**Leased Premises**”)

1.4 Term: (Section 4.1) April 1 2024

One (1) year commencing (the “**Commencement Date**”) ~~March 1, 2024~~ and expiring (the “**Expiry Date**”) on ~~February 28, 2025~~ (the “**Term**”). In the event the Lease is validly renewed or extended, the Term shall include such validly renewed or extended period.

1.5 Options to Renew:

The Tenant shall have the right to a further terms of one (1) year in accordance with and subject to the terms and conditions of Schedule “D” attached hereto.

1.6 Base Rent: (Section 5.1)

The Tenant shall pay to the Landlord, commencing on the Commencement Date, Base Rent as follows:

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Lease Year	Annual Rent Payable	Monthly Rent Payable
One (1) April 1, 2024 to February 28, 2025 April 1, 2024 to March 31, 2025	\$18,000.00	\$1,500.00 Plus hst

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Base Rent shall be payable in advance without deduction in equal monthly instalments on the first (1st) day of each and every month throughout the Term. If the Commencement Date falls on any day other than the first (1st) day of a month, then Base Rent for the fraction of the then-current month shall be adjusted pro rata. Base Rent shall be subject to adjustment, as required, upon final determination of the Rentable Area, in accordance with Section 5.2.

1.7 Additional Costs:

In addition to Base Rent, the Tenant shall be responsible for all utilities at the property in accordance with Section 5.3.

1.8 Rent Deposit/Security Deposit: (Section 5.10)

At the time of signing, the Tenant will provide the Landlord with the last month's Base Rent (the "**Rent Deposit**"), being **\$1,500.00**, and the first month's Base Rent (the "**First Month**"), being **\$1,500.00**, for a total of **\$3,000.00**

The Tenant will also provide the Landlord with a security deposit (the "**Security Deposit**"), being **\$1,500.00**, to be paid in 3 installments of **\$500.00** on the first day of the second, third and fourth months, **in addition to the monthly rent of \$1,500.00**.

The Rent Deposit and the Security Deposit are collectively referred to as the "**Pre-Paid Rent**", and shall be applied in accordance with Section 5.10.

HST will be added to all rent and security charges

1.9 Permitted Use: (Section 9.1)

The Tenant shall use the Leased Premises solely for the purpose of a carwash and any other use permitted by the Landlord and for no other purpose, provided that the Leased Premises shall at all times be used and maintained, and the business shall be operated therein, by the Tenant in compliance with all Applicable Laws and in accordance with the standards of a first-class building. The Tenant covenants and agrees that it shall at all times be in compliance with all by-laws and regulations which are now or hereafter set forth by the City of Toronto and with such other Federal or Provincial regulations or laws which may be applicable in the circumstances (the "**Permitted Use**").

1.10 Restrictive Covenant: (Article IX)

During the Term and provided the Tenant is in occupancy of the Leased Premises and no Event of Default has occurred and/or is continuing, the Tenant shall have the right to use the Leased Premises solely for the Permitted Use, and in the event that the Tenant utilizes the Leased Premises for any other commercial or retail use and such breach is not cured to the satisfaction of the Landlord, acting reasonably, within five (5) Business Days of delivery by the Landlord to the Tenant of written notice detailing same, in addition to any other remedies available to it, the Landlord shall have the immediate right to terminate this Lease and to recover from the Tenant all damages incurred by the Landlord as a result of such termination.

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1.11 Summary Provisions:

Each reference in this Lease to any of the Summary Provisions listed above shall be read as having the same dates, quantities and other meanings as specified in this Article I. The terms in the Summary Provisions are intended to be only a summary of certain basic terms of this Lease. In the event of any inconsistency between such terms and the terms hereinafter set out in this Lease, the latter shall govern.

ARTICLE II— INTERPRETATION

2.1 Definitions:

In this Lease, unless there is something in the subject matter or context inconsistent therewith:

- (a) “Additional Rent” means the Occupancy Costs, the cost of Utilities, and such other sums (excluding Base Rent) otherwise payable by the Tenant in accordance with the terms of this Lease, whether or not designated as Additional Rent hereunder.
- (b) “Adjustment Date” has the meaning ascribed thereto in Section 5.8(b) hereof.
- (c) “Applicable Law” means all applicable federal, provincial and/or municipal laws, by-laws, regulations, statutes, rules and directives or orders issued by agencies having jurisdiction in connection with, or pertaining to or affecting the Leased Premises.
- (d) “Architect” means such firm of third party professional architects, engineers, surveyors and, space planners as the Landlord may select from time to time engaged for preparation of construction drawings for the Development or for general supervision of architectural and engineering aspects and operations thereof or for the measurement of the Development or part or parts thereof and includes any consultant(s) from time to time appointed by the Landlord and/or the Architect whenever such consultant(s) is acting within the scope of his/her appointment and specialty.
- (e) “Article” means an article of this Lease and “Section” means a section of this Lease.
- (f) “Base Rent” has the meaning ascribed thereto in Section 5.1 hereof.
- (g) “Business Day” means any day other than a Saturday, Sunday or any statutory holiday on which chartered banks are not open for business in the Province of Ontario.
- (h) “CA” means the *Construction Act* (Ontario).
- (i) “Commencement Date” has the meaning ascribed thereto in Section 1.6 hereof.
- (j) “Commercial Component” has the meaning ascribed thereto in Section 1.4 and includes the Leased Premises and all improvements located therein, thereto, thereon or thereunder and every enlargement thereof and every addition thereto even though separated therefrom.

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- (k) "Common Areas" means those areas within the Development, which are designated by the Landlord, and which are not installed or intended for the use in common by tenants of the Development and not for the exclusive use or benefit of any individual tenant, including without limitation, all non-leasable areas, service and administrative areas (including, without limitation, administrative offices, janitorial rooms and storage rooms not reserved to any tenant exclusively), all roofs, roadways, sidewalks, landscaped areas, floor slabs, exterior walls and exterior and interior structural portions of the Development or other common means of access to leasable premises (excluding any structural mezzanines within any leasable premises), public lavatories, truck courts, common loading areas, driveways, music and public address systems, electrical, plumbing and drainage, fire protection, fire detection, heating, ventilation and/or air-conditioning systems or equipment servicing the Development and/or more than one tenant or promotional installations, customer and service stairways, directories and directional signs, elevators, escalators and all other areas, services and facilities which Landlord provides or designates from time to time to be part of Common Areas.
- (l) "Court" has the meaning ascribed thereto in Section 11.9 hereof.
- (m) "Date of Such Taking" has the meaning ascribed thereto in Section 17.1 hereof.
- (n) "Development" has the meaning ascribed thereto in Section 1.4 hereof.
- (o) "Ecologizer Unit" has the meaning ascribed thereto in Section 1 of Schedule "F" attached hereto.
- (p) "Environmental Claim" means all claims, losses, costs, expenses, fines, penalties, payments and/or damages (including, without limitation, all solicitors' fees on a substantial indemnity basis) relating to, arising out of, resulting from or in any way connected with the presence of any Hazardous Substance at the Leased Premises, the Lands and/or the Development, including, without limitation, all costs and expenses of any investigation, remediation, restoration or monitoring of the Leased Premises, the Lands and/or the Development and/or any property adjoining or in the vicinity of the Leased Premises, the Lands and/or the Development required or mandated by Environmental Law.
- (q) "Environmental Law" means any Applicable Law, as well as any common law obligations or requirements, relating to environmental or health and safety matters and/or regulating the generation, import, storage, distribution, labelling, sale, use, handling, transport or disposal of any Hazardous Substance which may be in force from time to time.
- (r) "Event of Default" has the meaning ascribed thereto in Section 21.1 hereof.
- (s) "Expiry Date" has the meaning ascribed thereto in Section 1.6 hereof.
- (t) "Fixturing Period" has the meaning ascribed thereto in Section 1 of Schedule "G" attached hereto.
- (u) "Force Majeure" means any event of strike, lock-out, labour trouble, inability to procure material, failure of power, restrictive Applicable Law, riot, insurrection,

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war, act of God or other reason of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Lease.

- (v) "GAAP" means, at any time, the "new GAAP Standard" of generally accepted accounting principles in Canada, applied on a consistent basis, and statements and interpretations (if applicable) issued by the Canadian Institute of Chartered Accountants or any successor body in effect from time to time, based on the Accounting Standards for Private Enterprises (ASPE).
- (w) "Governmental Authority" or "Governmental Authorities" means any Person, body, department, bureau, agency, board, tribunal, commission, Court, branch, public Utility or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Lands, the transaction contemplated in this Agreement and/or one or both of the Parties hereto and shall include a board or association of insurance underwriters.
- (x) "Hazardous Substance" means:
 - (i) any materials or substances declared or deemed to be hazardous, deleterious, caustic, dangerous, a dangerous good, toxic, a contaminant, a waste, a source of contaminant, a pollutant or toxic under any Environmental Law;
 - (ii) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (A) endangers the health, safety or welfare of Persons or the health of animal life;
 - (B) interferes with normal enjoyment of life or property; or
 - (C) causes damage to plant life or to property; and
 - (iii) any substance which is hazardous to the environment, including Persons or property and includes, without limiting the generality of the foregoing, the following:
 - (A) radioactive materials;
 - (B) explosives; or
 - (C) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant.

However, substances typically used in the operation of a restaurant, including, but not limited to, cooking oils, grease and cleaning products, shall be deemed to not be included in this definition, so long as they are produced, maintained, utilized or disposed of in strict compliance with Environmental Laws and prudent first class restaurant practices.

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- (y) "Initiating Party" has the meaning ascribed thereto in Section 2(a) of Schedule "D" attached hereto.
- (z) "Interest Rate" has the meaning ascribed thereto in Section 5.9 hereof.
- (aa) "Landlord Fiscal Year" means the twelve (12) month period designated from time to time by the Landlord, as determined by the Landlord in its sole and unfettered discretion.
- (bb) "Landlord's Work" has the meaning ascribed thereto in Schedule "E" attached hereto.
- (cc) "Lands" has the meaning ascribed thereto in Section 1.4 hereof.
- (dd) "Lease", "hereof", "herein", "hereunder" and similar expressions mean this Lease and all Schedules attached hereto, as originally signed, sealed and delivered or as amended, from time to time, which amendments shall be in writing and signed by the Landlord and Tenant.
- (ee) "Lease Year" in the case of the first (1st) Lease Year means the period beginning on the Commencement Date and terminating on the anniversary of the last day of the month in which the Commencement Date occurs, unless the Commencement Date is the first day of a month, in which event the first Lease Year period terminates on the expiration of the period of twelve (12) months thereafter. Each subsequent Lease Year commences 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.
- (ff) "Leased Premises" has the meaning ascribed thereto in Section 1.5 hereof.
- (gg) "Leasehold Improvements" means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant, or any previous occupant of the Leased Premises, in the Leased Premises and by or on behalf of other tenants in other premises in the Commercial Component (including the Landlord if an occupant of the Commercial Component), including all partitions and hardware however affixed, and whether or not movable, all mechanical, electrical and Utility installations and all carpeting and drapes, with the exception only of Trade Fixtures, furniture and equipment not of the nature of a fixture.
- (hh) "Non-Standard Leasehold Improvements" has the meaning ascribed thereto in Section 14.2 hereof.
- (ii) "Normal Business Hours" means 7:00 A.M. to midnight (Toronto time), Monday to Sunday.
- (jj) "Occupancy Costs" has the meaning ascribed thereto in Section 5.3 hereof.
- (kk) "Operating Expenses" means those items described in Schedule "B" attached hereto and "Operating Expense" means any one of them.
- (ll) "Parties" means, collectively, the Landlord and the Tenant and any other Person which becomes a party to this Agreement, and "Party" means any one of them.

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- (mm) "Permitted Signage" has the meaning ascribed thereto in Section 11.11 hereof.
- (nn) "Permitted Use" has the meaning ascribed thereto in Section 1.11 hereof.
- (oo) "Person" means an individual, a partnership, a corporation, a government or any department or agency thereof, a trustee, and the heirs, executors, administrators or other legal representatives of an individual and "Persons" means more than one (1) Person.
- (pp) "Pre-Paid Rent" has the meaning ascribed thereto in Section 1.10 hereof.
- (qq) "Proportionate Share" means the ratio, expressed as a percentage, which the Rentable Area of the Leased Premises bears to the Rentable Area of the Development, which ratio shall be determined from time to time by the Landlord.
- (rr) "Realty Taxes" means:
 - (i) any form of assessment (including any "special" assessment), property tax, license fee, license tax, business license fee, business license tax, machinery tax, business improvements association assessment, including those for local improvement assessment, commercial rental tax, levy, charge, penalty or tax, imposed by any Taxing Authority having the direct power to tax, including any city, county, provincial or federal government, or any, school, agricultural, lighting, water drainage or other improvement or special district thereof, against the Leased Premises or any legal or equitable interest of the Landlord therein;
 - (ii) any assessment, tax, fee, levy or charge in substitution, partially or totally, of or in addition to any assessment, tax, fee, levy or charge previously included within the definition of Realty Taxes which may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services provided to property owners or occupants; and
 - (iii) all costs incurred by the Landlord contesting or appealing the Realty Taxes (including, without limitation, legal, appraisal and other professional fees and costs).

Realty Taxes shall not include the Landlord's income taxes. It is the intention of the Landlord and the Tenant that all new assessments, taxes, fees, levies and charges be included within the definition of Realty Taxes for purposes of this Lease. The following shall also be included within the definition of Realty Taxes for the purposes of this Lease, provided, however, that the Tenant shall pay the Landlord the entire amount thereof:

 - (iv) any tax allocable to or measured by the area of the Leased Premises or the rental payable hereunder, including without limitation, any gross income, privilege, goods and services, harmonized sales, sales or excise tax levied by any municipal or provincial or federal government, with respect to the receipt of such rental, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration,

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repair, use or occupancy by the Tenant of the Leased Premises or any portion thereof; and

- (v) any tax upon this transaction or any document to which the Tenant is a party, creating or transferring an interest or an estate in the Leased Premises.
- (ss) "Redevelopment" has the meaning ascribed thereto in Section 10.10 hereof.
- (tt) "Renewal Notice" has the meaning ascribed thereto in Section 1 of Schedule "D" attached hereto.
- (uu) "Renewal Term" has the meaning ascribed thereto in Section 1 of Schedule "D" attached hereto.
- (vv) "Rent", "rent", "Rental" or "rental" means all payments and charges payable by the Tenant pursuant to this Lease, including without limitation, the Base Rent and Additional Rent.
- (ww) "Rent Deposit" has the meaning ascribed thereto in Section 1.10.
- (xx) "Rentable Area" of the Leased Premises, the Commercial Component, the Residential Component or any portion thereof, means the area of the Leased Premises, the Commercial Component, the Residential Component or any portion thereof, as applicable, measured in accordance with ANSI-BOMA Z65.1 — 2010 Standard Methods of Floor Measurement for Retail Buildings, as revised from time to time. Provided that the Rentable Area of the Leased Premises shall include all interior space, whether or not occupied by any projections, structures, stairs, elevators, escalators, shafts or other floor openings or columns, structural or non-structural, and if a storefront or entrance is recessed, same shall for all purposes be deemed to lie within and form part of the Rentable Area of the Leased Premises. In the event of any expansion of the Commercial Component or the creation of any additional Rentable Areas not contemplated by this Lease, the Landlord shall determine in its sole and unfettered discretion, whether such additional Rentable Areas shall form part of the calculation of the Rentable Area of the Commercial Component herein.
- (yy) "Rental Taxes" means any tax or duty imposed upon the Landlord or the Tenant which is measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Taxing Authority, including without limitation goods and services tax, value added tax, the provincial portion of harmonized sales tax, business transfer tax, retail sales tax, federal sales tax, excise taxes or duties, or any tax similar to any of the foregoing.
- (zz) "Residential Component" has the meaning ascribed thereto in Section 1.4.
- (aaa) "Security Deposit" has the meaning ascribed thereto in Section 1.10.
- (bbb) "Special Provisions" has the meaning ascribed thereto in Schedule "G" attached hereto.
- (ccc) "Standard Provisions" has the meaning ascribed thereto in Schedule "G" attached hereto.

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- (ddd) "Taxing Authority" means any duly constituted Governmental Authority legally empowered to impose taxes, rates, assessments, or charges, or other charges in lieu thereof, on, upon or in respect of the Landlord, the Lands, the Commercial Component and/or the Residential Component, including, without limitation, Realty Taxes and/or Rental Taxes.
- (eee) "Tenant HVAC System" has the meaning ascribed thereto in Section 10.3 hereof.
- (fff) "Tenant's Work" has the meaning ascribed thereto in Schedule "E" attached hereto.
- (ggg) "Term" has the meaning ascribed thereto in Section 1.6 hereof, together with any Renewal Term and/or any overholding period.
- (hhh) "Termination Date" has the meaning ascribed thereto in Section 4.4 hereof.
- (iii) "Trade Fixtures" means all items generally considered to be trade fixtures, including, without limitation, built-in fridges, stoves, walk-in coolers, counters, bars, chairs, stools, tables, racks, or any other equipment or fixtures used by the Tenant in its business, any of which have been installed in the Leased Premises by or on behalf of the Tenant and have been affixed to the realty, but, notwithstanding the foregoing, shall not include any Leasehold Improvements, any part of the electrical, plumbing, mechanical, sprinkler, heating, ventilating or air-conditioning equipment or systems, or any floor coverings, wall coverings, any part of the ceiling, whether or not installed by the Tenant or Landlord, all furniture, personal property, electronics and computer located at the Leased Premises prior to the Commencement Date and listed under Section 2 of Schedule "G".
- (jjj) "Transfer" has the meaning ascribed thereto in Section 13.1(a) hereof.
- (kkk) "Transferee" has the meaning ascribed thereto in Section 13.1(a) hereof.
- (III) "Utilities" means electricity, oil, gas, power, telephone, water and all other utilities and garbage collection and "Utility" means any one of such Utilities.

2.2 Schedules

The following schedules are attached to this Lease and are incorporated as part of this Lease by reference thereto:

Schedule "A" Operating Expenses

Schedule "B" Rules and Regulations

Schedule "C" Option to Renew

Schedule "D" Tenant Improvements and Guidelines

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ARTICLE III— GRANT OF LEASE

3.1 Grant

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hereby demises and leases the Leased Premises to the Tenant, and the Tenant hereby leases and accepts the Leased Premises from the Landlord, to have and to hold during the Term, subject to the terms and conditions of this Lease.

3.2 Quiet Enjoyment

The Landlord covenants to provide the Tenant with quiet enjoyment and possession of the Leased Premises during the Term and any renewal or extension thereto, subject to the terms and conditions of this Lease.

3.3 Covenants of the Landlord and the Tenant

The Landlord covenants to observe and perform all of the terms and conditions to be observed and performed by the Landlord under this Lease including the terms and conditions contained in the Schedules hereto. The Tenant covenants to pay the Rent when due under this Lease (except as otherwise set out herein) and to observe and perform all of the terms and conditions to be observed and performed by the Tenant under this Lease including the terms and conditions contained in the Schedules attached hereto.

3.4 Use of the Common Areas and Loading Dock

The Tenant shall have the right (in common with others entitled thereto) to the use of the Common Areas, subject to and in accordance with the provisions of this Lease.

3.5 Net Lease

The Tenant acknowledges and agrees that the Rent payable under this Lease is absolutely net to the Landlord and (except as otherwise expressly provided herein) that:

- (a) the Landlord is not responsible for any costs, charges, expenses, rates, taxes, or outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use or occupancy thereof, or the contents thereof, or the business carried on therein;
- (b) the Tenant shall pay all costs, charges, expenses, rates, taxes and outlays of every nature whatsoever arising from or relating to the Leased Premises or the use or occupancy thereof, or the contents thereof, or the business carried on therein, and including, for certainty, all Occupancy Costs pertaining to the Leased Premises, without any variation, set-off or deduction whatsoever; and
- (c) the Landlord shall not be called upon, nor shall the Landlord be obligated, to perform any work on or to the Leased Premises or to correct any condition relating to or arising out of the Leased Premises unless otherwise expressly provided for in this Lease.

3.6 LEED Design

Intentionally deleted.

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ARTICLE IV— TERM AND POSSESSION

4.1 Term

The Term of this Lease shall be as set forth in Section 1.4 hereof unless terminated earlier as provided in this Lease.

4.2 Delayed Possession

If the Landlord is delayed in delivering possession of all or any portion of the Leased Premises to the Tenant on the Commencement Date, then unless such delay is principally caused by or attributable to the Tenant, its servants, agents or independent contractors, the Commencement Date shall be postponed for a period equal to the duration of the delay. This Lease shall not be void or voidable, nor shall the Landlord be liable to the Tenant for any loss or damage resulting from any delay in delivering possession of the Leased Premises to the Tenant. If any delay in the completion of the Landlord's Work is attributable to the Tenant, its servants, agents or independent contractors, the Commencement Date shall not be postponed.

4.3 Acceptance of Leased Premises

Taking possession of all or any portion of the Leased Premises by the Tenant shall be conclusive evidence as against the Tenant that the Leased Premises or such portion thereof are in satisfactory condition as of the Commencement Date, subject to completion of the Landlord's Work set out in Schedule "F". For clarity, the Tenant agrees to accept the Leased Premises on a completely "as is, where is" basis and Landlord shall have no obligation to contribute towards any of the Tenant's Leasehold Improvements.

4.4 Landlord's Option to Terminate

The Landlord may, at any time after sixty (60) months following the Commencement Date, terminate the Lease on ninety (90) days written notice to the Tenant (the "**Termination Date**"). The Landlord will not pay any compensation or relocation costs to the Tenant for the termination. Despite such termination of the Lease, the Tenant shall remain liable to the Landlord for (i) any liability arising as a result of any non-observance or non-performance by the Tenant of its covenants and obligations under the Lease up to and including the Termination Date; (ii) any obligation of the Tenant pursuant to the Lease to indemnify the Landlord in respect of any claims made by third parties for damages or injuries suffered by such third parties prior to the Termination Date (which in all instances shall be subject to the terms and conditions applicable to such obligation and indemnity); (iii) those obligations of the Tenant which are expressly set out in the Lease to survive the expiration or earlier termination of the Term; and (iv) any amounts due and owing pursuant to the Lease prior to the Termination Date.

ARTICLE V— RENT AND OCCUPANCY COSTS

5.1 Base Rent

The Tenant shall pay to the Landlord Base Rent for the Leased Premises as set forth in Section 1.6 hereof.

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5.2 Adjustment of Base Rent based on Measurement of Rentable Area

The rentable area of the Leased Premises shall be determined based on the floor plan provided by the Landlord to the Tenant prior to the Commencement Date, which shall be conclusive with respect to the measurement of Rentable Area of the Leased Premises.

5.3 Other Charges

In addition to Base Rent, the Tenant shall be charged back for all utilities (electricity, gas and water) on a monthly basis.

5.4 Payment of Rent

All amounts payable by the Tenant to the Landlord under this Lease shall be deemed to be Rent and shall be payable and recoverable as Rent in the manner herein provided, and the Landlord shall have all rights against the Tenant upon the occurrence of an Event of Default in any such payment as in the case of arrears of Rent. Rent shall be paid to the Landlord, without deduction, abatement, set off or claim whatsoever, in legal tender of the jurisdiction in which the Lands are located, at the address of the Landlord set forth in this Lease, or to such other Person or at such other address as the Landlord may from time to time designate in writing. The Tenant's obligation to pay Rent shall survive the expiration or earlier termination of this Lease.

5.5 No Deduction or Set Off

The Tenant shall not under any circumstances be entitled to any deduction, abatement, compensation or set off whatsoever from the Rent payable hereunder, in respect of any amounts that the Tenant may claim to be entitled to from the Landlord unless the Landlord agrees in writing. All disputes with respect to amounts the Tenant wishes to claim from the Landlord shall be settled as a matter separate from the Tenant's obligation to pay Rent unless the Landlord agrees in writing.

5.6 Partial Month's Rent

If the Commencement Date is a day other than the first (1st) day of a calendar month, the instalment of Rent payable on the Commencement Date shall be that proportion of Rent which the number of days from the Commencement Date to the last day of the month in which the Commencement Date falls bears to three hundred sixty five (365) or three hundred and sixty-six (366) in the event of a leap year. If the Term ends on a day other than the last day of a calendar month, the instalment of Rent payable on the first day of the last calendar month of the Term shall be that proportion of Rent which the number of days from the first day of such last calendar month to the last day of the Term bears to three hundred sixty five (365) or three hundred and sixty-six (366) in the event of a leap year.

(a)

5.7 No Deemed Satisfaction and Interest Rate

No payment by the Tenant or receipt by the Landlord of a lesser amount than any instalment or payment of the Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any cheque or payment of Rent shall be deemed an accord and satisfaction. The Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such instalment or payment of Rent, or pursue any other remedies available to the Landlord. If any amount of Rent is in arrears it shall bear interest

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from the due date thereof to the date of payment, compounded monthly at the rate of fifteen (15%) percent per annum (the "**Interest Rate**").

5.8 Pre-Paid Rent

The Pre-Paid Rent is to be held without interest and applied by the Landlord upon receipt of same against Rent and Rental Taxes payable pursuant to Section 6.7 hereof, in respect of the first month's Rent payable under this lease, with the balance of the Pre-Paid Rent to be held by the Landlord as security for the performance by the Tenant of its covenants and obligations under this Lease. If an Event of Default occurs, the Landlord, at its option, may apply all or part of any yet to be applied Pre-Paid Rent towards the payment of any cost or expense which the Landlord may incur as a result of any such breach, without limiting or excluding any other right which the Landlord may have hereunder or pursuant to Applicable Law, and the Tenant will, upon demand, deliver such amount as is required to restore the Pre-Paid Rent to the original amount held by the Landlord prior to such application, and the Tenant's failure to do so within three (3) days after delivery of such demand to the Tenant constitutes an Event of Default under this Lease. Any Pre-Paid Rent remaining at the end of the Term shall be returned to the Tenant, provided that there is no Event of Default that is continuing. Notwithstanding anything contained in this Lease, in case of bankruptcy or insolvency of the Tenant, the Pre-Paid Rent shall be deemed to have been the Landlord's property from its date of delivery.

5.9 Transfer of Prepaid Rent

In the event of a sale, transfer or assignment of this Lease by the Landlord, the Landlord may transfer the Pre-Paid Rent, or so much thereof as shall then be remaining, to the purchaser, transferee or assignee, and thereupon the Landlord shall be freed and discharged from any further liability in respect of the Pre-Paid Rent.

5.10 Post-Dated Cheques

The Tenant agrees to deliver to the Landlord a series of (i) eleven (11) monthly post-dated cheques on or prior to the Commencement Date in amounts conforming with the monthly Base Rent payments, plus any Additional Rent payments estimated by the Landlord in advance, for the remainder of the first Lease Year, and (ii) twelve (12) monthly post-dated cheques on or prior to the commencement of each subsequent Lease Year of the Term in amounts conforming with the monthly Base Rent payments, plus any Additional Rent payments estimated by the Landlord in advance, for the forthcoming Lease Years, plus any Rental Taxes applicable thereon. Alternatively, the Tenant shall, if and when required by the Landlord, authorize and direct the Landlord to automatically debit any bank account designated by the Tenant for all or a portion of the Rent payments to be made by the Tenant to the Landlord hereunder, as the Tenant may notify the Landlord in writing, and the Tenant shall execute any such documentation required by the Tenant's bank for such purpose. The Tenant shall ensure that any bank account so designated contains sufficient funds to make any Rent payments to be made by the Tenant to the Landlord under this Lease, failing which, an Event of Default shall be deemed to have occurred by the Tenant hereunder and the Landlord shall be entitled to pursue any and all of its remedies herein and/or pursuant to Applicable Law as it may deem necessary at its option. In the event the Tenant's bank returns a cheque to the Landlord, in addition to any rights and remedies available to the Landlord hereunder or pursuant to Applicable Law, the Tenant shall pay to the Landlord an administration fee equal to the sum of Two Hundred Fifty Dollars (\$250.00), together with the Landlord's actual amount from time to time charged to it by its financial institution. All such fees shall bear interest at the Interest Rate.

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ARTICLE VI— TAXES

6.1 Landlord's Taxes

The Landlord shall pay Realty Taxes before delinquency (subject to participation by the Tenant by payment of Occupancy Costs pursuant to Section 5.8 hereof and excluding those taxes described in Sections 6.2 and 6.3 hereof), which are imposed, levied, assessed or charged by any Taxing Authority having jurisdiction and which are payable by the Landlord in respect of the Term upon or on account of the Commercial Component.

ARTICLE VII— UTILITIES

7.1 Utilities

The Tenant shall be solely responsible for water, gas, electricity, telephone and other public and private Utilities and services used or consumed in or in respect of the Leased Premises, and for all fittings, machines, apparatus or other things leased or purchased in respect thereof, and for all work or services performed by any corporation or commission in connection with such Utilities or services.

The Tenant shall immediately advise the Landlord of any installations, appliances or machines used by the Tenant which consume or are likely to consume large amounts of electricity or other Utilities and, on request, shall promptly provide the Landlord with a list of all installations, appliances and machines used in the Leased Premises. The Tenant's use of any such Utilities shall not exceed the available capacity of the existing systems from time to time. The Tenant shall satisfy itself that the building standard Utilities supplied to the Leased Premises are sufficient for its purposes.

ARTICLE VIII— USE OF UNIT

8.1 Use

The whole of the Leased Premises shall be used and occupied throughout the Term only for the Permitted Use. The Tenant shall be responsible for obtaining at its sole cost and expense all necessary approvals, licences and permits, including, but not limited to, zoning, development, building, occupancy, liquor and business approvals, licences and permits, for the Permitted Use of the Leased Premises and shall submit all applications for such approvals, licences and permits to the Landlord for its prior written consent (which consent, if the application pertains to the zoning applicable to the Development or may adversely affect the value or use of the Development or any part thereof may be arbitrarily withheld by the Landlord) prior to making application. Notwithstanding the Landlord's consent to an application, the Tenant shall indemnify and defend the Landlord and save it harmless from and against any and all claims incurred or suffered by the Landlord directly or indirectly arising out of the Tenant's application for, or failure to obtain such approvals, licences or permits or the resulting approvals, licences and permits with respect to the use, intended or otherwise, of the Leased Premises, whether such claims are in respect of the Leased Premises or in respect of the Development. The Landlord makes no representation or warranty whether or not necessary approvals can be obtained for the Permitted Use of the Leased Premises.

8.2 Character of Business

Without limiting Section 9.1, the Tenant shall not use or permit all or any portion of the Leased Premises to be used for:

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- (a) a store conducted in whole or in part for the sale of fire sale stock, second-hand goods or surplus articles, insurance salvage stock, bankruptcy stock or as an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting under the Lease), liquidation sale, "going out of business sale", bankruptcy sale, warehouse sale, pawn shop or flea market;
- (b) any operation in any line of merchandising or other business which is associated with any fraudulent or deceptive advertising or selling procedures or which, because of merchandise being sold or the merchandising or pricing methods adopted, in the opinion of the Landlord, tends to lower the character of the Commercial Component;
- (c) machines vending merchandise, services or entertainment unless expressly permitted in writing by the Landlord;
- (d) the sale, rental or display of materials that are pornographic in nature;
- (e) any unusual fire, explosive or dangerous hazards (including the storage, sale or display of explosives, firecrackers or fireworks);
- (f) any manufacturing, warehouse and/or storage facility;
- (g) a bowling alley, theatre, amusement arcade, bingo hall, premises for games of chance, and/or off track betting;
- (h) growing of marijuana plants;
- (i) operation of a marijuana clinic;
- (j) the sale of merchandise which is or may be used for the consumption of drugs, or tobacco or similar products contrary to law; and/or
- (k) any other noxious or offensive use, as determined by the Landlord in the Landlord's sole and absolute discretion.

8.3 Conduct of Tenant's Business

In the conduct by the Tenant of its business as described in Section 9.1 hereof, the Tenant shall:

- (a) open for business on the Commencement Date and operate its business in an active, continuous and diligent manner throughout the Term that is in keeping with the overall standard and nature of the Development as a first-class building;
- (b) supply and maintain or cause to be installed and maintained Utility services within the interior of the Leased Premises where the same are required for the proper operation thereof; and
- (c) keep the Leased Premises properly heated and air-conditioned as necessary and in any event in such manner as shall avoid the appropriation of heat or air-conditioning from any other part of the Commercial Component, maintain adequate lighting for the Leased Premises as necessary during the hours that the Leased Premises is open for business.

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8.4 Discontinuance of Unacceptable Use

Any business, conduct or practice promulgated, carried on or maintained by the Tenant, whether through advertising or selling procedures or otherwise, which in the opinion of the Landlord, acting reasonably, may harm or tend to harm the business or reputation of the Landlord or reflect unfavourably on the Development, the Landlord or other tenants in the Development, or which may tend to confuse, mislead, deceive or be fraudulent to the public, shall be immediately discontinued by the Tenant at the request of the Landlord.

8.5 Compliance with Applicable Law

The Tenant covenants to comply with all present and future Applicable Laws, which affect the Tenant's use and occupancy of the Leased Premises or any Leasehold Improvements of the Tenant or any use by it of other parts of the Lands or Development or the making of any repairs, alterations, additions, changes, substitutions or improvements of or to the Leased Premises, and the regulations of any insurance underwriters in respect of the insurance maintained by the Landlord in respect of the Commercial Component, and carry out all modifications to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which may be required by any such Governmental Authorities, at its sole cost and expense.

8.6 Abandonment

Subject to the provisions of Section 9.1 hereof, the Tenant shall not abandon the Leased Premises at any time during the Term without the Landlord's prior written consent.

8.7 Nuisance

The Tenant shall not cause or maintain any nuisance in or about the Leased Premises, and shall keep the Leased Premises free of debris, rodents, vermin and anything of a dangerous, noxious or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat or noise. The Tenant shall indemnify, defend and hold the Landlord harmless from and against any and all claims, demands, losses, costs or damages, whether direct or consequential relating to disturbances caused to the quiet enjoyment of the Landlord or other tenant's or occupants in the Development resulting from the use of the Leased Premises, including as examples only, any odours, smells, rats or vermin. The Landlord acknowledges that the use of the Leased Premises for the Permitted Use shall be deemed not to be a nuisance and not to create a fire hazard, undue vibration, heat or noise, provided that the Tenant carries on such Permitted Use in compliance with this Lease and all Applicable Law. If the Tenant's garbage is of a deteriorating nature, or creating offensive odours, the Tenant shall utilize and maintain, at its cost, refrigerated facilities as required by the Landlord. The Tenant will not permit waste or garbage to be placed or accumulate within the Leased Premises or outside the Leased Premises.

8.8 Security

The Tenant shall take all reasonable security measures as are necessary to protect and safeguard the Leased Premises and its contents.

8.9 Pest Control

In order to maintain satisfactory and uniform pest control throughout the Commercial Component, the Tenant shall engage for the Leased Premises, at its sole cost and expense, a pest extermination contractor.

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8.10 Cleaning

The Tenant shall, at regular intervals, cause the floors of the Leased Premises to be swept and cleaned, the furniture and the equipment of the Tenant to be cleaned, all garbage removed to the appropriate receptacles, and when necessary, the walls and windows of the Leased Premises to be cleaned, and to generally keep the Leased Premises in a neat and tidy condition, and in good order. The Landlord shall provide an area within the Development, to be accessed by the Tenant and its garbage contractor via the rear exterior access to the Development for the Tenant's recycling bins and wet garbage bins. The Landlord acknowledges that the Tenant will be removing its garbage and recycling from its Leased Premises via the exterior side door of the Leased Premises. The Landlord shall have the right to control and limit access to the back residential hallway, in its sole discretion, insofar as the transport of garbage and recycling materials are concerned.

9.11 Parking

Tenant confirms that there are no parking spaces available at the Development for Tenant's use.

9.12 Continued Use in the Event of Insolvency or Bankruptcy

If the Tenant becomes insolvent or files a notice of intention to file a proposal to some or all of its creditors, or files for protection from its creditors, or a trustee in bankruptcy, liquidator or receiver is appointed, and if the Landlord has consented in writing to the occupancy of the Premises by such tenant, receiver, liquidator or trustee, the tenant, receiver, liquidator or trustee shall continue only the business operated by the Tenant from the Leased Premises in accordance with the provisions of this Lease signed by the Parties before the Commencement Date and in the same manner, with the same quality and type of inventory and on the same terms as that business was carried on prior to the insolvency, filing, receivership or bankruptcy. For certainty, in such situations, the tenant receiver or trustee may not bring merchandise onto the Premises for sale except on such terms and in such quantities as were usual and ordinary in the Tenant's business immediately prior to the insolvency, filing, receivership or bankruptcy. The provisions of this Section 9.12 may be waived in whole or in part by the Landlord, but such waiver may be unreasonably withheld or made subject to such conditions as the Landlord, in its sole discretion, may see fit.

ARTICLE IX— SERVICES, MAINTENANCE, REPAIR AND ALTERATIONS BY LANDLORD

9.1 Operation of Development

During the Term, the Landlord shall operate and maintain the Development including, without limitation to, the Common Areas of the Development, the Tenant HVAC System, and the structural portions of the Leased Premises (but excluding the obligations of the Tenant as to the Leased Premises), in the manner as would a prudent landlord of a similar mixed-use development in a comparable area and shall do all things necessary or desirable to provide the Utilities, cleaning, maintenance, repairs, replacement, supervision, administration, management or other services and facilities, subject to any interruptions to Utility or other services during periods of repair or construction which are beyond the reasonable control of the Landlord.

9.2 Maintenance, Repair and Replacement

Subject to the provisions of Section 10.1 hereof, the Landlord shall operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Development and for provision of the Landlord's services under Section 10.1 hereof (except such as may be installed by or be the property of the Tenant), and shall be responsible for and shall maintain and repair the foundations, structure and roof of the Development, provided that:

- (a) if all or part of such systems, facilities and equipment are destroyed, damaged or impaired, the Landlord shall have a reasonable time in which to complete the necessary repair or replacement, and during that time shall be required only to maintain such services as are reasonably possible in the circumstances;
- (b) the Landlord may temporarily discontinue such services or any of them at such times as may be necessary due to causes beyond the reasonable control of the Landlord;
- (c) the Landlord shall use reasonable diligence in carrying out its obligations under this Section 10.2 and to the extent reasonably possible shall not affect access to or egress from the Leased Premises, but except as expressly provided otherwise in this Lease, there shall be no allowance to the Tenant by way of abatement or diminution of rent, or otherwise, by reason of inconvenience, annoyance or injury to the business arising from the happening of the event which gives rise to the need for any repairs, alterations, additions or improvements or from the making of any repairs, alterations, additions or improvements in or to any portion of the Development or the Leased Premises, or in and to the fixtures, appurtenances and equipment thereof;
- (d) no temporary reduction or discontinuance of such services under Section 10.2(a) and/or 10.2(b) hereof shall be construed as an eviction of the Tenant or (except as specifically provided in this Lease) release the Tenant from any obligation of the Tenant under this Lease; and
- (e) nothing contained herein shall derogate from the provisions of Article XVIII hereof.

Provided that notwithstanding the foregoing, the Landlord may slow down, interrupt, delay, or shut down any of the Utilities on account of repairs, maintenance or alterations to any equipment or other parts of the Development so long as where practical, it schedules such interruptions, delays, slowdowns, or stoppage so as to minimize any inconvenience to the Tenant. The Landlord shall not be held responsible for any direct or indirect damages, losses, or injuries caused to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any Utility or service to the Leased Premises regardless of whether the said interruption delay or shutdown to the Utilities were caused by the Landlord or a third party. If possible, the Landlord will give the Tenant at least two (2) days advance notice of any planned service interruption. The Tenant hereby acknowledges and agrees that all of the costs and/or expenses incurred by the Landlord in performing the tasks set out in this Section 10.2 shall form of Operating Expenses, unless otherwise expressly provided herein. The Landlord shall use all reasonable efforts at all times not to substantially interfere with Tenant's business operations or the

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public's access to the Leased Premises, except during the making of temporary repairs or replacements to the Development or any part thereof, or for the purposes of complying with the requirements of any Governmental Authority.

9.3 HVAC Maintenance Program

Subject to payment of the Additional Rent by the Tenant, the Landlord shall, throughout the Term and any extensions or renewals thereof, maintain, repair and, if necessary (as determined by the Landlord acting reasonably), replace the heating, ventilating and air-conditioning equipment within and serving the Leased Premises, in each case as determined by the Landlord (the "**Tenant HVAC System**"). For certainty, the Occupancy Costs shall include all costs of maintenance, together with all costs of required repairs and replacements to the Tenant HVAC System. For clarity, any capital repairs or replacements to the Tenant HVAC System as determined by the Landlord in accordance with GAAP consistently applied in the real estate industry by major landlords will be deemed to be recoverable by the Landlord from the Tenant in accordance with Section(s) of Schedule "B" hereof. Notwithstanding the foregoing, should any maintenance, repair or replacement be required as a result of the fault or default of the Tenant, its employees, agents, suppliers or customers, the entire cost of same, together with an administration fee of fifteen percent (15%) shall be payable by the Tenant to the Landlord at the time it is incurred.

If from time to time as requested in writing by the Tenant and to the extent that it is reasonably able to do so, the Landlord shall provide in the Leased Premises services in addition to those set out in Section 10.1 hereof, provided that the Tenant shall within thirty (30) days of receipt of any invoice for any such additional service pay the Landlord therefor at such reasonable rates as the Landlord may from time to time establish plus an administration fee as set out in Section 7.1 hereof. The Tenant shall not, without the Landlord's prior written consent (which can be withheld in its sole discretion), install in the Leased Premises equipment (including by way of example and without limitation, telephone equipment) that could generate heat to such an extent as to adversely affect the temperature otherwise maintained in the Leased Premises by the Tenant HVAC System as normally operated.

9.4 Alterations by the Landlord

The Landlord may from time to time make repairs, replacements, changes, alterations or additions to the Leased Premises, the Common Areas or other parts of the Development as the Landlord determines are necessary or advisable, in its sole and absolute discretion, provided that in performing any repairs, replacements, changes, alterations and/or additions, the Landlord will at all times use reasonable commercial efforts to provide the Tenant with at least two (2) days advance written notice of any anticipated excessive noise or dust within the Development that may arise from the work described in this Section 10.5 that may have an impact on the Tenant's business operations within the Leased Premises, having regard to the Permitted Use.

9.5 Access by the Landlord

Subject to the provisions contained in Section 10.5 and otherwise subject to providing reasonable prior notice (except in the case of emergency, real or apprehended, when no such notice will be required), the Tenant shall permit the Landlord to enter the Leased Premises to examine, inspect, and show the Leased Premises to Persons wishing to purchase the Development, to provide services or make repairs, replacements, changes or alterations as set out in this Lease, and to take such steps, as the Landlord may deem necessary for the safety,

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improvement or preservation of the Leased Premises or the Development. No such entry shall constitute an eviction or entitle the Tenant to any abatement of Rent.

9.6 Notice of Letting and Inspection by Prospective Tenants

At any time within one hundred eighty (180) days prior to the expiry or sooner termination of this Lease:

- (a) The Landlord may place upon the Development signage indicating the Leased Premises is for rent, and the Tenant shall not remove or obscure such signage or permit the same to be removed or obscured, provided that such signage shall not interfere with the Tenant's signs for the Leased Premises; and
- (b) any prospective tenant or its representative may inspect the Leased Premises and all parts thereof after the Normal Business Hours, if accompanied by the Landlord or its agent.

9.7 Energy Conservation and Security Policies

The Landlord shall be deemed to have observed and performed those things required to be observed and performed pursuant to the terms of this Lease, including those relating to the provision of Utilities and services, if in doing so it acts in accordance with a directive, policy or request of a Governmental Authority serving the public interest in the field of energy conservation or security.

9.8 Landlord's Work

The Landlord shall be responsible, at its sole cost and expense, for providing all the work set out to be the Landlord's Work in Schedule "F" attached hereto. All other improvements to the Leased Premises constitute the Tenant's Work, and shall be performed at the sole expense of the Tenant in accordance with the terms of this Lease.

ARTICLE X— MAINTENANCE, REPAIR, ALTERATIONS AND IMPROVEMENTS BY TENANT

10.1 Condition of Leased Premises

- (a) Except to the extent that the Landlord is specifically responsible therefor under this Lease and subject to the provisions of Article XVIII, the Tenant shall maintain the Leased Premises and all improvements therein in good order and condition and at its sole cost and expense, subject to reasonable wear and tear, including:
 - (i) all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus that supply any services to the Leased Premises only and that lie within or beyond the Leased Premises boundaries, specifically including:
 - (A) the Tenant HVAC System, subject only to Article X;
 - (B) the branch piping extending to the common pipe riders servicing the Leased Premises;
 - (C) all electrical receptacles, intercom and alarm controls (excluding only the cable servicing such controls), ventilation fan units, light

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- fixtures lying within suspended ceilings and similar apparatus that supply any service to the Leased Premises only, regardless of whether same are installed or located within or beyond the boundaries of the Leased Premises;
- (D) any branch piping extending to the common pipe riders but excluding the common pipe risers;
 - (E) all exterior doors and windows and any hardware (such as door and/or window handles, locks, hinges and peep holes) appurtenant thereto; and
 - (F) the entire sign band component contained within the Leased Premises boundaries and any wire or cable appurtenant to it;
- (ii) the interior of the Leased Premises, the Leasehold Improvements within the Leased Premises or exclusively servicing the Leased Premises, the Trade Fixtures and any signage, or other fixtures, attachments or installations in any part of the Development, whether or not located in the Leased Premises permitted by this Lease to be installed by or on behalf of the Tenant provided that said fixtures, attachments or installations exclusively service the Leased Premises;
 - (iii) subject to Section 10.3, all work relating to heating, cooling, ventilation, exhaust, electrical distribution and life safety systems, including thermostatic controls, in or servicing the Leased Premises exclusively and are located within the Leased Premises (to the shut-off valve). Provided however, the Landlord may at its sole option upon prior written notice to the Tenant, elect to maintain and repair the heating, cooling, ventilation and exhaust systems in or servicing the Leased Premises exclusively, at the cost of the Tenant, and upon receipt of an invoice therefor from the Landlord, the Tenant shall pay the amount of the invoice, as Rent, concurrently with the payment of Occupancy Costs next payable. In the event the Landlord elects to maintain and repair the aforesaid heating, cooling, ventilation and exhaust systems, the Tenant will permit the Landlord access into the Leased Premises upon forty-eight (48) hours prior written notice to the Tenant and at a mutually convenient time thereto, and at any time and without prior written notice in the event of an emergency;
 - (iv) cleaning window coverings and treatments and carpets at reasonable intervals as determined by the Tenant, acting reasonably;
 - (v) keeping the Leased Premises including glass store fronts in a clean and tidy condition, and not permit wastepaper, garbage, ashes, waste or objectionable material to accumulate thereon or in or about the Development, other than in areas designated by the Landlord. The Tenant shall retain any contractor(s) as may be required to dispose of garbage and recycling in accordance with Applicable Law. If a separate container/enclosure is not permitted due to site plan restrictions or other lawful requirements, the Tenant may use the Landlord's facilities and shall pay its share of the cost of such facilities as determined by the Landlord as part of Occupancy Costs, acting reasonably;

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- (vi) repairing all damage in the Leased Premises resulting from any misuse, excessive use or installation, alteration, or removal of Leasehold improvements, fixtures, furnishings or equipment by the Tenant or those for whom the Tenant is responsible at law; and
- (vii) making repairs, replacements and alterations as needed, including those necessary to comply with the requirements of any Governmental Authority having jurisdiction, of all fixtures and items which at any time during the Term of this Lease are located or erected in or upon the Leased Premises (including but not limited to signs, the inside and the outside of the ground floor windows, partitions and doors, lighting, wiring, plumbing, and electrical fixtures), such repair and maintenance to be made by the Tenant when, where and so often as needed shall be, always excepting only:
 - (A) reasonable wear and tear, provided the state of repair does not affect the proper appearance, use and enjoyment of the Leased Premises and shall not be permitted to fall below the standard of a good state of repair; and
 - (B) repairs required to be made by the Landlord pursuant to Section 10.2 hereof.
- (b) Throughout the Term, the Tenant shall, at its sole cost and expense, maintain all Trade Fixtures and maintain and re-lamp all lighting fixtures. If the Tenant requires any electrical equipment which will overload the electrical facilities in the Leased Premises, the Tenant shall first submit to the Landlord plans and specifications for the work required to install and supply additional electrical equipment necessary to prevent overloading the electrical facilities in the Leased Premises, and obtain from the Landlord written approval to perform the same. All such work shall meet all governmental regulations, regulations of any other competent Governmental Authority, regulations of the Association of Insurance Underwriters and requirements as set down by the Landlord's insurers, and shall be at the sole cost and expense of the Tenant, and shall be carried out in a good and workmanlike manner and in accordance with this Lease.

10.2 Inspection, Entry and Notice

- (a) The Landlord, or its agents, may from time to time, upon at least two (2) days prior written notice (except in the case of emergency, real or apprehended, when no such notice will be required), enter the Leased Premises and inspect the state of maintenance, repair and decoration.
- (b) The Landlord shall give written notice to the Tenant requiring it to perform certain repairs in accordance with Section 11.1 hereof which are the Tenant's responsibility pursuant to the provisions of this Lease, and the Tenant shall rectify such repairs within the time period set out in Section 21.1(b) hereof.
- (c) If Tenant is not present to open and permit any entry into the Leased Premises when for any reason an entry shall be necessary only 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 thereof, and without affecting the obligations and covenants of this Lease.

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- (d) Nothing in this Lease shall make the Landlord liable for any actions, notices or inspections as described in this Section 11.2, nor is the Landlord required to inspect the Leased Premises, give notice to the Tenant or carry out remedies on the Tenant's behalf, except as otherwise specifically provided in this Lease, nor is the Landlord under any obligation for the care, maintenance or repair of the Leased Premises, except as specifically provided in this Lease.

10.3 Failure to Maintain Leased Premises

If the Tenant fails to perform or commence to perform any obligation under this Lease including, without limitation, those set out in Sections 11.1 and 11.12 hereof, the Landlord may, without prejudice to its other rights set out herein or at law, enter the Leased Premises and perform such obligation without liability to the Landlord for any loss or damage to the Tenant thereby incurred and the Tenant shall pay the Landlord for the cost thereof, plus fifteen percent (15%) of such costs for overhead and supervision, within thirty (30) days of receipt of the Landlord's invoice therefor.

10.4 Alterations by the Tenant

- (a) The Tenant may from time to time at its own expense make changes, additions and improvements in the Leased Premises to better adapt the same to its business, provided that the Tenant obtains the Landlord's prior written consent to any such any such changes, additions or alterations, which consent shall (except as otherwise provided herein) not be unreasonably withheld, and that any such improvements, change, addition or improvement shall:
- (i) comply with the requirements of the Landlord's insurer and any Governmental Authority having jurisdiction;
 - (ii) be made only by contractors that the Landlord has approved using detailed plans and specifications therefor that the Landlord has approved;
 - (iii) comply with the requirements set out in Schedule "F" attached hereto; and
 - (iv) with respect to changes, additions and improvements which may affect the structure of the Leased Premises or other portions of the Development, the base building systems and/or the Common Areas, or which relate to the heating, cooling, ventilation and exhaust systems for the Leased Premises, be made only with the prior written consent of the Landlord, which consent the Landlord may arbitrarily withhold; and
 - (v) equal or exceed the then current standards for the Development.

The Tenant may, however, make any necessary minor internal improvements within the Leased Premises of a cosmetic nature which do not require a building permit, at the Tenant's own expense, without the Landlord's prior written consent and in compliance with all requirements of any Governmental Authority having jurisdiction.

- (b) If required by the Landlord, the Tenant shall deliver to the Landlord before commencement of any work related to such changes, additions and improvements in the Leased Premises as set out in Section 11.4(a)(iii), proof of

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workers' compensation and public liability and property damage insurance coverage in accordance with the provisions of Section 12.1 of this Lease.

10.5 Work Done by the Landlord

- (a) In the event the Tenant requires any of the following work, it shall be carried out by the Landlord at the Tenant's sole expense pursuant to an agreement in writing:
 - (i) all approved work on the roof and to the exterior of the Development, including the installation of telecommunications equipment;
 - (ii) patching of Development standard fireproofing;
 - (iii) any drilling, cutting, coring and patching for conduit, pipe sleeves, chases, duct equipment, or openings in the floors, walls, columns or roofs of the Commercial Component and/or the Development which is approved by the Landlord; and
 - (iv) installation of approved modifications to the sprinkler system.
- (b) The Tenant shall pay the Landlord fifteen percent (15%) of the cost of any such work in Section 11.6(a) hereof as a fee for the Landlord's supervision and/or management of such work.

10.6 Ownership of Improvements

All improvements to the Leased Premises, whether installed or constructed by the Tenant, except for Trade Fixtures, shall become the property of the Landlord when constructed or installed, without compensation therefor to the Tenant, but the Tenant will be solely responsible for insuring, repairing and maintaining same. Notwithstanding the foregoing, the Tenant shall have the right to take the benefit of any capital cost allowance or other applicable allowance to which it may be entitled under the *Income Tax Act* (Canada) or any Applicable Law for any improvements made by the Tenant which by definition becomes the property of the Landlord.

10.7 Trade Fixtures, Personal Property, Copyright and Trademark Rights

The Tenant may install in the Leased Premises its usual first class Trade Fixtures and personal property appropriate for the Tenant's business and the general character of the Development in a proper manner, provided that:

- (a) no such installation shall interfere with or damage or impede access to the mechanical or electrical systems or the structure of the Development;
- (b) the charge for and the cost of any and all damages to the Development resulting from such installation will be paid by the Tenant;
- (c) such installation does not contravene the provisions of this Lease;
- (d) the Tenant will remove from the Leased Premises, immediately upon written notice from the Landlord, any safes, machinery, equipment, article or thing which has been installed by the Tenant, that by reason of its weight, size or use may, in the reasonable opinion of the Landlord, damage the Leased Premises and will

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not at any time overload the floors of the Leased Premises. If damage is caused to the Development or any part thereof by any machinery, equipment article or thing by overloading, or by any act, neglect or misuse on the part of the Tenant or any Person for whom the Tenant is responsible pursuant to Applicable Law, the Tenant shall forthwith repair the same; and

- (e) if the Tenant has paid the Rent hereby reserved, and performed the covenants herein contained and on its part to be performed, the Tenant shall have the right to remove its Trade Fixtures which shall include and be limited to proprietary items, tables, chairs, moveable equipment, small wares, signage and logos. The Tenant shall make good any damage or injury caused to the Leased Premises or the Development by reason of such removal, subject to reasonable wear and tear. The Tenant shall leave the Leased Premises in vacant, broom swept condition.

10.8 Construction Liens

The Tenant shall promptly pay all of its contractors and suppliers and shall do any and all things necessary so as to minimize the possibility of a lien attaching to the Lands pursuant to the CA and/or any other Applicable Law and should any such lien be registered, the Tenant shall discharge it within five (5) Business Days following the Tenant receiving notice thereof, provided however that the Tenant may contest the validity of any such lien and in so doing shall obtain an order of a court of competent jurisdiction (the "**Court**") discharging the lien from the title to the Lands by payment into Court. If the Tenant shall fail to discharge any lien as aforesaid, then in addition to any other right or remedy of the Landlord, the Landlord may, but it shall not be so obligated, discharge the lien by paying the amount claimed to be due into Court and the amount paid by the Landlord together with all costs and expenses including solicitor's fees (on a substantial indemnity basis) incurred for the discharge of the lien shall be due and payable by the Tenant to the Landlord as Additional Rent on demand.

10.9 Notify the Landlord

The Tenant covenants to immediately notify the Landlord of any defect, damage or malfunction affecting the Leased Premises or other parts of the Development of which the Tenant is aware.

10.10 Signage

Save and except as hereinafter set out, the Tenant shall not paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction on any part of the outside of the Development, nor shall the Tenant paint, display, inscribe, place or affix any signage on the outside of the Leased Premises or perimeter windows of the Leased Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. In addition to the foregoing, no exterior signage may be erected by the Tenant without the Landlord's prior written consent, which may not be arbitrarily withheld. In the event that the Landlord grants its consent to the installation by the Tenant of exterior or window signage, the Tenant shall be required to provide the Landlord with written evidence of (i) approval from all relevant Governmental Authorities having jurisdiction and (ii) compliance with all Applicable Laws prior to the installation or erection of any exterior or window signage by or on behalf of the Tenant. Any signage so consented to hereunder shall be hereinafter referred to as the "**Permitted Signage**". The Landlord agrees to cooperate and support any applications made by the Tenant for such Permitted Signage, at the Tenant's sole cost and expense. It is hereby understood and agreed that the Tenant shall be solely responsible for all costs and expenses related to the ongoing Utility, maintenance, repair, replacement, removal and other usual operating costs of the

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Permitted Signage throughout the Term, including, without limitation, any initial construction and/or capital costs relating thereto. All Permitted Signage shall be dignified in appearance and shall be removed by the Tenant on the Expiry Date or earlier termination of this Lease in accordance with the terms herein. The Tenant shall be responsible for repairing any damage caused by the installation and removal thereof. The Tenant shall indemnify the Landlord against all loss or damage caused to any Person or thing as the result of the placing or use of any Permitted Signage to the extent the Landlord bears any liability therefor. Notwithstanding anything contained herein to the contrary, the Tenant shall not, nor shall it permit its employees or agents to canvass, solicit, peddle or distribute handbills or other advertising matter or display any merchandise in or about the Development or outside of the Leased Premises, unless otherwise approved in writing by the Landlord, which approval may be arbitrarily withheld.

ARTICLE XI— INSURANCE

11.1 Tenant's Insurance

The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect at all times throughout the Term the following insurance:

- (a) "all risks" insurance (including flood, earthquake and sewer back-up) upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Leased Premises or on the Lands or the Development, including, without limitation, stock-in-trade, furniture, equipment, partitions, Trade Fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time;
- (b) commercial general liability policy and property damage insurance, including personal liability, contractual liability, tenants' legal liability, plate glass insurance (if applicable), non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Leased Premises and the Common Elements, which coverage shall include the business operations conducted by the Tenant and any other Person within the Leased Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Five Million Dollars (\$5,000,000);
- (c) when applicable, broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement costs of the property outlined in Section 12.1(a) hereof, and of all boilers and machinery owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises or relating to or serving the Leased Premises;
- (d) business interruption insurance in an amount sufficient to cover the Tenant's Base Rent and Additional Rent for a period of not less than twelve (12) months;
- (e) Tenant's legal liability insurance for the replacement cost of the Leased Premises; and
- (f) any other form of insurance as the Landlord may reasonably require from time to time in amounts and for insurance risks against which a prudent tenant would protect itself.

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11.2 Policy Requirements

Each policy of insurance taken out by the Tenant in accordance with this Lease shall be taken out with reputable insurers, and shall be in such form and on such terms as are satisfactory to the Landlord acting reasonably, and each such policy shall name the Landlord and any others designated by the Landlord as additional named insured's and first loss payee, as their respective interests may appear, and each of such policies shall contain, in form satisfactory to the Landlord:

- (a) a standard mortgage clause;
- (b) a waiver by the insurer of any rights of subrogation or indemnity or any other claim over, to which such insurer might otherwise be entitled against the Landlord, its agents, employees or for whom the Landlord is responsible pursuant to Applicable Law;
- (c) an undertaking by the insurer to notify the Landlord and any mortgagee of which it has notice in writing not less than thirty (30) days prior to any proposed material change, cancellation or other termination thereof;
- (d) a provision that the Tenant's insurance is primary and shall not call into contribution any other insurance available to the Landlord; and
- (e) a severability of interests clause and a cross-liability clause, where applicable.

The Tenant shall be entitled to take out all insurance which may be required to be taken out by it under the insurance provisions of the Lease, under its blanket insurance policies as long as the Tenant's blanket insurance policies meet the insurance provisions of this Lease, from time to time in force, with such insurers and with such deductibles as are contained in the Tenant's said blanket insurance policies and for the purposes of the Lease, the Tenant shall be deemed to have met the insurance requirements under the Lease.

11.3 Proof of Insurance

The Tenant shall provide to the Landlord on demand satisfactory evidence that the policies of insurance required to be maintained by the Tenant in accordance with this Lease are in fact being maintained, which evidence shall be in the form of certificates of insurance, in form and content acceptable to the Landlord, acting reasonably.

11.4 Failure to Maintain

If the Tenant fails to take out or keep in force any insurance referred to in this Article XII and should the Tenant not rectify the situation within forty-eight (48) hours following receipt by the Tenant of written notice from the Landlord (stating, if the Landlord does not approve of such insurance, the reasons therefor), the Landlord shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord together with a fifteen percent (15%) administration fee thereon shall be payable by the Tenant to the Landlord and shall be due on the first day of the next month following said payment by the Landlord without prejudice to any other rights and remedies of the Landlord under this Lease.

11.5 Increase in Insurance Premiums/Cancellation

The Tenant shall not do or permit anything to be done upon the Leased Premises that shall cause the premium rate of insurance on the Development and/or the Commercial Component to be increased. premium rate of insurance on the Development and/or the Commercial Component increased by reason of any use made of the Leased Premises, the Tenant shall pay to the Landlord on demand the amount of such premium increase. In the event of an actual or threatened cancellation of any insurance on the Development and/or the Commercial Component or any adverse change thereto by the insurer by reason of the use or occupation of the Leased Premises, and if the Tenant has failed to remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation or adverse change within twenty-four (24) hours after receipt of written notice thereof by the Landlord, then the Landlord may terminate this Lease by notice in writing to the Tenant or remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation or change, all at the reasonable cost of the Tenant to be paid forthwith on demand, and for such purposes the Landlord shall have the right to enter upon the Leased Premises without further notice.

11.6 Landlord's Insurance

The Landlord shall obtain such insurance in respect of the Development and its operations in respect thereof as it may determine in its sole and unfettered discretion. Notwithstanding that the Tenant shall be contributing to the Landlord's costs and premiums respecting any such insurance, the Tenant shall not have any insurable or other interest in any of the Landlord's insurance, and in any event, the Tenant shall not have any interest in, or any right to recover any proceeds under any of the Landlord's insurance policies.

11.7 Non-Liability for Loss, Injury or Damage

The Tenant acknowledges and agrees that the Landlord shall not be liable for (i) any death or injury arising from or out of any occurrence in, upon, at or relating to the Lands, the Development and/or the Commercial Component, (ii) damage to property of the Tenant or others located on the Leased Premises, (iii) 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 Development or from the water, steam or drainage pipes or plumbing works of the Development or from any other place or quarter, (iv) any damage caused by or attributable to the condition or arrangement of any electric or other wiring, (v) any damage caused by anything done or omitted to be done by the Landlord or by any other tenant of the Development, (vi) any claim or demand in connection with any injury, loss or damage to the Tenant, its agents, invitees or licensees, or to the property of the Tenant, its agents, invitees or licensees, where such injury, loss or damage arises out of the security services in force or lack thereof in the Development from time to time, and (vii) in any event, whether arising from the Landlord's negligence or otherwise, the Landlord shall not be liable for any indirect or consequential damages suffered by the Tenant. Without limiting the foregoing, the Tenant hereby releases the Landlord, and those for whom the Landlord is responsible pursuant to Applicable Law, from all losses, damages and claims of any kinds in respect of which the Tenant is required to maintain insurance or otherwise insured.

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11.8 Indemnification of the Landlord

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 Leased Premises (save where caused by the gross negligence or wilful misconduct of the Landlord) or arising from the occupancy or use by the Tenant of the Leased Premises or the Commercial Component by the Tenant, its agents, contractors, employees, servants, licensees, concessionaires or invitees or occasioned wholly or in part by any act or omission of the Tenant, its agents, contractors, employees, servants, licensees or concessionaires whether on the Leased Premises, the Lands, the Development and/or the Commercial Component. In case the Landlord is made a party to any litigation commenced by or against the Tenant, the Tenant shall hold the Landlord harmless and shall pay all costs and legal fees (on a substantial indemnity basis) incurred or paid by the Landlord in respect of such litigation.

ARTICLE XII— ASSIGNMENT AND SUBLETTING

12.1 Assignment or Subletting

- (a) Save and except as hereinafter set out, the Tenant will not assign, transfer, sublet, part with or share possession or set over or permit the Leased Premises to be occupied or used by a licensee or concessionaire or otherwise by any act or deed permit the Leased Premises or any part of them to be assigned, transferred, set over or sublet (individually and collectively, a “**Transfer**”) unto any Persons, firm, partnership or corporation whomsoever except with the consent of the Landlord, as set out in this Article XIII, which consent shall not be unreasonably withheld or unduly delayed if the Tenant has materially observed and performed all of the terms and conditions of this Lease on its part to be observed and performed and there is no Event of Default (it being acknowledged and agreed that any financial default is included in the definition of “materially”). If the Tenant desires to assign this Lease or sublet the Leased Premises or any portion thereof to a named third party (the “**Transferee**”), the Tenant shall first provide the Landlord with any information the Landlord may reasonably require (including a copy of the draft agreement to assign or sublet, evidence as to the responsibility, reputation, financial standing and business of the proposed Transferee, and a completed credit check application in the Landlord’s form) together with a cheque payable to the Landlord in the sum of not less than One Thousand Five Hundred Dollars (\$1,500.00) (exclusive of harmonized sales tax), being the administration cost of responding to the Tenant’s request for an assignment, or sublet, as the case may be. Notwithstanding anything to the contrary herein contained, the Landlord, in its sole and unfettered discretion, may arbitrarily withhold its consent to any assignment or sublet where the proposed use is inconsistent with the Permitted Use.
- (b) Without limiting the grounds upon which consent may be refused, the Landlord will not be deemed to be unreasonable in refusing consent when:
 - (i) the giving of such consent would place the Landlord in breach of any other tenant’s lease in the Development;

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- (ii) such consent is requested for a mortgage, charge, debenture (secured by floating charge or otherwise) or other encumbrance of, or in respect of, this Lease or the Leased Premises or any part of them;
- (iii) the proposed Transferee, in the reasonable opinion of the Landlord:
 - (A) does not have a history of successful business operation in the business to be conducted in the Leased Premises;
 - (B) does not have a good credit rating or sufficient net worth; and/or
 - (C) there is a history of default under other leases by the proposed Transferee or by companies or partnerships that the proposed Transferee was a principal shareholder of or a partner in at the time of the default;
- (iv) in the case of a Transfer to a subtenant of less than the entire Leased Premises, if such would result in a configuration which:
 - (A) would require access to be provided through space leased or held for lease to another tenant in the Development or improvements to be made outside of the Leased Premises; and/or
 - (B) would, in the sole opinion of the Landlord, be unreasonable to attempt to release to a third party;
- (v) the required information received from the Tenant or the proposed Transferee is not sufficient in the Landlord's reasonable opinion, to enable the Landlord to make a determination concerning the matters set out above (the Landlord agreeing to provide the Tenant with the basis underlying the Landlord's determination as regards the insufficiency of said information); and/or
- (vi) the use of the Leased Premises by the proposed Transferee, in the Landlord's opinion arrived at in good faith, could result in excessive use of the systems or services in the Development, be inconsistent with the image and standards of the Development or expose the occupants of the Development to risk of harm, damage or interference with their use and enjoyment thereof, or reduce the value of the Development.

12.2 Consent to Assignment or Subletting

Any Transfer to which the Landlord may consent or which may otherwise be permitted pursuant to Section 13.1 hereof will be conditional upon the proposed Transferee:

- (a) in the case of an assignment of this Lease, the Tenant, Transferee and Indemnifier executing and delivering an agreement (in the Landlord's form) to the Landlord agreeing to be bound by the terms of the Lease; and
- (b) in the case of a sublease, the Tenant, Transferee and Indemnifier executing and delivering an agreement (in the Landlord's form) to the Landlord agreeing to be bound by the terms of the Lease as they relate to the subleased premises.

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12.3 Improvements at the Tenant's Cost

In the event any sublease is made pursuant to this Article XIII, the Tenant shall bear the cost of all improvements (including, without limiting the generality of the foregoing, all demising walls, entrance doors, mechanical and electrical modifications) necessary to separate the area to be sublet from the remainder of the Leased Premises and the Tenant shall also be responsible for the removal of all improvements, (including, but not limited to, wiring), and restoring the Leased Premises to the condition they were in prior to the sublease if requested by the Landlord at the time it approves such alterations (if such approval is required) or at the expiry of any sublease agreement if the Tenant made such alterations without the Landlord's approval (if such approval is required).

12.4 Tenant's Obligations Continue

No assignment or disposition by the Tenant of this Lease or of any interest under this Lease shall relieve the Tenant, from the performance of its covenants, obligations or agreements under this Lease during the then current Term.

12.5 No Deemed Consent

The Landlord's consent to any Transfer shall not be effective unless given by the Landlord in writing, and no such consent shall be deemed or presumed by any act or omission of the Landlord other than consent in writing, nor shall any consent be deemed to be a consent to any future Transfer by the Tenant or by any Transferee. Without limiting the generality of the foregoing, the Landlord may collect Rent and any other amounts from any Transferee and apply the net amount collected to the Rent and other amounts payable pursuant to this Lease, and the collection or acceptance of such amounts shall not be deemed to be a waiver of the Landlord's rights under this Section 13.5 nor an acceptance of or consent to any such Transfer.

12.6 Subsequent Assignments

The Landlord's consent to an assignment, transfer or subletting (or use or occupation of the Leased Premises by any other Person) shall not be deemed to be consent to any subsequent assignment, transfer, subletting, use or occupation.

12.7 Change in Corporate Control

- (a) If the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of the Tenant shall result in changing the control of the Tenant such sale, assignment, transfer or other disposition shall be deemed a Transfer and shall be subject to all of the provisions of this Lease with respect to Transfers by the Tenant.
- (b) For the purpose of Section 13.7(a) hereof, "control" of any corporation shall be deemed to be vested in the Person or Persons owning more than fifty (50%) percent of the voting power for the election of the board of directors of such corporation. The provisions of Section 13.7(a) hereof shall not apply in respect of any initial public offering of securities or trading or issuance of securities listed on any recognized security exchange in Canada or the United States of America.

12.8 Unamended Lease Terms

If the Tenant receives the Landlord's prior written consent to a Transfer under the provisions of this Article XIII, the Tenant, the Landlord and the proposed Transferee specifically agree that

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notwithstanding anything to the contrary contained herein, all terms, covenants and conditions of this Lease shall remain as herein specified save and except for the provisions of this Lease relating to the use, business name and character of the business.

12.9 No Advertising

The Tenant shall not advertise the whole or any part of the Leased Premises or this Lease for the purpose of a Transfer and shall not print, publish, post, display or broadcast any notice or advertisement to that effect and shall not permit any broker or other Person to do any of the foregoing.

ARTICLE XIII— SURRENDER

13.1 Possession

At the expiration or earlier termination of the Term, the Tenant shall peaceably surrender and yield up to the Landlord the Leased Premises and all Leasehold Improvements made, constructed, erected or installed in the Leased Premises in good and substantial repair and condition in accordance with its covenants to maintain and repair the Leased Premises. The Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for payment of Rent (or as otherwise directed by the Landlord), and shall inform the Landlord of all combinations of locks, safes and vaults, if any, in the Leased Premises.

13.2 Removal of Leasehold Improvements and Trade Fixtures

- (a) The Tenant shall, at its sole cost and expense, at the expiration or earlier termination of the Lease, at Landlord's option and direction, remove all Non-Standard Leasehold Improvements, fixtures (including all Trade Fixtures), equipment and personal property and restore the Leased Premises to Landlord's base building standard. Tenant shall repair and make good any damage to the Leased Premises or to the Development caused either in the installation or removal of Leasehold Improvements. Trade Fixtures, and Tenant's property. **"Non-Standard Leasehold Improvements"** shall include shall not be limited to the following: all wiring and cabling; non-standard ceiling treatments; and non-standard flooring treatments. Each time Tenant submits alteration plans to Landlord, Landlord shall, within ten (10) days of receipt of such plans, provide written notice to Tenant of any item that is determined by the Landlord as non-standard, and suggest materials or other Leasehold Improvements that Landlord designates as not non-standard. Tenant shall not be required to remove Leasehold Improvements suggested by Landlord as not non-standard in this manner. The determination of non-standard Leasehold Improvements shall be at the Landlord's discretion, acting reasonably, and the term **"Leasehold Improvements"** shall include both Non-Standard Leasehold Improvements and all other leasehold improvements.
- (b) Upon the expiration or earlier termination of the Term and at the Tenant's sole cost, the Tenant shall remove all of the Trade Fixtures (including signage), goods or chattels of any kind installed by it or on behalf of it and shall make good any damage caused by reason of the installation and removal of such Trade Fixtures, goods and/or chattels. Notwithstanding the foregoing, the Tenant shall not remove any Trade Fixtures, goods and/or chattels of any kind from the Leased Premises until all Rent and other money due by the Tenant to the Landlord is paid unless otherwise directed by the Landlord. Any removal of Trade Fixtures,

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goods and/or chattels and repairs required as a result of such removal, which is undertaken pursuant to this Section 14.2, shall be completed prior to the expiry of the Term.

13.3 Landlord's Property

All Leasehold Improvements made, constructed, erected or installed in the Leased Premises and not required by the Landlord to be removed upon the expiry of this Lease are the property of the Landlord. All furniture, personal property, electronics and computer existing at the Leased Premises prior to the Commencement Date and as set out in Schedule "G", is the property of the Landlord and shall be returned to the Landlord and/or remain at the Leased Premises in the condition the Tenant received it, reasonable wear and tear excepted.

13.4 Tenant's Failure to Remove and Repair

Should the Tenant fail to remove any Leasehold Improvements, Trade Fixtures, goods or chattels of any kind that it is required to be removed in accordance with the provisions of this Lease, from the Leased Premises or to repair the Leased Premises prior to the expiry or earlier termination of the Term of this Lease then such Leasehold Improvements, Trade Fixtures, goods and chattels shall be deemed to have been abandoned by the Tenant and the Landlord may, at its option, remove, appropriate, sell, destroy or otherwise dispose of same, without compensation of any kind whatsoever to the Tenant, and repair any damage caused to the Leased Premises by their removal at the Tenant's expense, all in accordance with Section 21.2(c) hereof.

13.5 Merger

The voluntary or other surrender of this Lease by the Tenant or the cancellation of this Lease by mutual agreement of the Tenant and the Landlord shall not constitute a merger, and shall at the Landlord's option terminate all or any subleases. The Landlord's option hereunder shall be exercised by notice to the Tenant and all known sublessees or subtenants in the Leased Premises or any part thereof.

13.6 Payments After Termination

No payments of money by the Tenant to the Landlord after the expiration or earlier termination of the Term or after giving of any notice (other than a demand for payment of money) by the Landlord to the Tenant, shall reinstate, continue or extend the Term or make ineffective any notice given to the Tenant prior to the payments of such money. After the service of notice or the commencement of a suit, or after final judgment granting the Landlord possession of the Leased Premises, the Landlord may receive and collect any sums of Rent due under this Lease, and the payment thereof shall not make ineffective any notice, or in any manner affect any pending suits or any judgment therefor obtained.

ARTICLE XIV— HOLDING OVER

14.1 Month to Month Tenancy

If, with or without the Landlord's prior written consent, the Tenant remains in possession of the Leased Premises after the expiration or other termination of the Term, with or without the consent of the Landlord and without any further written agreement, the Tenant shall be deemed to be occupying the Leased Premises on a month to month tenancy only, and the base monthly rental payable pursuant to Section 5.1 hereof shall be equal to 200% of the Base Rent payable by the Tenant in the last month of the Term or such other rental as is stated in such prior written

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consent, and such month to month tenancy may be terminated by the Landlord or the Tenant on the last day of any calendar month by delivery of at least thirty (30) days' advance written notice of termination to the other.

14.2 General

Any month-to-month tenancy hereunder shall be subject to all other terms and conditions of the Lease, except any right of renewal and nothing contained in this Article XV shall be construed to limit or impair any of the Landlord's rights of re-entry or eviction or constitute a waiver thereof.

ARTICLE XV— RULES AND REGULATIONS

15.1 Purpose

The rules and regulations set forth in Schedule "C" attached hereto have been adopted by the Landlord for the safety, benefit and convenience of all tenants and other Persons in the Development. The rules and regulations may differentiate between different types of businesses in the Development, but the Landlord shall not discriminate against the Tenant in the establishment or enforcement of the rules and regulations. All such rules and regulations shall be deemed to be incorporated into and form part of this Lease, provided that if there is a conflict between such rules and regulations and the other provisions of this Lease, such other provisions of this Lease shall in all cases prevail.

15.2 Observance

The Tenant shall, at all times, comply with, and shall cause its employees, agents, licensees and invitees to comply with, such rules and regulations attached as Schedule "C" hereto and such further and other reasonable rules and regulations and amendments and changes thereto as may be made by the Landlord and notified to the Tenant by mailing a copy thereof to the Tenant. All such rules and regulations now or hereafter in force shall be read as forming part of this Lease, provided that if there is a conflict between such rules and regulations and the other provisions of this Lease, such other provisions of this Lease shall in all cases prevail.

15.3 Loading and Unloading

The delivery and shipping of merchandise, supplies, fixtures, and other materials or goods of whatsoever nature to or from the Leased Premises and all loading, unloading, and handling thereof shall be done only at such times, in such areas, by such means, and through such elevators, entrances, malls and corridors as are designated by the Landlord and in accordance with the rules and regulations set forth in Schedule "C" attached hereto, as may be amended from time to time. Notwithstanding anything in this agreement, including Schedule "C", Tenant shall be permitted to receive and dispatch deliveries from the exterior entrance at the side of the Premises at any time permitted by law, provided that the Tenant shall take all reasonable steps to ensure that said deliveries and usage of such access do not cause any disturbance of or nuisance to the tenants or occupants of the Development.

ARTICLE XVI— EXPROPRIATION

16.1 Taking of Leased Premises

If during the Term or any renewal thereof all of the Leased Premises shall be taken for any public or quasi-public use under any Applicable Law or by right of expropriation, or purchases under threat of such taking, this Lease shall automatically terminate on the date on which the expropriating authority takes possession of the Leased Premises (the "**Date of Such Taking**").

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16.2 Partial Taking of Development

- (a) If during the Term only part of the Development is taken or purchased as set out in Section 17.1 hereof, then:
 - (i) if in the reasonable opinion of the Landlord substantial alteration or reconstruction of the Development is necessary or desirable as a result thereof, whether or not the Leased Premises is or may be affected, the Landlord shall have the right to terminate this Lease by giving the Tenant at least thirty (30) days' written notice of such termination: and
 - (ii) if more than one third of the number of square feet in the Leased Premises is included in such taking or purchase, the Landlord and the Tenant shall each have the right to terminate this Lease by giving the other at least thirty (30) days' written notice thereof.
- (b) If either Party exercises its right of termination hereunder, this Lease shall terminate on the date stated in the notice, provided however, that no termination pursuant to notice hereunder may occur later than sixty (60) days after the Date of Such Taking.

16.3 Surrender

On any such date of termination under Sections 17.1 or 17.2 hereof, the Tenant shall immediately surrender to the Landlord the Leased Premises and all interest therein under this Lease, and if it fails to do so, the Landlord may re-enter and take possession of the Leased Premises and remove the Tenant therefrom, and the Rent shall abate on such date in respect of the portion taken. After such termination, and on notice from the Landlord stating the Rent then owing for the period prior to the termination date, the Tenant shall forthwith pay the Landlord such Rent.

16.4 Partial Taking of Leased Premises

If any portion of the Leased Premises (but less than the whole thereof) is so taken, and no rights of termination herein conferred are timely exercised, the Term of the Lease shall expire with respect to the portion so taken on the Date of Such Taking. In such event the Rent payable hereunder with respect to such portion so taken shall abate on such date, and the Rent thereafter payable with respect to the remainder not so taken shall be adjusted pro rata by the Landlord in order to account for the resulting reduction in the number of square feet in the Leased Premises.

16.5 Awards

Upon any such taking or purchase, the Landlord shall be entitled to receive and retain the entire award or consideration for the affected interest in the Lands and improvements, and the Tenant shall not have nor advance any claim against the Landlord for the value of its property or its leasehold estate or the unexpired Term, or for costs of removal or relocation, or business interruption expense or any other damages arising out of such taking or purchase. Nothing herein shall give the Landlord any interest in or preclude the Tenant from seeking and recovering on its own account from the condemning Governmental Authority any award or compensation attributable to the taking or purchase of the Tenant's improvements, chattels or Trade Fixtures, or the removal or relocation of its business. If any such award made or

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compensation paid to either Party specifically includes an award or amount for the other, the Party first receiving the same shall promptly account therefor to the other.

ARTICLE XVII— DAMAGE BY FIRE OR OTHER CASUALTY

17.1 Limited Damage to Leased Premises, Access or Services

If during the Term, the Leased Premises or any part thereof, or other portions of the Development providing access to services essential to the Leased Premises, shall be destroyed or damaged by any hazard against which the Landlord is obligated to insure pursuant to the provisions of this Lease, the Landlord, if permitted by Applicable Law to do so, shall oversee with reasonable diligence the rebuilding, restoration and/or repair of the Leased Premises to base building standards or such access routes or service systems, as the case may be, in conformance with current Applicable Law to the extent of insurance proceeds received. For greater certainty, it is understood and agreed that, upon substantial completion of the Landlord's repair work, the Tenant shall repair or restore the Leasehold Improvements to the state existing prior to the destruction or damage and consistent with its obligations in to Section 11.1 hereof. In the event that damage to the Leased Premises or any part thereof or to other portions of the Development providing access or services essential to the Leased Premises is such that the Leased Premises cannot be occupied by the Tenant for a period of five (5) Business Days or more:

- (a) Rent payable by the Tenant shall abate from the date of such damage or destruction to the date of substantial completion of the rebuilding, restoration and/or repair of the Leased Premises by the Landlord as determined by the Architect or restoration of access or services, as the case may be; and
- (b) if less than all of the Leased Premises is destroyed or damaged as contemplated in this Section 18.1, Rent payable by the Tenant shall abate from the date of such damage or destruction to the date of substantial completion of the rebuilding, restoration and/or repair of the Leased Premises by the Landlord in the same proportion as the Rentable Area of the Leased Premises so damaged or destroyed is of the total Rentable Area of the Leased Premises.

17.2 Major Damage to Leased Premises

- (a) If all or part of the Leased Premises is rendered untenable by damage from fire or other casualty which, in the reasonable opinion of the Architect, cannot be substantially repaired under Applicable Law and governmental regulations within three hundred and sixty (360) days from the date of such casualty (employing normal construction methods without overtime or other premium), then the Landlord or the Tenant may elect to terminate this Lease as of the date of such casualty by written notice delivered to the other not more than ten (10) Business Days after receipt of the Architect's opinion, failing which the Landlord, as the case may be, according to the nature of the damage and their respective obligations under this Lease (including the original Landlord's Work and the Tenant's Work), shall oversee the repair of such damage with all reasonable diligence in the event that neither Party terminates the Lease.
- (b) Notwithstanding any other right of termination contained herein, if all or part of the Leased Premises shall be damaged or destroyed by any hazard against which the Landlord is obligated to insure pursuant to the provisions of this Lease, and if in the opinion of the Architect, given within thirty (30) days of the

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happening of said damage or destruction, such damage and/or destruction shall be incapable of being repaired or restored with reasonable diligence within nine (9) months after the occurrence of such damage or destruction, then the Landlord or the Tenant may, at its option, terminate this Lease by notice in writing to the other. If such notice is given under this Section 18.2, then this Lease shall terminate on the date of such notice and the Tenant shall immediately surrender the Leased Premises and all interest therein to the Landlord and Rent shall be apportioned and shall be payable by the Tenant only to the date of such damage or destruction and the Landlord may thereafter re-enter and repossess the Leased Premises. For greater certainty, it is understood and agreed that if the Landlord or the Tenant does not elect to terminate this Lease as aforesaid, upon substantial completion of the rebuilding, restoration and/or repair of the Leased Premises by the Landlord, the Tenant shall repair or restore the Leasehold Improvements to the state existing prior to the destruction or damage and consistent with its obligations pursuant to Section 11.1 hereof and in accordance with the Tenant's then current layout of its other locations, at the Tenant's sole option.

17.3 Major Damage to Development

If, during the Term of this Lease or any renewal thereof, "substantial damage" (which for the purposes hereof shall mean damage to fifty percent (50%) or more of the Commercial Component) occurs to the Development, then the Landlord may, by notice in writing to the Tenant, elect either to oversee the repair or repair, as applicable, such damage or destruction (including any such demolition and reconstruction as the Architect may recommend in the overall interests of the Development) or to terminate this Lease, in which event the Tenant shall deliver up possession of the Leased Premises to the Landlord within thirty (30) days after delivery of the notice of termination, and Rent shall be apportioned and paid to the date upon which possession has been delivered up.

17.4 Limitation on Landlord's Liability

Except as expressly provided in this Lease, there shall be no reduction of Rent and the Landlord shall have no liability to the Tenant by reason of any injury to or interference with the Tenant's business or property arising from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom in or to any portion of the Development.

ARTICLE XVIII— TRANSFERS BY LANDLORD

18.1 Sale, Conveyance and Assignment

Nothing in this Lease shall restrict the right of the Landlord to sell, convey, assign or otherwise deal with the Development, subject only to the rights of the Tenant under this Lease.

18.2 Effect of Sale, Conveyance or Assignment

A sale, conveyance or assignment of the Development shall operate to release the Landlord of liability to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord, from after the effective date thereof, upon all of the covenants, terms and conditions of this Lease, express or implied, except as such may relate to the period prior to such effective date. This Lease shall not be affected by any such sale, conveyance or assignment, and the Tenant shall attorn to the Landlord's successor in interest thereunder.

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18.3 Subordination

This Lease is and shall be subject and subordinate in all respects to any and all mortgages and security interests now or hereafter placed on the Development, and to all renewals, modifications, consolidations, replacements and extensions thereof. The Tenant 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 Development 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. Notwithstanding the foregoing, the subordination of this Lease to a mortgagee which would otherwise have priority over this Lease shall be subject to the condition precedent that the Landlord obtain from the mortgagee a non-disturbance agreement in registerable form which provides that in the event of any foreclosure, sale under a power of sale, or the exercise of any other remedy pursuant to any such mortgage, the Tenant's use, possession and enjoyment of the Leased Premises shall not be disturbed and this Lease shall continue in full force and effect so long as the Tenant is not in default hereunder.

18.4 Attornment

If proceedings are brought for foreclosure, or if there is exercise of the power of sale or if there is an entry into possession of the Development or any part thereof pursuant to any mortgage, charge, deed of trust or any lien resulting from any other method of financing or refinancing made by the Landlord covering the Leased Premises and/or the Development, the Tenant shall attorn to the mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser upon any such foreclosure or sale and recognize such mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser as the Landlord under this Lease.

18.5 Effect of Attornment

Upon such attornment, this Lease shall continue in full force and effect as a direct lease between the mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser and the Tenant, upon all of the same terms, conditions and covenants as are set out in the Lease.

ARTICLE XIX— NOTICES, ACKNOWLEDGEMENTS, AUTHORITIES FOR ACTION

19.1 Notices

Any notice from one Party to the other hereunder shall be in writing and shall be deemed duly served if delivered personally to a responsible employee of the Party being served or if delivered by courier addressed to the Landlord or the Tenant at the address or addresses for such Party set forth in Sections 1.1 and 1.2 hereof. Any notice shall be deemed to have been given at the time of personal delivery. Either Party shall have the right to designate by notice, in the manner above set forth, a different address to which notices are to be delivered.

19.2 Acknowledgement

The Tenant shall at any time and from time to time upon not less than ten (10) Business Days' prior written notice from the Landlord, acknowledge and deliver a written statement, certifying:

- (a) that this Lease is in full force and effect, subject only to such modification (if any) as may be set out therein;
- (b) that the Tenant is in possession of the Leased Premises and paying Rent as provided in this Lease;

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- (c) the dates (if any) to which Rent is paid in advance;
- (d) that there are not, to the Tenant's knowledge any uncured Events of Default on the part of the Landlord hereunder, or specifying such Events of Default if any are claimed; and
- (e) such other matters as may be reasonably requested by the Landlord or its mortgagee.

Any such statement may be relied upon by the Person to whom such statement is addressed.

19.3 Authorities for Action

The Landlord may act in any matter provided for herein by its property manager and any other Person who shall from time to time be designated by the Landlord by notice to the Tenant. The Tenant shall designate in writing one or more Persons to act on its behalf in any matter provided for herein and may from time to time change, by notice to the Landlord, such designation.

ARTICLE XX— DEFAULT

20.1 Events of Default

Any of the following constitutes an "Event of Default" under this Lease, as is hereby defined accordingly:

- (a) the Tenant has failed to pay, when due, any Rent or Rental Taxes, from time to time, or any part thereof for a period of five (5) consecutive days following its due date, regardless of whether demand for payment has been made by the Landlord or not;
- (b) the Tenant has breached any of its obligations in this Lease, other than the obligation to pay Rent or Rental Taxes, and, if such breach is capable of being remedied and is not otherwise listed in this Section 21.1, after notice in writing from the Landlord:
 - (i) the Tenant fails to remedy or commence to take any action to remedy and such breach within fifteen (15) days (or such shorter period as may be provided in this Lease); or
 - (ii) if such breach cannot reasonably be remedied within fifteen (15) days or such shorter period, the Tenant fails to commence to remedy such breach within such fifteen (15) days or shorter period or thereafter fails to proceed diligently and continuously to remedy such breach;
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any Applicable Law for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings are commenced for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager, or a Person acting in a similar capacity is appointed with respect to the business or assets of the Tenant;

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- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a sale, assignment or other transfer approved by the Landlord;
- (f) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within ten (10) days after the date of such taking;
- (g) the Tenant makes a Transfer other than in compliance with the provisions of this Lease or fails to continuously operate in accordance with this Lease;
- (h) the Tenant abandons or attempts to abandon the Leased Premises;
- (i) the Tenant moves or commences, attempts or threatens to move its Trade Fixtures, goods, chattels and/or equipment out of the Leased Premises, other than in the routine course of its business;
- (j) the Tenant has committed any act or neglected to do anything with the result that a construction lien or other encumbrance is registered against the Leased Premises and/or the Development;
- (k) any insurance policy covering any part of the Lands, the Development, and/or the Commercial Component is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any action or omission by the Tenant or any Person for whom it is legally responsible; and/or
- (l) the Leased Premises or any portion thereof shall, without the prior written consent of the Landlord, be used or occupied by any other Persons for any purpose other than that for which they were leased or occupied or by any Persons whose occupancy is prohibited by this Lease.

20.2 Default and Remedies

if and whenever an Event of Default occurs, then without prejudice to any other rights which it has pursuant to this Lease or pursuant to Applicable Law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Leased Premises and repossess them and, in either case, enjoy them as of its former estate, and the Landlord may remove all Persons and property from the Leased Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;
- (b) to enter the Leased Premises as agent of the Tenant and to relet the Leased Premises for whatever length, and on such terms as the Landlord in its sole and unfettered discretion may determine and to receive the rent therefore and as agent of the Tenant to take possession of any property of the Tenant on the Leased Premises, to store such property at the expense and risk of the Tenant or to sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant; to make alterations to the Leased Premises to facilitate their reletting; and to apply the proceeds of any such sale or reletting first, to the payment of any expenses incurred by the Landlord with respect to any such reletting or sale second, to the payment of any indebtedness of the

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Tenant to the Landlord other than Rent and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it becomes due and payable; provided that the Tenant shall remain liable for any deficiency to the Landlord;

- (c) to remedy or attempt to remedy any Event of Default of the Tenant under this Lease for the account of the Tenant and to enter upon the Leased Premises for such purposes; and no notice of the Landlord's intention to remedy or attempt to remedy such Event of Default need be given the Tenant unless expressly required by this Lease; and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such Event of Default and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith;
- (d) to recover from the Tenant all damages, reasonable costs and expenses incurred by the Landlord as a result of any Event of Default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Leased Premises;
- (e) to recover from the Tenant the full amount of the current month's Rent together with the next three (3) months' instalments of Rent, all of which shall accrue on a day to day basis and shall immediately become due and payable as accelerated rent; and/or
- (f) to suspend the supply to the Leased Premises of any benefit or service furnished by the Landlord, except utilities.

20.3 Distress

Notwithstanding any provision of this Lease or any provision of Applicable Law, none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

20.4 Security Interest

- (a) The Tenant hereby grants to the Landlord a security interest (in this section called the "**Security Interest**") in all of the Tenant's personal property of every kind, including, without limitation, all goods, chattels, trade fixtures, furniture, equipment, inventory, stock-in-trade, chattel paper, accounts, instruments, money, documents of title, supplies, securities, accounts receivable, book debts and intangibles (in this section collectively called the "**Collateral**") which are or may at any time hereafter be on the Leased Premises from time to time, to secure the payment of all Rent and the fulfilment of all other obligations of the Tenant under this Lease. The parties agree that the Security Interest shall attach to the Collateral immediately upon the Tenant acquiring any rights in the Collateral from time to time. Except for the Security Interest, the Tenant will keep the Collateral free and clear of all other security interests and encumbrances. The Tenant acknowledges and agrees that this section is intended to constitute a

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security agreement as defined in the *Personal Property Security Act* (Ontario). This security agreement is separate from and shall survive the termination, expiry or disclaimer of this Lease.

- (b) Upon the occurrence of an Event of Default, the Landlord, by itself or by a receiver or any replacement thereof appointed in writing by the Landlord, may take possession of the Collateral and will have all the rights of a secured party under the *Personal Property Security Act* (Ontario). The Landlord shall be entitled to recover the reasonable expenses of retaking, holding, repairing, processing, repairing for disposition and disposing of the Collateral and all other reasonable expenses, including, without limitation, legal costs, incurred by the Landlord. The Landlord may exercise any rights provided by this Section on the Leased Premises and for such purpose may lock the Leased Premises, change any locks on the Leased Premises and by any means exclude the Tenant from all or any part of the Leased Premises and the Landlord shall not thereby be terminating this Lease in the absence of express written notice terminating this Lease.
- (c) This Security Interest shall not be deemed to have been satisfied, discharged or redeemed by reason of the Tenant not being indebted to the Landlord at any time or from time to time and no payments shall reduce the amount secured by this Security Interest except to the extent expressly approved by the Landlord in writing.
- (d) This Security Interest and the rights of the Landlord under this Section are additional security to the Landlord to secure the Tenant's obligations under this Lease and are given in addition to and may be exercised by the Landlord without prejudice to any other rights of the Landlord under this Lease or at law, including, without limitation, the Landlord's right of distress.

20.5 Costs

The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord.

20.6 Remedies Cumulative

The rights and remedies given to the Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by the Landlord shall be deemed to be in exclusion of any other rights or remedies provided in this Lease or pursuant to Applicable Law or in equity.

20.7 Landlord May Follow Chattels

In case of removal by the Tenant of the goods or chattels of the Tenant from the Leased Premises, the Landlord may follow the same for thirty (30) days in the same manner as is provided for in the *Commercial Tenancies Act* (Ontario), or any other Applicable Law.

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20.8 Acceptance of Rent Non-Waiver

No receipt of money by the Landlord from the Tenant after the termination of this Lease shall reinstate, continue or extend the Term, or affect any notice previously given 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 Leased Premises by proper action, proceeding 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 action, proceeding or other remedy, or after a final order or judgment for possession of the Leased Premises, the Landlord may demand, receive and collect any money due, or thereafter falling due without in any manner affecting such notice, action, proceeding, order or judgment; and any and all such money so collected shall be deemed payments on account of the use and occupation of the Leased Premises or at the election of the Landlord on account of the Tenant's liability hereunder.

ARTICLE XXI—HAZARDOUS SUBSTANCES

21.1 Tenant's Covenants

The Tenant covenants and agrees that it, its agents, suppliers and customers, will:

- (a) not bring or allow any Hazardous Substance to be brought onto the Lands, the Development, the Commercial Component and/or the Leased Premises except in compliance with Environmental Law;
- (b) comply at all times with Environmental Law as it affects the Lands, the Development, the Commercial Component and/or the Leased Premises;
- (c) give notice to the Landlord of the presence at any time during the Term of any Hazardous Substance on the Lands, the Development, the Commercial Component and/or the Leased Premises together with such information which the Tenant has in its possession concerning such Hazardous Substance and its presence on the Lands, the Development, the Commercial Component and/or the Leased Premises as the Landlord may reasonably require;
- (d) give notice to the Landlord of any occurrence of which the Tenant is aware or ought to have been aware which might give rise to a duty under Environmental Law by either the Tenant or the Landlord with respect to the presence of any Hazardous Substance on the Lands, the Development, the Commercial Component and/or the Leased Premises including, without limitation, notice of any discharge, release, leak, spill or escape into the environment of any Hazardous Substance at, to or from the Lands, the Development, the Commercial Component and/or the Leased Premises;
- (e) at the Landlord's request, provide the Landlord with copies of all of the Tenant's records with respect to the presence, storage, handling and disposal of Hazardous Substances on the Lands, the Development, the Commercial Component and/or the Leased Premises (including tank measurements, policies and procedures and evidence of compliance therewith);
- (f) in any case where the Tenant has given notice as to the presence of a Hazardous Substance at the Lands, the Development, the Commercial Component and/or the Leased Premises, where such Hazardous Substance has

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been brought to the Lands, the Development, the Commercial Component and/or the Leased Premises by the Tenant or the Lands, the Development, the Commercial Component and/or the Leased Premises, to commission an environmental audit at the Tenant's expense when required by the Landlord to do so;

- (g) comply with any investigative, remedial or precautionary measures required under Environmental Law or as reasonably required by the Landlord, be fully and completely liable to the Landlord for any and all investigation, clean up, remediation, restoration or monitoring costs or any costs incurred to comply with Environmental Law or any request by the Landlord that such measures be taken as a result of Hazardous Substances brought to the Lands, the Development, the Commercial Component and/or the Leased Premises by the Tenant or any Person for whom the Tenant is responsible pursuant to Applicable Law; and
- (h) protect, indemnify and save each of the Landlord and its directors, officers, employees, agents, successors and assigns completely harmless from and against any Environmental Claim, directly or indirectly incurred, sustained or suffered by or asserted against the Landlord and/or its directors, officers, employees, agents, successors and assigns caused by or attributable to, either directly or indirectly, any act or omission of the Tenant and/or any Person for whom the Tenant is responsible pursuant to Applicable Law.

21.2 Inquiries by the Landlord

The Tenant hereby authorizes the Landlord to make inquiries from time to time of any Governmental Authority with respect to the Tenant's compliance with the Environmental Law at the Leased Premises, and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information. The Landlord or its agent may inspect the Leased Premises from time to time upon reasonable notice to the Tenant, in order to verify the Tenant's compliance with the Environmental Law and the requirements of this Lease respecting Hazardous Substances. If the Landlord reasonably suspects that the Tenant is in breach of any of its covenants herein, the Landlord and its agent shall be entitled to conduct an environmental audit immediately, and the Tenant shall provide access to the Landlord and its agent for the purpose of conducting an environmental audit. Such environmental audit shall be at the Landlord's expense (but if it is determined as a result of such audit that the Tenant is in breach of any of its environmental covenants in this Article XXII, then the Tenant shall reimburse the Landlord for the costs of such audit), and the Tenant shall forthwith remedy any problems identified by the environmental audit, and shall ensure that it complies with all of its covenants herein.

21.3 Ownership of Hazardous Substances

In the event that the Tenant shall bring or create upon the Lands, the Development, the Commercial Component and/or the Leased Premises any Hazardous Substance or if the conduct of the Tenant's business shall cause there to be any Hazardous Substance upon the Lands, the Development, the Commercial Component and/or the Leased Premises then, notwithstanding any rule of Applicable Law to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Lands, the Development, the Commercial

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Component and/or the Leased Premises and notwithstanding the expiry or earlier termination of this Lease.

21.4 Landlord's Remedies upon Default

Upon the occurrence of an Event of Default under this Article XXII and in addition to the rights and remedies set forth elsewhere in this Lease, the Landlord shall be entitled to the following rights and remedies:

- (a) after providing the Tenant with fifteen (15) days prior written notice of the Event of Default, and the Tenant fails or neglects to cure, at the Landlord's option, to terminate this Lease; and/or
- (b) to recover any and all damages associated with the Event of Default, including without limitation, in addition to any rights reserved or available to the Landlord in respect of an early termination of this Lease, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by the Landlord and other tenants of the Lands, the Development and/or the Commercial Component, any and all damages and claims asserted by third parties and the Landlord's solicitors' fees (on a substantial indemnity basis) and costs.

ARTICLE XXII— MISCELLANEOUS

22.1 Relationship of Parties

Nothing contained in this Lease shall create any relationship between the Parties hereto other than that of landlord and tenant, and it is acknowledged and agreed that the Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or a joint venturer or a member of a joint or common enterprise with the Tenant.

22.2 Applicable Law and Construction

This Lease unless otherwise agreed by the Parties shall be governed by and construed under the Applicable Law of the Province of Ontario and the Parties attorn to the exclusive jurisdiction of the Courts of such Province. The provisions of this Lease shall be construed as a whole according to their common meaning and not strictly for or against the Landlord or the Tenant. The words the Landlord and the Tenant shall include the plural as well as the singular. Time is of the essence of the Lease and each of its provisions. The captions of the Articles are included for convenience only, and shall have no effect upon the construction or interpretation of this Lease.

22.3 Entire Agreement

There are no terms and conditions which at the date of execution of this Lease are additional or supplemental to those set out on the pages of this Lease, and in the Schedules which are attached hereto and which form part of this Lease. This Lease contains the entire agreement between the Parties hereto with respect to the subject matter of this Lease. The Tenant acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except such as is set out in this Lease. Delivery of an unsigned copy of this Lease to the Tenant, notwithstanding insertion of all particulars in the Lease and presentation of any cheque or acceptance of any monies by the Landlord given by the Tenant as a deposit, does not constitute an offer by the Landlord, and no contractual or other legal right shall be created between the Parties hereto until this Lease has been fully executed by both Parties and delivery has been made of an executed copy of this Lease to the Tenant.

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22.4 Amendment or Modification

Unless otherwise specifically provided in the Lease, no amendment, modification, or supplement to this Lease shall be valid or binding unless set out in writing and executed by the Parties hereto in the same manner as the execution of this Lease.

22.5 Construed Covenants and Severability

All of the provisions of the Lease are to be construed as covenants and agreements as though the word importing such covenants and agreements were used in each separate Article hereof. Should any provision of this Lease be or become invalid, void, illegal or not enforceable, it shall be considered separate and severable from the Lease and the remaining provisions shall remain in force and be binding upon the Parties hereto as though such provision had not been included.

22.6 No Implied Surrender or Waiver

No provisions of this Lease shall be deemed to have been waived by the Landlord or the Tenant, unless such waiver is in writing signed by the waiving Party. The waiver of a breach of any term or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a breach, from having all the force and effect of any original breach. Failure of either Party to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right. The Landlord's receipt of Rent with knowledge of a breach by the Tenant of any term or condition of the Lease shall not be deemed a waiver of such term or condition. No act or thing done by the Landlord or those for whom the Landlord is responsible pursuant to Applicable Law during the Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid, unless in writing and signed by the Landlord. The delivery of keys to any of the Landlord's agents shall not operate as a termination of the Lease or a surrender of the Leased Premises. No payment by the Tenant, or receipt by the Landlord, of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque, or payment as Rent, be deemed an accord and satisfaction, and the Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy available to the Landlord.

22.7 Joint/Several Liability

In the event there is more than one entity or Person which or who are Parties constituting the Tenant under this Lease, the obligation imposed upon the Tenant under this Lease shall be joint and several.

22.8 Registration

The Tenant shall not register this Lease or any notice thereof on the title to the Lands. If the Tenant wishes to register a short form of this Lease against the title to the Development only, the Tenant shall deliver the form of short form of Lease to the Landlord for its prior approval and shall pay the Landlord's reasonable third party costs incurred in connection with the review of same. Provided that any such short form of this Lease shall not disclose any business terms and/or confidential terms herein, as the Landlord shall determine in its sole and unfettered discretion. The Tenant agrees that it will, at its sole expense, discharge and withdraw from title any such registration within thirty (30) days after the expiration or sooner termination of this

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Lease. If such registration is not discharged and withdrawn during the aforesaid time, the Landlord shall have the right and is hereby appointed by the Tenant as its agent to prepare, execute and register such documentation as is required to discharge and withdraw any such registration.

22.9 Unavoidable Delay

Save and except for the obligations of the Tenant as set forth in this Lease to pay Base Rent, Additional Rent, increased rent or other monies to the Landlord, if either Party shall fail to meet its obligations hereunder within the time prescribed and such failure shall be caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such Party hereunder and neither Party shall be entitled to compensation from the other for any inconvenience, nuisance or discomfort thereby occasioned, provided that the Party claiming Force Majeure shall use reasonable diligence to put itself in a position to carry out its obligations hereunder. For clarity, the Tenant shall not be excused from paying Base Rent, Additional Rent, increased rent or other monies to the Landlord as a result of the current Covid-19 pandemic, notwithstanding any restrictions and/or shut-downs placed upon the Tenant's business operations by any Governmental Authority with jurisdiction.

22.10 Planning Act

This Lease is conditional upon compliance with the *Planning Act* (Ontario) and any amendments thereto.

22.11 Survival of Obligations

If the Tenant has committed an Event of Default hereunder in respect of any of its obligations under this Lease beyond any applicable notice and cure periods at the time this Lease expires or is terminated:

- (a) the Tenant shall remain fully liable for the performance of such obligations; and
- (b) all of the Landlord's rights and remedies in respect of such failure shall remain in full force and effect;

all of which shall be deemed to have survived such expiration or termination of this Lease. Every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease or in any of the Tenant's or the Landlord's insurance policies shall survive the expiration or termination of this Lease.

22.12 No Option

The submission of this Lease for examination does not constitute a reservation of or option to lease for the Leased Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by the Landlord and the Tenant.

22.13 References to Statutes

Any reference to a statute in this Lease includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.

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22.14 Confidentiality

The Parties hereby covenant and agree that the contents, terms and conditions of this Lease shall be kept strictly confidential. Accordingly, it is understood that the Tenant and the Landlord and their partners, officers, directors, employees and attorneys, will not, without the prior written consent of the other Party, intentionally or voluntarily disclose, by public filings or otherwise, the terms of this to any third party that is not engaged by either Party for its normal business purposes, without the written consent of the other Party, save and except for the legal and financial advisors of the Tenant and the Landlord.

22.15 Counterparts and Execution

This Lease may be executed by the Parties in separate counterparts each of which when so executed and delivered to all of the Parties shall be deemed to be and shall be read as a single Lease among the Parties. In addition, execution of this Lease by any of the Parties may be evidenced by way of a faxed and/or electronic transmission of such Party's signature (which signature may be by separate counterpart), or a photocopy of such faxed and/or electronic transmission, and such faxed/electronic signature, or photocopy of such faxed/electronic signature, shall be deemed to constitute the original signature of such Party to this Lease.

22.16 Interpretation

This Lease has been negotiated and approved by the Parties.

22.17 Binding Effect

All rights and liabilities herein given to, or imposed upon, the respective Parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and permitted assigns of the said Parties.

IN WITNESS WHEREOF the Landlord and the Tenant have executed this Lease as of the date first above written.

)	
)	
)	11250493 CANADA INC
)	Per: 
)	Name: Kasey Wong
)	Title: Director
)	
)	Per: _____
)	Name: _____
)	Title: _____
)	I/We have the authority to bind the corporation

SCHEDULE "A" — OPERATING EXPENSES

In this Lease, "**Operating Expenses**" means the aggregate amount of all expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord determined for each Landlord Fiscal Year on either a cash or an accrual basis in the complete maintenance, repair, replacement, operation and management of the Development, including the Common Areas, without duplication, excluding any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development and do not in any way benefit the Leased Premises or the Common Areas. Operating Expenses include, without limitation, the following:

- (a) the total annual net costs and expenses of any insurance placed and maintained by the Landlord pursuant to Section 12.6 hereof;
- (b) landscaping, gardening, snow removal, pest control, garbage and waste collection and disposal and cleaning, janitorial and similar services supplied to the Development, if any, including without limitation, the cost of all supplies;
- (c) the total of the costs and amounts paid for all Utilities supplied to the Development, but not including any Utilities consumed within the residential units in the Development;
- (d) the total of the costs and amounts paid (i) for the operation, maintenance, alteration, repair, replacement and/or maintenance of the Development, or any part thereof, and the systems, facilities and equipment servicing the Development including, without limitation, the cost of the rental of any equipment and signs and the cost of supplies used in connection therewith, and (ii) to observe and comply with the requirements of any Governmental Authority in respect of the Development, which costs and amounts so paid may be expensed in the year incurred, or at the Landlord's option amortized over a reasonable period as determined by the Landlord acting reasonably in accordance with GAAP, excluding any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development;
- (e) policing, security, supervision and traffic control;
- (f) salaries and benefits of on-site personnel including supervisory personnel, to the extent that the personnel are employed to carry out the day to day maintenance and operation of the Development, including contributions and premiums towards reasonable fringe benefits, unemployment and workers' compensation insurance, workers' wage protection program contributions, pension plan contributions and similar premiums and contributions and the cost of all uniforms of employees and agents or the cost of all independent contractors engaged in performing any of the above activities;
- (g) the cost of operating, servicing, maintaining, repairing (including major repairs), improving, replacing and acquiring all machinery, equipment, systems, facilities and fixtures used in or kept on or about the Development which by their nature require periodic replacement or substantial replacement, including, without limitation, heating, ventilating and air conditioning systems and equipment, plumbing, electrical (including light fixtures, pylon signs and sound equipment

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and systems), garbage room equipment and machinery, communication and transportation equipment and systems (including escalators and elevators), fire alarms, signs, locks and key equipment and systems, doors, glass, maintenance, janitorial and cleaning equipment and machinery), excluding any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development;

- (h) the cost of providing janitorial services, window cleaning and garbage removal and the cost of supplies and materials for all Common Areas and the non-residential portions of the Development;
- (i) cost of sewer charges;
- (j) except as otherwise provided in this Lease, depreciation for all structures, improvements, furnishing, fixtures, equipment, machinery, facilities, systems, and property which is part of or installed in or used in connection with the Development, including those which, by their nature require periodic or substantial repair or replacement, or which are installed or used primarily to reduce the cost or consumption of other items included in Operating Expenses (whether or not such costs in respect of the same are, in fact, reduced), unless they are pursuant to this Schedule "B" charged fully in the Landlord Fiscal Year in which they are incurred in accordance with GAAP;
- (k) intentionally deleted;
- (l) a charge for interest calculated at a rate per annum equal to two (2%) percent above the prime interest rate of the Landlord's bank, as determined from time to time, on the undepreciated or unamortized part of the costs referred to in Sections (d), (g) and (j) of this Schedule "B" which have not been recovered by the Landlord during the Landlord Fiscal Year or any prior Landlord Fiscal Year;
- (m) legal, audit, consulting, engineering and accounting fees and disbursements incurred in connection with the operation and maintenance of the Development, including the determination and apportionment of Operating Expenses, excluding any legal, audit, consulting, engineering and accounting fees and disbursements paid or incurred by the Landlord that are only for the benefit of one or more residential units in the Development; and
- (n) intentionally deleted.

Notwithstanding anything contained herein to the contrary, Operating Expenses shall not include:

- (o) any income tax or taxes, large corporation taxes, business taxes and capital taxes (other than those business taxes payable by the Tenant) unrecoverable taxes or land transfer taxes or any other similar taxes personal to the Landlord and/or imposed or levied by any Governmental Authority whatsoever, penalties relating to late payment of taxes (provided such penalties are not a result of the Tenant's actions or omissions) and any principal, interest or other carrying charges on mortgages, debt or other financing or refinancing with respect to the Development or the Development lands;

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- (p) all fines, suits, claims, demands, actions, costs, charges and expenses of any kind or nature for which the Landlord is or may become liable by reason of any neglect or wilful act or omission on the part of the Landlord or those for whom it is in law responsible or by reason of any breach, violation or non- performance by the Landlord of any of the covenants, terms or provisions contained in this Lease or with other tenants' leases;
- (q) all costs or expenses arising from or occasioned by the default or negligence of any person other than the Tenant or those for whom the Tenant is responsible for at law;
- (r) all costs incurred by the Landlord as a result of a default or dispute by any tenant in enforcing the terms of their respective leases;
- (s) all costs and expenses which are considered to be capital expenses in their totality in the year incurred (provided it being agreed that capital costs and expenses may be included in Operating Expenses so long as they shall be amortized over the useful life of the item replaced on a straight-line basis as determined by the Landlord and the amortized portion of such costs and expenses, together with interest calculated at the annual rate of interest charged by the Landlord's bank from time to time, together with two percent (2%) on the unamortized portion, shall be included in each year's Operating Expenses);
- (t) all contributions by the Landlord to any merchants' association, advertising fund and/or promotion fund;
- (u) all costs or expenses which relate to leasing individual rentable premises in the Development, including leasing commissions, legal costs, tenant inducements, tenant allowances and the cost of rental advertising;
- (v) all costs of repairs or replacements of structural portions of the Development (including without limitation, the structural portion of the roof deck of the Development and the Leased Premises) save and except where caused by or resulting from any act or omission of the Tenant or those for whom it is responsible at law;
- (w) HST paid by the Landlord for which the Landlord has received or is entitled to receive an input tax credit;
- (x) all costs or expenses incurred in enforcing the collection of rents or any other obligations or dispute of any other tenants in the Development;
- (y) any increase in insurance premiums resulting from the business carried on by other tenants in the Development or any repairs and replacements paid for by the Landlord's insurance or any item that the Landlord is compensated by insurance; and
- (z) any expenses, fees, rentals, costs and disbursements of every nature and kind paid or incurred by or on behalf of the Landlord that are only for the benefit of one or more residential units in the Development.

SCHEDULE "B" — RULES AND REGULATIONS

The Tenant shall observe the following rules and regulations (as amended, modified or supplemented from time to time by the Landlord as provided in this Lease):

1. In these rules and regulations, "**Tenant**" includes the employees, servants, agents, invitees (while in the Leased Premises), subtenants and licensees of the Tenant and others over whom the Tenant can reasonably be expected to exercise its control.
2. Smoking is not permitted in the Development or in any area outside of the Development and on the Lands which has not been designated by the Landlord as a smoking area.
3. The sidewalks, driveways, entrances, vestibules, passages, corridors, halls, elevators and stairways shall not be encumbered or obstructed by the Tenant or be used by it for any purpose other than for entrance from the Leased Premises.
4. The Tenant shall not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area or entrances. The Tenant shall ensure that deliveries of materials and supplies to the Leased Premises are made through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in or to the Development caused by any Person making such deliveries. The Tenant shall also abide by loading and unloading requirements including weight restrictions, as may be introduced from time to time by the Landlord. The Landlord reserves the right to remove at the expense and risk of the owner a vehicle not using designated "vehicle standing" areas.
5. The Landlord may from time to time adopt appropriate systems and procedures for the security and safety of the Development, including restricting access other than those set out in Section 9.3 of the Lease and the Tenant shall comply with the Landlord's reasonable requirements relating thereto.
6. No additional locks or bolts of any kind shall be placed by the Tenant upon any of the doors or windows of the Leased Premises, nor shall any changes whatsoever be made to existing locks or the mechanics thereof except by the Landlord at its option. The Tenant shall not permit any duplicate keys to be made, but additional keys as reasonably required shall be supplied by the Landlord when requested by the Tenant in writing and at the Tenant's sole expense. Upon termination of this Lease, the Tenant shall surrender to the Landlord all keys to the Leased Premises and any other parts of the Development together with any parking passes or other devices permitting entry.
7. The Tenant shall not mount or place an antenna or aerial of any nature on the exterior of the Leased Premises and/or the Development or, unless it first obtains the Landlord's prior written consent, as applicable.
8. The handling and disposal of garbage shall comply with arrangements prescribed by the Landlord from time to time. No disproportionate or abnormal quantity of waste material shall be allowed to accumulate in the Leased Premises and the cost of removal or clearing of quantities in excess of such normally provided service may be charged to the Tenant.
9. The Tenant shall participate in all recycling, energy reduction and water conservation programs as may be determined by the Landlord from time to time.

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10. The Tenant shall carry out repairs, maintenance, alterations and improvements in the Leased Premises only during times agreed to in advance by the Landlord and in a manner which will not interfere with the rights of other tenants of the Development.
11. The Tenant shall provide adequate facilities and means to prevent the soiling of walls, floors and carpets in and abutting the Leased Premises whether by shoes, overshoes, any acts or omissions of the Tenant or otherwise.
12. The Tenant shall not mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Leased Premises and the Development except with the prior written consent of the Landlord and as it may direct. If the Tenant desires electrical or communications connections, the Landlord reserves the right to direct qualified Persons as to where and how the wires should be introduced, and without such directions, no boring or cutting for wires will be permitted. No gas pipe or electric wire will be permitted which has not been ordered or authorized in writing by the Landlord.
13. The Tenant shall not attempt any repairs, alterations or modifications to the heating, air conditioning or plumbing systems, save and except as otherwise expressly permitted pursuant to the provisions of this Lease.
14. The Tenant shall not use the plumbing facilities for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the Tenant shall pay the cost of any breakage, stoppage or damage resulting from a violation of this provision.
15. The Leased Premises shall not be used for residential, lodging or sleeping purposes or for the storage of personal effects or property not required for business purposes as permitted under this Lease:
16. The Landlord reserves the right to restrict or prohibit canvassing, soliciting or peddling on the Lands.
17. The Tenant shall not, in the Leased Premises and/or the Development, bring in, take out, position, construct, install or move anything liable to injure or destroy any part of the Development including, without limiting the generality of the foregoing, any safe, business machinery or other heavy machinery or equipment without the prior written consent of the Landlord. In giving such consent, the Landlord shall have the right, in its sole and unfettered discretion, to prescribe the permitted weight and the position thereof, and the use and design of planks, skids or platforms required to distribute the weight thereof. All damage done to the Development by moving or using any such heavy equipment or machinery shall be repaired at the expense of the Tenant. The moving of all heavy equipment or other machinery shall occur only by prior arrangement with the Landlord.
18. The Tenant shall not bring any animals into the Development and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Development, except in areas designated from time to time by the Landlord for such purposes.
19. The Tenant shall ensure that furniture, equipment and fixtures being moved into or out of the Leased Premises are moved through such entrances, elevators and corridors and at such times as may from time to time be designated by the Landlord, and shall promptly pay or cause to be paid to the Landlord the cost of repairing any damage in the Development caused thereby.

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20. The Tenant shall not use any means of heating or cooling the Leased Premises other than that provided by or specifically otherwise permitted in writing by the Landlord.
21. No material or equipment which could cause undue loads on electrical circuits or undue vibration, heat or noise or which could interfere with wireless or other communications shall be brought into the Development or used therein by or on behalf of the Tenant and no machinery or tools of any kind shall be affixed to or used in the Leased Premises without the prior written consent of the Landlord.
22. The Tenant shall not do or permit anything to be done in the Leased Premises or bring or keep anything therein which will in any way increase the risk of fire, or obstruct or interfere with the rights of other tenants of the Development, or violate or act at variance with the Applicable Law relating to fires or with the regulations of the local fire department or the board of health. The Tenant shall cooperate in any fire drills and shall participate in all fire prevention or safety programs designated by the Landlord.
23. No flammable oils or other flammable, dangerous or explosive materials shall be kept or permitted to be kept in the Leased Premises.
24. Intentionally deleted.
25. The Tenant shall give immediate notice to the Landlord in case of fire or accident in the Leased Premises and/or in the Development, or in case of defects therein or in any fixtures or equipment thereof, notwithstanding the Landlord may have no obligations with respect thereto.
26. The Tenant shall provide its own janitorial service to the Leased Premises at its sole cost and expense, subject to the Landlord's prior written approval of the Tenant's janitor or janitorial contractor, such approval not to be unreasonably withheld.
27. The Tenant shall not make any use of the Leased Premises which could result in risk or injury to any Person, nor shall the Leased Premises be used any immoral or criminal purpose.
28. The Tenant shall not perform any acts or carry on any practice which may damage the Common Areas or be a nuisance to any other tenant of the Development.
29. The Landlord shall be entitled, during such time as there is a health emergency, to require all occupants of the Development to comply with reasonable measures imposed in respect thereof by the Landlord, including health screening, the use of hand washing and other sanitation products directly related to the management of the health emergency, attendance at mandatory training sessions, and the use of additional protective clothing by all tenants, invitees or visitors of the Development such as protective barriers, gloves and masks.
30. During a health emergency, the Landlord shall be entitled to specify modes of ingress and egress from and to the Lands for tenants generally, or for specific tenants, occupants or invitees who may have a heightened risk of either exposure to a health threat or a heightened risk of transfer of unhealthy condition to other tenants, invitees or visitors of the Development.
31. The Tenant shall take reasonable steps to inform the Landlord of any outbreak of an infectious disease amongst its employees where such outbreak may impact the health and/or safety of other tenants of the Development or lead to a health emergency.

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32. The Tenant shall participate in any fire or health emergency drill that the Landlord shall choose to implement, acting reasonably, in preparation for a fire or health emergency.
33. The Tenant shall not keep or display any merchandise on or otherwise obstruct sidewalks or other areas adjacent to the Leased Premises.
34. The Tenant and the Tenant's employees and agents shall not solicit business in the Common Areas, nor shall the Tenant distribute any handbills or other advertising material in the Common Areas or any other part of the Development.

SCHEDULE "C" — OPTION TO RENEW

It is understood and agreed between the Landlord and the Tenant as follows:

1. Provided that an Event of Default has not been committed by the Tenant, the Tenant shall have the option of renewing this lease for one (1) further term of one (1) year (a **"Renewal Term"**), on the same terms and conditions as the Lease, except for any inducement, improvement allowance, fixturing or free rent period provided to the Tenant, and except for this option to renew. The Tenant shall be required to give written notice to the Landlord of its intention to renew the Lease (the **"Renewal Notice"**) not less than three (3) months prior to the Expiry Date or expiration of the then-current Renewal Term, as applicable. The Base Rent for each of the first (1st) and second (2nd) Renewal Term shall be at the fair market rent for premises of similar size, quality and geographical area at the time of renewal, and in the event that the Landlord and the Tenant fail to agree upon the amount of the Base Rent for the first (1st) or second (2nd) Renewal Term at least sixty (60) days prior to the commencement of the first (1st) and second (2nd) Renewal Term, the determination of the rental shall be subject to arbitration as set out hereinafter, provided, however, that the Base Rent for the first (1st) Renewal Term shall not be less than the Base Rent payable under this Lease for the initial Term and the Base Rent for the second (2nd) Renewal Term shall not be less than the Base Rent payable under this Lease for the first (1st) Renewal Term.
2. If any disputes arise between either Party hereto as to fair market rent which cannot be settled in accordance with the provisions of paragraph 1 hereof, arbitration proceedings shall be commenced by the Initiating Party who shall clearly identify the question to be submitted to arbitration and the following principles shall apply to such arbitration:
 - (a) upon notice from the Initiating Party (the **"Initiating Party"**) to the responding party, the Parties shall meet and shall attempt to appoint a single arbitrator. If the Parties are unable to agree on a single arbitrator, then either Party shall be entitled to apply under the *Arbitration Act, 1991* (Ontario) for the appointment of an arbitrator. Neither Party shall nominate an arbitrator to act hereunder unless such Person is a qualified by education and/or training to pass upon the particular question in dispute and is independent of the Initiating Party;
 - (b) the arbitrator so chosen shall proceed immediately to hear and determine the question or questions in dispute. The decision and reasons therefor of the arbitrator shall be made within fifteen (15) Business Days after the appointment of the arbitrator, subject to any reasonable delay due to unforeseen circumstances. Notwithstanding the foregoing, in the event that the arbitrator fails to make a decision within fifteen (15) Business Days after his appointment, then either Party may elect to have a new arbitrator or arbitrators chosen in like manner as if none had previously been selected;
 - (c) the decision and reasons therefor of the arbitrator shall be drawn up in writing and signed by the arbitrator and shall be final and binding upon the Parties as to any question or questions so submitted to arbitration and the Parties shall be bound by such decision and perform the terms and conditions thereof;
 - (d) the compensation and expenses of the arbitrator (unless otherwise determined by the arbitrator at the request of either Party) shall be paid equally by each Party;

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- (e) neither Party shall be deemed to be in default of any matter being arbitrated until fourteen (14) Business Days after the decision of the arbitrator is delivered to each Party hereto provided that:
 - (i) if the decision of the arbitrator is capable of being complied with by payment of money by either Party, such payments shall bear interest at the Interest Rate from the date payable pursuant to the terms of this Lease to and including the date of actual repayment, such interest to be calculated and payable monthly with interest on overdue interest at the Interest Rate;
 - (ii) if the decision of the arbitrator is not capable of being complied with by payment of money and if a period of more than fourteen (14) Business Days is reasonably required to remedy such default then the Party required to remedy such default shall not be deemed to be in default so long as such Party commences to remedy the same and prosecutes the same to completion diligently, expeditiously and continuously; and
 - (iii) the arbitrator shall be entitled to award interest and grant injunctive relief;
- (f) until a decision of the arbitrator has been rendered, the Tenant shall continue to pay Base Rent at the same rental rate paid under this Lease for the initial Term and the Base Rent paid under this Lease for the first (1st) Renewal Term, as applicable, and Base Rent adjustments shall be paid as set out in Subparagraph 2(e).

SCHEDULE "D" — TENANT'S WORK AND GUIDELINES

1. Definitions:

For the purpose of this Lease, and except as specified in the Lease:

- (a) the term "**Landlord's Work**" shall mean finishing the Leased Premises in a manner and only to the extent set out in Schedule "F" attached hereto; and
- (b) the term "**Tenant's Work**" shall mean the work described as Tenant's Work in this Schedule "E" to this Lease and all work other than the Landlord's Work required to be done to complete the Leased Premises for occupancy by the Tenant to meet all building code requirements and Applicable Law. The Tenant's Work shall not be undertaken or commenced by the Tenant until:
 - (i) all permits necessary for the installation of the Tenant's Leasehold Improvements and approval have been obtained by the Tenant from applicable municipal and other government departments, prior to the commencement of the installation by the Tenant, and copies provided to the Landlord;
 - (ii) a certificate of insurance has been provided to the Landlord showing that a valid insurance policy is in place naming the Landlord as an additional insured for minimum general liability of no less than Five Million Dollars (\$5,000,000); and
 - (iii) proper documentation has been provided by the Tenant to the Landlord verifying that provisions have been made by the Tenant for payment in full of all costs of the Tenant's Work.

2. Installation of Leasehold Improvements and Fixtures:

- (a) All Leasehold Improvements to the Leased Premises shall conform to the quality standards of the Development. The Tenant shall use an Architect and other necessary consultants who may be required from time to time, to design and prepare working drawings and specifications of the Tenant's Work and shall submit same for the Landlord's prior written approval.
- (b) All work including changes to the structure or the systems employed in the Development necessitated by the Tenant's Work shall be first approved by the Landlord.
- (c) The preparation of all design and working drawings and specifications relating to completion of the Leased Premises for occupation by the Tenant and the calling of tenders and letting of contracts relating to the Tenant's Work and the supervision and completion of the Tenant's Work and payment therefore shall be the responsibility of the Tenant.
- (d) Approvals must be obtained by the Tenant for its work from the municipal building department and all Governmental Authorities having jurisdiction and the Tenant must submit evidence of these approvals to the Landlord before commencing work and post such approvals on the job site prior to the commencement of the work. The Tenant shall be responsible for payment of all fees and charges incurred in obtaining such approvals to the Landlord before

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commencing work. The Tenant shall be responsible for payment of all fees and charges incurred in obtaining such approvals and for obtaining an occupancy permit prior to opening.

- (e) All Tenant's Work required by the Tenant to complete the Leased Premises for occupancy shall be carried out with good workmanship and shall not be in contravention of the codes or regulations of any Governmental Authority having jurisdiction.
- (f) Before commencing any work, the Tenant shall furnish the Landlord with written proof of all contractors' comprehensive general liability insurance for limits not less than those to be maintained by the Tenant under the Lease. The Landlord shall be named as an additional named insured in the Tenant's insurance policy.
- (g) Before commencing any work, the Tenant must furnish the Landlord with written proof of all contractors' Workplace Safety and Insurance Board clearances as well as a list of all trades, which must be approved by the Landlord. All contractors shall abide by all Workplace Safety and Insurance Board rules and regulations on site.
- (h) The Tenant shall at all times keep the Leased Premises and all other areas clear of waste materials and refuse caused by itself, its suppliers, its contractors or by their work.
- (i) The Landlord may require the Tenant to clean up on a daily basis and be entitled to clean up at the Tenant's expense if the Tenant shall not comply with the Landlord's reasonable requirements.
- (j) All Tenant's Work including the delivery, storage and removal of materials shall be subject to the reasonable supervision of the Landlord and shall be performed in accordance with any reasonable conditions or regulations imposed by the Landlord including, without limitation, payment on demand of a reasonable fee of the Landlord for such supervision and adherence to all building rules and regulations, the Landlord confirming, however, that no such fee shall be payable by the Tenant in respect of the Tenant's Work to be carried out during, the Fixturing Period.
- (k) In no event shall the Tenant alter or interfere with window coverings (if any) or other light control device (if any) installed in the Development. Window coverings must be bagged or otherwise protected during construction at the Tenant's cost.
- (l) The Landlord may require that the Landlord's contractors and sub-contractors be engaged for any mechanical or electrical work, work conducted on the roof or the fire and sprinkler systems, or other work which may be under warranty.
- (m) No locks shall be installed on the entrance doors or in any doors in the Leased Premises that are not keyed to the Development master key system.
- (n) The Landlord shall not in any way be responsible for or liable with regard to any work carried out or any materials left or installed in the Leased Premises and shall be reimbursed for any additional cost and expense caused which may be occasioned to it by reason thereof and for any delays which may be directly or indirectly caused by the Tenant or its contractor.

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- (o) Any damages caused by the Tenant, the contractors or subtrades employed on the work to any of the structures or the systems employed in the Development or to any property of the Landlord or of other tenants, shall be repaired by the Landlord's contractor to the satisfaction of the Landlord and the Landlord may recover the costs incurred from the Tenant plus a fifteen percent (15%) administration fee on account of supervision.
- (p) If the Tenant's contractor neglects to carry out the work properly or fails to perform any work required by or in accordance with the approved plans and specifications, the Landlord, after thirty (30) days' written notice to the Tenant may, without prejudice to any right or remedy, complete the work, remedy the default or make good any deficiencies and recover the costs incurred from the Tenant.
- (q) The Tenant shall maintain and keep within the Leased Premises at all times during construction and the Term, a suitable portable fire extinguisher for Class A, B and C fires.
- (r) The Tenant shall perform its work expeditiously and efficiently and shall complete the same within the period stipulated in this Lease subject only to circumstances over which the Tenant has no control and which by the exercise of due diligence could not have been avoided.
- (s) On completion of the Tenant's Work, the Tenant shall forthwith furnish to the Landlord a statutory declaration in a form provided by the Landlord standing that there are no construction or builders' liens outstanding against the Leased Premises or the Development on account of the Tenant's Work and that all accounts for work, service and materials have been paid in full with respect to all of the Tenant's Work, together with evidence in writing satisfactory to the Landlord that all assessments under the *Workplace Safety and Insurance Act* (Ontario) have been paid.
- (t) The Tenant shall not suffer or permit any construction or builders' liens or other liens for work, labour, services or materials to be filed against or attached to the Development or any other portion of the Development. The Tenant agrees that if any builders' lien is filed, as aforesaid as a result of its occupancy or possession, the Tenant shall have the lien removed within fifteen (15) Business Days of becoming aware of such lien. This includes, but shall not be limited to, payment of money into Court and/or any other remedy which would result in the lien being removed from the title to the Lands forthwith.
- (u) No work shall be commenced by the Tenant until all drawings and specifications have been approved in writing by the Landlord and until the Tenant has secured approval and permits from all Governmental Authorities having jurisdiction and submitted proof of same to the Landlord. In this regard, the Landlord will provide its approval of the Tenant's drawing and specifications or advise that such approval shall not be granted, as applicable, within ten (10) days of receipt of such drawings and specifications from the Tenant. The Tenant shall complete all work in a good and workmanlike manner, and in strict accordance with the drawings and specifications approved by the Landlord. The Tenant agrees to indemnify and save the Landlord harmless from any and all loss, damage or injury which may result from the Tenant's activities in the Leased Premises or the Development in completing the Leased Premises as aforesaid. The Tenant

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acknowledges and agrees that there may be inconvenience associated with completing either the Landlord's Work or the Tenant's Work.

- (v) If the Tenant does not comply with the provisions of the Lease or any other agreement relative to the construction or occupation of the Leased Premises, including, without limitation, this Schedule "E", the Landlord, in addition to and not in lieu or by other rights or remedies, shall have the right in its sole and unfettered discretion to declare and treat the Tenant's non-compliance as an Event of Default under the Lease and exercise any right available under the provisions of the Lease, including the right of termination (subject to delivering notice of such Event of Default and an opportunity to cure as set out in this Lease).
- (w) The Tenant shall ensure that in undertaking any work to the Leased Premises including, without limitation, the installation of Leasehold Improvements, access to the systems, facilities and equipment serving the Leased Premises shall not be unreasonably impeded either temporarily or permanently.

3. Additional Tenant's Work Requirements:

The following provisions shall apply in respect of the Tenant's Work and shall take precedence, to the extent required, in the event that any of the following contradict the provisions of Section 2 of this Schedule "E":

- (a) Without in any way limiting its construction obligations in respect of Tenant's Work, the Tenant shall provide for an ecology system for its kitchen exhaust and grease traps, and will require Landlord's approval of the termination point and direction of such exhaust and traps. Further, upon the Landlord's request, the Tenant shall, at its sole cost, implement any additional odour mitigation methods which the Landlord, acting reasonably requires, including, without limitation, creating a negative air pressure within the Leased Premises and/or purchasing air purification and/or air curtain systems. The Parties hereby expressly agree that Landlord's exercise or non-exercise of its right to review or approve all of Tenant's plans in no way constitutes: (i) an acceptance or approval by Landlord of the Leased Premises' construction and the steps taken to prevent odours, smells, rats or vermin originating from the Leased Premises from affecting the other areas of the Development; or (ii) a waiver or renunciation by the Landlord of its rights as otherwise set forth herein. Tenant shall construct the Leased Premises in accordance with the approved plans and specifications and use the garbage holding area and otherwise comply with the Lease with respect to the treatment and disposal of garbage and creation of odours. Any default by Tenant in respect of its obligations set forth in this Section shall entitle Landlord to exercise its rights set forth in this Lease.
- (b) The Tenant will provide and carry out, at its expense, all equipment and work required to be provided and performed in order to make the Leased Premises complete and ready for the proper conduct of the Tenant's permitted business and suitable to open the Leased Premises for business to the public.
- (c) The Tenant shall be responsible, at its expense, for obtaining all permits and approvals related to Tenant's Work, including without limitation, any licenses, approvals or permits required for use, change of use and/or occupancy.

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- (d) All Tenant's Work must comply with all plans approved by the Landlord, Applicable Laws, building codes, permits and approvals for the work and with the requirements of Landlord's insurers. If Tenant is in default of this obligation and does not cure such default within the time period required by the Governmental Authority, Landlord's insurers or Landlord, Landlord may, but will not be obligated to, cure such default, and all charges and costs incurred by Landlord will be paid to Landlord by Tenant, together with an administrative fee equal to fifteen percent (15%) of those charges and costs.
- (e) The Tenant will, after satisfying all of its requirements set out in this Lease, complete Tenant's Work in a good and workmanlike manner, using new materials, to Landlord's satisfaction and in conformity with the plans, drawings and specifications approved by Landlord. Deficient or inferior materials or workmanship will be replaced by Tenant at its expense by materials or workmanship of high quality, in accordance with Landlord's reasonable satisfaction. One set of the plans, drawings and specifications with Landlord's consent endorsed on them will remain on the Leased Premises at all times during completion of Tenant's Work.
- (f) The Tenant, its contractors, and their employees and agents will: (i) abide by all safety regulations; (ii) provide adequate fire protection including, without limitation, fire extinguishers; (iii) deliver and store materials and tools as directed by Landlord; (iv) stop immediately, if requested by Landlord, any work which, in the opinion of Landlord, by reason of public hazard, noise or otherwise, is likely to affect the normal operation of the Development or any part of it; (v) be responsible for waste removal; and (vi) abide by all other reasonable requirements of Landlord. Tenant authorizes Landlord and Landlord's consultants to enter the Leased Premises, without warning, throughout and following Tenant's construction activities to ascertain compliance with requirements.

Title	Lease - 146 Brock Street North, Whitby ON
File name	146 Brock Lease A...rry Stevenson.pdf
Document ID	92d7964a860c6b8982c9ea3f462376f041da720e
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

03 / 01 / 2024
20:31:43 UTC

Sent for signature to Larry Stevenson
(discount416@hotmail.com) from admin@cacoeli.com
IP: 174.89.20.4



VIEWED

03 / 02 / 2024
03:01:32 UTC

Viewed by Larry Stevenson (discount416@hotmail.com)
IP: 99.232.103.223



SENT

03 / 04 / 2024
20:16:37 UTC

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EDITED

03 / 04 / 2024
20:16:37 UTC

Edited by Kasey Wong (admin@cacoeli.com)
IP: 174.89.20.4



RESENT

03 / 04 / 2024
20:16:38 UTC

Signature request resent by Kasey Wong (admin@cacoeli.com)
IP: 174.89.20.4

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16:24:22 UTC

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04 / 10 / 2024
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Document History



04 / 10 / 2024
15:40:50 UTC

Signature request resent by Kasey Wong (admin@cacoeli.com)
IP: 142.189.148.36



04 / 12 / 2024
17:01:04 UTC

Signed by Larry Stevenson (discount416@hotmail.com)
IP: 99.232.103.223



04 / 12 / 2024
17:01:04 UTC

The document has been completed.

SCHEDULE “E”

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 25, 2024

CASE NO(S):

OLT-24-000115

PROCEEDING COMMENCED UNDER subsection 17(24) and 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 11250396 Canada Inc. (Cacoeli Whitby LP)
Appellant: Whitby Brock Estates
Subject: Proposed Official Plan Amendment No. 126
Description: To appeal the approval by the Region of Durham of Amendment No. 126 to the Town of Whitby Official Plan
Reference Number: OPA 2020-W/03
Property Address: 132 & 146 Brock St N and 423-435 Brock St N
Municipality/UT: Whitby/Durham
OLT Case No.: OLT-24-000115
OLT Lead Case No.: OLT-24-000115
OLT Case Name: 11250396 Canada Inc. & Whitby Brock Estates v. Whitby (Town)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Terrabona Developments Ltd. and 11250396 Canada Inc. (Cacoeli Whitby LP)
Subject: Request to amend the Official Plan – Failure to adopt the requested amendment
Description: To permit a site-specific amendment to increase the governing density policy within Downtown Whitby's Secondary Plan
Reference Number: DEV-15-22 (OPA-2022/-W/03)
Property Address: 132 & 146 Brock Street North
Municipality/UT: Town of Whitby/Regional Municipality of Durham
OLT Case No.: OLT-22-004776
OLT Lead Case No.: OLT-22-004776
OLT Case Name: Terrabona Developments Ltd. v. Whitby (Town of)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Terrabona Developments Ltd. and 11250396 Canada Inc. (Cacoeli Whitby LP)
Subject:	Application to amend the Zoning By-law By-law No. 2585—neglect to make a decision
Description:	To permit a redevelopment of the site to construct an eleven storey mixed-use building
Reference Number:	DEV-15-22 (Z-11-22)
Property Address:	132 & 146 Brock Street North
Municipality/UT:	Town of Whitby/Regional Municipality of Durham
OLT Case No.:	OLT-22-004777
OLT Lead Case No.:	OLT-22-004776
OLT Case Name:	Terrabona Developments Ltd. v. Whitby (Town of)

Heard: June 28, 2024, by Video Hearing

APPEARANCES:

Parties

Counsel

11250396 Canada Inc. (132 and 146 Brock Street North) (Cacoeli Whitby LP)	Russell D. Cheeseman Stephanie Fleming
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Whitby Brock Estates (423-435 Brock Street North)	Michael Cara
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Town of Whitby	Kacie Layton
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Region of Durham	Andrew Biggart Robert Woon
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Bara Group (Whitby) Inc. (1200 and 1202 Green Street)	Matthew Helfand
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**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN T. MASTORAS ON
JUNE 28, 2024, AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Tribunal is a second Case Management Conference ("CMC") relating to two separate appeals under s. 17(24) and s.17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended ("Act") of Official Plan Amendment No.126 ("OPA 126") approval by the Town of Whitby ("Town") and the approval of OPA 126 by the Region of Durham of ("Region"), respectively (the "Appeals"). The Appeals have been filed individually by 11250396 Canada Inc. ("Cacoeli Whitby LP") as the owners of 132 and 146 Brock Street North ("Appellant A" / "Site A") under s. 17(24) of the Act. Whitby Brock Estates has appealed as the owners of 423-435 Brock Street North ("Appellant B" / "Site B") under s. 17(36) of the Act.

[2] The purpose of the Town-initiated OPA 126 is to replace Section 11.3 – of the Downtown Whitby Secondary Plan 1989 and introduce updated policies and land use development in the Downtown Whitby Community Secondary Area to reflect the Town's growing population forecasted to reach approximately 193,000 people by 2031. Town Council adopted OPA 126 on March 20, 2023.

[3] Site A consists of a total of 0.35 hectares ("ha") and frontage of approximately 70 metres ("m") with a depth of 50 m, a single-storey commercial building, with automotive sales/service uses and heritage buildings that provide similar commercial uses, along with a single two-storey concrete building for storage.

[4] Site B consists of four parcels of land (423, 425, 427, and 435 Brock Street North), on the east side of the street, and consists of a total of 0.36 ha, with a frontage of 60 m and a depth of 60 m. Each parcel of land on Site B consists of a single storey detached bungalow, with private driveway access to Brock Street North.

CONSOLIDATION, APPLICATION STATUS UPDATES, AND HEARING REQUEST

[5] Counsel for Appellant A/Site A sought to administratively consolidate this OPA 126 Appeal with its own matter before the Tribunal OLT Case File No. (OLT-22-004776), which was previously adjourned *sine die* earlier this year (March 2024). This request had the consent of all of the Parties related to the Site-Specific Appeal, who were present at this CMC. The Tribunal provided direction that the two matters will be administratively consolidated.

[6] Counsel for Appellant A also requested that a full Hearing on the merits of consolidated appeal OLT Case File No. (OLT-22-004776) and Appeal OLT Case File No. (OLT-24-000115) (together the "Consolidated Appeals") be scheduled and heard together for a total length of two-weeks at the discretion of the Tribunal. This request was also on consent of the relevant Parties present at the CMC. The Parties committed to scoping issues further and were directed to submit an updated draft Procedural Order and Issues List ("PO-IL") to the Case Coordinator or before July 5, 2024.

[7] Counsel for Appellant B/Site B advised the Tribunal that its own Application is currently in its second pre-consultation phase with the Town. There is no appeal currently before the Tribunal, however, they continue to maintain an interest as a "placeholder" in the OPA 126 Appeal, as it may impact their development proposal.

[8] The Tribunal noted that a separate Bara Group (Whitby) Inc. ("Bara") OPA/ZBA matter OLT Case File No. (OLT-21-001810) was recently the subject of a Tribunal Decision on April 29, 2024., and Counsel for Bara advised that it may reconsider its status regarding this proceeding, following a Tribunal Order regarding OPA 126.

[9] The Parties agreed to submit a draft order on consent, addressing each matter respectively, as they related to OPA 126, and each of their individual matters. It was recommended that for Bara's own purposes, OPA 126 should broadly proceed and be brought into full force and effect, pursuant to s.17(39) of the Act, in geographic areas

not specifically under these Appeals (specifically excluding Site A and Site B) respectively. All Parties agreed that OPA 126 should be allowed to come into full force and effect, with the exception of the Site-Specific considerations applicable to Site A and Site B.

[10] The Order that follows, allows for a partial approval of OPA 126 without prejudice to the disposition of any other appeal of OPA 126 and any unapproved portions of OPA 126. If/when those appeals proceed to a subsequent hearing or motion, either consolidated, or individually, the Town and Region indicated they would not take the position that the Tribunal ought not to approve amendments to OPA 126 on the basis that such amendments deviate from or are inconsistent with OPA 126 as brought into force with this Order.

[11] The Tribunal noted that if there were any issues that may be unresolved during the interim period, the Tribunal could arrange for a Telephone Conference Call if requested and reminded the Parties that Tribunal-led mediation is available if mutually agreed upon and if requested through the Case Coordinator.

[12] After careful consideration of the respective calendars of Parties, the Tribunal scheduled a Hearing of the Consolidated Appeals OLT Case File No(s). (OLT-22-004776 and OLT-24-000115) commencing on **Tuesday May 20, 2025, to Friday May 30, 2025**, by Video Conference, for a period of **nine-days**, with a start time of **10 a.m.**

GoToMeeting: <https://global.gotomeeting.com/join/927921077>

Access Code: 927-921-077

[13] Parties are asked to log into the Video Hearing at least **15 minutes** before the start of the event to test their video and audio connections. Parties are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The

desktop application can be downloaded at [GoToMeeting](https://app.gotomeeting.com/home.html) or a web application is available: <https://app.gotomeeting.com/home.html>

[14] Persons who experience technical difficulties accessing the GoToMeeting Application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **Toll-Free: 1-888-299-1889** or **+1 (647) 497-9391**. **The Access Code is as indicated above.**

[15] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the CMC by Video to ensure that they are properly connected to the event at the correct time. Questions prior to the CMC event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[16] The Tribunal expressed its appreciation to all of the Parties for their cooperation and concurred with their recommendations. The Parties to the Consolidated Appeals Hearing, submitted an updated final PO-IL on July 5, 2024, which is approved and attached to this Order marked as **Schedule 1**, and will guide the proceedings accordingly.

ORDER

[17] **THE TRIBUNAL ORDERS THAT:**

1. The Appeal of OPA 126 by 11250396 Canada Inc. (Cacoeli Whitby LP) is scoped in geographic area to 132 and 146 Brock Street North (Site A), Town of Whitby; and
2. The Appeal of OPA 126 by Whitby Brock Estates Inc. is scoped in geographic area to 423-435 Brock Street North (Site B), Town of Whitby.

[18] Accordingly, and by operation of s. 17(39) of the *Planning Act*, the non-appealed portions of OPA 126 are in full force and effect except for the lands identified preceding this, in paragraphs 1 and 2, as of the date of this Order.

[19] **THE TRIBUNAL FURTHER ORDERS** that:

1. The Hearing as scheduled above relating to the Consolidated Appeals OLT Case File No(s). (OLT-22-004776 and OLT-24-000115) by 11250396 Canada Inc. (Cacoeli Whitby LP) (Site A) is along with the Procedural Order and Issues List attached below as **Schedule 1** is so ordered; and
2. The appeal of OPA 126 by Whitby Brock Estates Inc. (Site B) is adjourned sine die. Counsel for the Town of Whitby and Whitby Brock Estates Inc. are directed to provide a status update in respect of this matter to the Case Coordinator on or before Friday, November 29, 2024.

[20] There will be no further notice.

[21] The Tribunal may be spoken to if there are any difficulties arising from this Order.

"Steven T. Mastoras"

STEVEN T. MASTORAS
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

SCHEDULE 1**Ontario Land Tribunal**

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5

Tel: 416-212-6349 | 1-866-448-2248

Web Site: olt.gov.on.ca

CASE NO(S): OLT-24-000115**PROCEEDING COMMENCED UNDER** subsection 17(24) and 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 11250396 Canada Inc. (Cacoeli Whitby LP)
Appellant: Whitby Brock Estates
Subject: Proposed Official Plan Amendment No. 126
Description: To appeal the approval by the Region of Durham of Amendment No. 126 to the Town of Whitby Official Plan
Reference Number: OPA 2020-W/03
Property Address: 132 & 146 Brock St N and 423-435 Brock St N
Municipality/UT: Whitby/Durham
OLT Case No.: OLT-24-000115
OLT Lead Case No.: OLT-24-000115
OLT Case Name: 11250396 Canada Inc. & Whitby Brock Estates v. Whitby (Town)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Terrabona Developments Ltd. and 11250396 Canada Inc. (Cacoeli Whitby LP)
Subject: Request to amend the Official Plan – Failure to adopt the requested amendment
Description: To permit a site-specific amendment to increase the governing density policy within Downtown Whitby's Secondary Plan
Reference Number: DEV-15-22 (OPA-2022/-W/03)
Property Address: 132 & 146 Brock Street North
Municipality/UT: Town of Whitby/Regional Municipality of Durham
OLT Case No.: OLT-22-004776
OLT Lead Case No.: OLT-22-004776

OLT Case Name: Terrabona Developments Ltd. v. Whitby (Town of)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Terrabona Developments Ltd. and 11250396 Canada Inc. (Cacoeli Whitby LP)
 Subject: Application to amend the Zoning By-law By-law No. 2585—neglect to make a decision
 Description: To permit a redevelopment of the site to construct an eleven storey mixed-use building
 Reference Number: DEV-15-22 (Z-11-22)
 Property Address: 132 & 146 Brock Street North
 Municipality/UT: Town of Whitby/Regional Municipality of Durham
 OLT Case No.: OLT-22-004777
 OLT Lead Case No.: OLT-22-004776
 OLT Case Name: Terrabona Developments Ltd. v. Whitby (Town of)

PROCEDURAL ORDER

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the parties' request or its own motion.

Organization of the Hearing

2. The video hearing will begin on **Tuesday, May 20, 2025, at 10:00 a.m.**
3. The parties' initial estimation for the length of the hearing is 9 days. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.
4. The parties and participants identified at the case management conference are set out in Attachment 1 (see the sample procedural order for the meaning of these terms).
5. The issues are set out in the Issues List attached as Attachment 2. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. The order of evidence shall be as set out in Attachment 3 to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on the parties' consent, subject to the Tribunal's approval, or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website.

Requirements Before the Hearing

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before Friday, November 3, 2023 and in accordance with paragraph 22 below. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
10. Expert witnesses in the same field shall have a meeting on or before Friday, December 1, 2023 and use best efforts to try to resolve or reduce the issues for the hearing. Following the experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the OLT case co-ordinator on or before Friday, December 15, 2023.
11. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in paragraph 13 below. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in paragraph 13 below. A party who intends to call

a witness who is not an expert must file a brief outline of the witness' evidence, as in paragraph 13 below.

13. On or before Friday, January 12, 2024, the parties shall provide copies of their expert witness statements to the other parties and to the OLT case co-ordinator and in accordance with paragraph 22 below.
14. On or before Friday, January 12, 2024, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 22 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
15. On or before Friday, April 11, 2025 the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
16. On or before Friday, May 9, 2025, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 22 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
17. Parties may provide to all other parties and the OLT case co-ordinator a written response to any written evidence on or before Friday, January 26, 2024 and in accordance with paragraph 22 below.
18. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case co-ordinator on or before Friday, May 9, 2025 .
19. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. *See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.*
20. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
21. The parties shall prepare and file a preliminary hearing plan with the Tribunal on or before Monday, May 12, 2025 with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness

in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.

- 22.** All filings shall be submitted electronically and in hard copy. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the *Rule 7*.
- 23.** No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

Summary of Procedural Dates

Date	Event
Friday, November 3, 2023	Witness List
Friday, December 1, 2023	Final day for expert witness meeting
Friday, December 15, 2023	Statement of Agreed Facts and Issues filed
Friday, January 12, 2024	Expert witness and witness statements due
Friday, January 12, 2024	Written participant statement due
Friday, January 26, 2024	Response to written evidence due
Friday, April 11, 2025	Hearing date confirmation
Friday, May 9, 2025	Visual evidence due
Friday, May 9, 2025	Joint Document Book due
Monday, May 12, 2025	Preliminary hearing plan due
May 20, 2025	Hearing

Attachment 1**PARTIES**

1. Terrabona Developments Ltd.
2. Town of Whitby
3. Region of Durham

PARTICIPANTS

Attachment 2
Issues List

NOTE: The appeal shall not have the effect of limiting:

- (a) The rights of the appellants who have not resolved all their issues in the within appeal to request as a consequence of their evidence that the Tribunal modify, delete, or add to the unapproved portions of OPA 126; or
- (b) The jurisdiction of the Tribunal to consider and approve modifications, deletions, or additions to the unapproved portions of OPA 126 on a site-specific basis, or to render decisions on the remaining appeals that deviate from or are inconsistent with those portions of OPA 126 as partially approved, provided that the parties shall be bound by the commitments made by them to scope their issues to a site-specific or area-specific basis.

Principles of Development

- 1. Provincial Policy Statement (2020): Are the proposed applications consistent with and have proper regard for the Provincial Policy Statement (2020), in particular policies 1.1.1, 1.4 and 1.7(d) and (e), 2.6(?)?
- 2. A Place to Grow: Growth plan for the Greater Golden Horseshoe: Does conformity with the Growth Plan require approval of proposed applications, including when considering policies 1.2.1, 2.2.6 and 4.2.7?

Town of Whitby Official Plan, Downtown Whitby Secondary Plan and Durham Regional Official Plan

- 3. Do the proposed applications conform to and meet the goal and intent of the relevant policies of the Durham Regional Official Plan, including policies 7.3.17, 8A.2.2 and 8A.2.14?
- 4. What weight should be given to the recently adopted Downtown Whitby Secondary Plan when assessing the proposed applications?
- 5. Do the proposed applications conform to and meet the overall goals, intent, and guiding principles of the Town of Whitby's Official Plan, including policies
 - a. 2.1.1(b) and (h);
 - b. 2.3.4.2.1, 2.3.4.2.4 and 2.3.4.2.5;
 - c. 3.1.2.6;
 - d. 4.3.2.2 to 4.3.2.5, and 4.3.2.8;
 - e. 4.4.3.9.4;
 - f. 6.1.1, 6.1.2.2, 6.1.3.2 and 6.1.3.10;
 - g. 6.2.3.1.2, 6.2.3.1.3, 6.2.3.1.4, 6.2.3.6, 6.2.3.11.1, 6.2.3.11.2, and 6.2.3.12.
- 6. Do the proposed heights integrate and transition appropriately with the planned/existing heights of the surrounding area in conformity with the Town's Official Plan policy 11.3.6.4?

7. Is the proposed increase to the maximum permitted building height from 3 and 6 storeys to 11 storeys appropriate as set-out on Schedule "I" – Downtown Secondary Plan Building Height, including policies 6.2.3.12.3 and 11.3.3.3?
8. Is the proposed increase in the maximum permitted residential density from 200 units per net hectare to at least 370 units per net hectare appropriate, in consideration of the Town's Official Plan (including policy 11.3.4.1)?

Zoning & Urban Design

9. Given the current Holding provision applicable to the rear portion of the subject lands, have the proposed applications sufficiently assessed the servicing capacities within the Downtown area in relation to the sanitary sewers, municipal water, and storm water servicing facilities?
10. Does the proposed Zoning By-law amendment conform to the Town's Official Plan, and does it properly address/justify and give consideration to:
 - h. compatibility with adjacent uses of land;
 - i. suitability of the land for the proposed purpose and uses;
 - j. adequacy of vehicular access;
 - k. minimum parking requirements;
 - l. height and density of the proposed development;
 - m. lot coverage, setback and stepback requirements;
 - n. road widening across the Brock Street North frontage; and
 - o. impacts to site plan and site development approvals.
11. Is the proposed height and built form/massing appropriate for the site, given the existing zoning and streetscape?

Heritage

12. Would the height of the proposed applications create a negative impact on the heritage characteristics on the site and surrounding heritage context of the area?
13. How should the heritage conservation measures be implemented and secured as a part of the proposed applications?
14. Has the Appellant conducted a sufficient archaeological assessment of the subject lands?

Site Servicing, Transportation and Engineering

15. Has the Appellant appropriately addressed the site servicing and engineering comments from Town (including those dated July 18, 26 and August 26, 2022), Region and the Central Lake Ontario Conservation Authority (August 2, 2022)?
16. Has the Appellant appropriately responded to the comments of the Town of Whitby's Transportation Services Division dated July 18, 2022?
17. Has the Appellant appropriately responded to the Region's comments on the Appellant's Environmental Noise Study?

Affordable Housing

18. What does the Appellant mean when it says that it is going to provide affordable housing?

- a. Will the proposed applications provide affordable housing, as defined in the Provincial Policy Statement and in the Growth Plan?
 - b. If affordable housing is to be provided as part of the proposed applications, how will the affordable housing be secured, what form will it take (i.e., ownership or rental), and for what period of time will it be secured?
19. Does the proposed affordable housing conform to the policy requirements of Regional Official Plan Policy 4.2.4?
20. Does the proposed affordable housing conform to the policy requirements of Town Official Plan Policy 7.7.1, 7.7.3, and 11.3.2.2?

Attachment 3**ORDER OF EVIDENCE**

1. Terrabona Developments Ltd.
2. Town of Whitby
3. Regional Municipality of Durham
4. Terrabona Developments Ltd., in Reply

SCHEDULE "F"

Jackie Chang

From: Majid Tavakoli <majid@terrabona.ca>
Sent: April 19, 2022 2:52 PM
To: Jedidiah Liu; Jackie Chang
Cc: Jason Cosman
Subject: RE: Whitby Loan

Hi Jackie – as per our conversation please let this email act as notice of consent in regards to the Restrictive Covenants registered on title of the aforementioned property in Whitby.

Should you have any question please do not hesitate to contact me directly.

Hope the above email suffice.

Thanks Majid

Best Regards,

Majid Tavakoli | CEO & President



TerraBona Developments LTD.

1899 Leslie Street
Toronto, Ontario
M3B-2M3
D: 416-824-2914
O: 416-226-9777
www.terrabona.ca

Please consider the environment before printing this email.

PLEASE NOTE: The contents of this communication, including any attachment(s), are confidential and may be privileged. If you are not the intended recipient (or are not receiving this communication on behalf of the intended recipient), please notify the sender immediately and delete or destroy this communication without reading it, and without making, forwarding, or retaining any copy or record of it or its contents. Thank you. Note: We have taken precautions against viruses, but take no responsibility for loss or damage caused by any virus present.

From: Jedidiah Liu <jed@cacoeli.com>
Sent: April 19, 2022 2:33 PM
To: Majid Tavakoli <majid@terrabona.ca>
Subject: Fwd: Whitby Loan

Please sign asap

----- Forwarded message -----

From: Jackie Chang <jchang@gropperlaw.com>
Date: Tue, Apr 19, 2022 at 2:31 PM
Subject: RE: Whitby Loan
To: Shahab Nazarinia <info@nia-law.com>
CC: Jason Cosman <jason@cosmanmortgage.ca>, jed@cacoeli.com <jed@cacoeli.com>, kasey@cacoeli.com <kasey@cacoeli.com>, Bernie Gropper <bernie@gropperlaw.com>, mark@m2cap.ca <mark@m2cap.ca>

Shahab,

We are in funds and are ready to register the attached Notice. However, the PINs 26535-0186 and 26535-0187 are "Subject to no dealings". I attach a copy of the Restrictive Covenants for your information.

Please obtain a Consent from Terra Bona Developments Ltd. allowing us to register the attached Notice. Once we are in receipt of the Consent, we will proceed to register asap and wire you the funds.

Please also send us your wiring instructions.

Yours truly,

Jackie Chang

Legal Assistant

 **Gropper**
Professional Corporation

1701 Avenue Road, Suite 200
Toronto ON M5M 3Y3

Phone/Fax: 416.962.3000
Email: jchang@gropperlaw.com

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From: Shahab Nazarinia <info@nia-law.com>
Sent: April 13, 2022 5:27 PM
To: Bernie Gropper <bernie@gropperlaw.com>; mark@m2cap.ca
Cc: Jackie Chang <jchang@gropperlaw.com>; Jason Cosman <jason@cosmanmortgage.ca>; jed@cacoeli.com; kasey@cacoeli.com
Subject: FW: Whitby Loan

Hello Mark,

Thank you for your email. I have cc all the parties signing the documents. Please use their email for docusign.

Please feel free to contact me anytime. I would appreciate it if you could CC info@nia-law.com on all our correspondence as this email is checked more frequently and in order to avoid any delays.

Kindly contact either Nelly ext. 2 (nelly@nia-law.com) or Laya ext. 1 (laya@nia-law.com) for real estate matters. Kindly contact Nasim ext. 3 or Saeideh ext. 4, for immigration matters. (immigration@nia-law.com)

Thank you and have a great day,

NiaLaw Professional Corporation
250 Sheppard Avenue East unit 203 Toronto ON. M2N 6M9

Phone: 416-989-0866 | **Fax:** 647 345 3403

info@nia-law.com

www.nia-law.com

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--

Regards,
Jedidiah Liu
416-419-9635

www.Cacoeli.com

Preserve Capital, Create Wealth

SCHEDULE "G"

3 Church Street, Suite 505, Toronto, ON M5E 1M2
Tel: 416.981.9401 Fax: 416.981.0060

Calvin J. Ho
Direct Dial: 416.981.9430
Direct Fax: 416.981.0060
E-Mail: cho@laishleyreed.com

28 October 2024

Pollard & Associates Inc., Licensed Insolvency Trustee
31 Wright Street
Richmond Hill, Ontario, L4C 4A2

Attn: Angela Pollard

Dear Angela:

**Re: Receivership of Cacoeli Whitby LP aka Cacoeli Whitby Limited Partnership,
11275127 Canada Inc. and 11250396 Canada Inc.**

You have asked us to provide you with an opinion as to the validity of the security interest of Cosman Mortgage Holding Corp. (the "Secured Party") based on the documentation provided to us.

Schedule "A" lists the security and other documents which we reviewed regarding the loan provided by the Secured Party to Cacoeli Whitby LP aka Cacoeli Whitby Limited Partnership, 11275127 Canada Inc. and 11250396 Canada Inc. (collectively "the Borrower"). In this letter we refer to all such documents collectively as the "Security Documents" and each as a "Security Document".

1. Scope of Review

We reviewed the Security Documents generally to identify any aspect of the documents or any registrations which did not appear complete and regular on their face or which appeared to raise other problems. In conducting our review we have assumed:

- i) with respect to all documents examined, the genuineness of all signatures, the legal capacity of individuals signing any documents, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified or photocopied copies;
- ii) that there are no agreements to which the Borrower is a party which might impair the Borrower's ability to grant security or perform its obligations under its Security Documents;
- iii) that the descriptions in the Security Documents of the property and assets intended to be secured thereby are correct and complete;
- iv) that the indices and records in all filing systems maintained in all public offices where we have searched or inquired or have caused searches or inquiries to be conducted are accurate

and current, and all certificates and information issued or provided pursuant therefore are and remain accurate and complete;

v) that all of the Security Documents have been duly authorized, executed and delivered by all parties to them, and that the authorization, execution and delivery of the Security Documents by the Borrower and the performance of its obligations thereunder does not breach any constating or trust documents of the Borrower or any laws to which the Borrower is subject; and

vi) that the only jurisdiction where the Borrower carries on business is the Province of Ontario.

2. Security Documents

We have examined the Security Documents and found that the Security Documents have been completed and executed in accordance with the Secured Party's requirements. The Security Documents have been filed and registered where necessary, and the Security Documents are valid and enforceable in accordance with their terms, subject to our comments and to the assumptions and qualifications set out in this letter.

i) The General Security Agreements dated March 21, 2021, from a) Cacoeli Whitby LP to Cosman Mortgage Holding Corp. b) 11250396 Canada Inc to Cosman Mortgage Holding Corp.; and c) 11275127 Canada Inc. to Cosman Mortgage Holding Corp. appear to have been duly executed on behalf of the Borrower and purports to grant the Secured Party a security interest in the present and after-acquired property of the Borrower, including a) all present and future equipment of the Borrower; b) all present and future inventory of the Borrower; c) all present and future debts, demands and amounts due or accruing to the Borrower (Accounts); d) all present and future intangible personal property, chattel paper, documents of title, instruments, money and securities, and any proceeds therefrom; e) all books, accounts, and other records, and f) all of the Borrower's present and future right, title and interest to all leases, leasehold interests, tenancies, and rights of occupation or possession of real estate or personal property; and f) Proceeds, collectively called the "Collateral".

The General Security Agreement from Cacoeli Whitby LP to Cosman Mortgage Holding Corp. was registered under the PPSA as Registration No. 20210322 1025 1862 3811 over inventory, equipment, accounts, other, motor vehicle included, for a period of 5 years, expiry March 22, 2026.

The General Security Agreement from 11250396 Canada Inc. to Cosman Mortgage Holding Corp. was registered under the PPSA as Registration No. 20210322 1025 1862 3811 over inventory, equipment, accounts, other, motor vehicle included, for a period of 5 years, expiry March 22, 2026.

The General Security Agreement from 11275127 Canada Inc. to Cosman Mortgage Holding Corp. was registered under the PPSA as Registration No. 20210322 1025 1862 3811 over inventory, equipment, accounts, other, motor vehicle included, for a period of 5 years, expiry March 22, 2026.

We have assumed that there are no statutory trust claims in favour of the Crown or ny other party which would take priority over the interest of the Secured Party.

3. PPSA Searches

The Province of Ontario does not have a system for registering absolute title to personal property, so we cannot confirm that the Borrower holds (or held, as the case may be) title respectively to any of the personal property subject to the Security Documents.

However, you have provided us with a search under the Personal Property Security Act (Ontario) (the “PPSA”) to identify the relative competing claims to the personal property described in the Security Documents. The particulars of the PPSA search is summarized in Schedule “B” to this letter and is current to October 20, 2024.

4. Mortgage Charge

We have reviewed the Mortgage Charge of the lender. The Charge was duly registered by the chargor, Cosman Mortgage Holding Corp. as against the partnership chargees, 11250396 Canada Inc., Cacoeli Whitby LP, and 11275127 Canada Inc. as Instrument No. DR1984468 on March 22, 2021 against i) PIN: 26535-0187 LT, being municipal address 146 Brock Street North, Whitby; and ii) PIN: 26535-0209 LT and PIN: 26535-0186 LT, being municipal address 132 Brock Street North, Whitby.

The principal amount charged was \$2,800,000 with interest at 12 per cent per annum, payable monthly, not in advance, balance due April 1, 2022 in accordance with a Commitment letter between the Chargors, Guarantors, and the Chargee dated March 18, 2021. Standard Charge terms 200033.

The Additional Provisions annexed and incorporated to the Charge provide for the appointment of a receiver by the Chargee in the event of default.

5. Assignment of Rents

A Notice of Assignment of Rents for PIN: 26535-0187 LT and PIN: 26535-0209 LT, 146 Brock Street North, Whitby, was duly registered as Instrument No. DR1984469 on March 22, 2021 by 11250396 Canada Inc. and Cacoeli Whitby LP as assignors in favour of Cosman Mortgage Holding Corp.

A Notice of Assignment of Rents for PIN: 26353-0186 LT, 132 Brock Street North, Whitby, was duly registered as Instrument No. DR1984470 on March 22, 2021 by 11250396 Canada Inc., 11275127 Canada Inc., and Cacoeli Whitby LP as assignors in favour of Cosman Mortgage Holdings Corp.

6. Title Search

We have conducted land titles searches against Cacoeli Whitby LP, 1120396 Canada Inc., and 11275127 Canada Inc. for the relevant parcels.

The aforementioned Mortgage Charge in favour of Cosman Mortgage Holding Corp. appears to have been duly registered against the parcels described in the aforesaid PINs in accordance with the *Mortgages Act*.

Attached as Schedule “C” is a general parcel review with brief comments.

Specific note should be made of Instrument No. DR2120831 registered by the owners 11250396 Canada Inc., 11275127 Canada Inc. and Cacoeli Whitby LP, as an Application to Annex Restrictive Covenants, namely to have an entry made on the Register for the following restriction: "No Transfer, charge or other dealings, either directly or indirectly by the registered owners of any of their interest in the lands described hereon or any part thereof, shall be created, registered or occur without the prior consent of Terra Bona Developments Ltd. ("Terra Bona") in accordance with a Development Management Agreement dated February 4, 2021". We have reviewed a copy of said Development Management Agreement between Terra Bona and the Owner, which itself was not registered on title, so accordingly we cannot fully comment or confirm its validity or enforceability. We note however, that paragraph 10.2 states that the "...Owner hereby irrevocably covenants and agrees that the Development Management Fee and the Bonus Density shall and do form an equitable interest in favour of the Manager as against the Owner's interest and/or equity in the Property..." We also note that paragraph 10.3 states that "...Owner shall forthwith upon signing this Agreement apply to the Land Registrar...to the effect that no transfer shall be made or any charge or mortgage created in respect of all or any part of the Property unless the consent of the Manager is given to the proposed transfer or to the creation of such charge of the Property..." You have provided us with copies of Consents signed by Terra Bona for the registration of the first and second mortgages against title. We further note that Terra Bona Developments Ltd. have registered a lien claim limited to the amount of \$135,215 against the described parcels.

7. **Qualifications**

The enforceability of the Security Documents is also subject to the following qualifications which arise under the laws of general application:

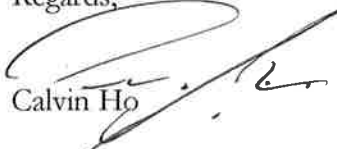
- i) the effect of any applicable bankruptcy, insolvency, reorganization, preference, moratorium, liquidation, or similar laws relating to or affecting creditors' rights generally;
- ii) the equitable and statutory powers of the courts to stay proceedings before them;
- iii) the execution of judgments and equitable remedies, such as specific performance and injunctions, which are available only at the discretion of a court of competent jurisdiction;
- iv) section 95 of the BIA - being an obligation that is incurred, or a charge on property that is made in favour of a creditor with a view to giving that creditor a preference is void as against the Trustee if it is made during the period beginning on the day that is three (3) months before the date of the initial bankruptcy event and ending on the date of bankruptcy, if the creditor and the debtor are dealing at arms' length; or, during the period beginning on the day that is twelve (12) months before the date of the initial bankruptcy event and ending on the date of bankruptcy, if the creditor and debtor are not dealing at arms' length.

On the basis of the above and subject to the qualifications and caveats noted herein, we opine that the Secured Party has good and valid security under the PPSA and the Mortgages Act, for the security contained in the documents referred to above as against the Receiver, save that the enforcement of the Secured Party's remedies under the PPSA and Mortgages Act are subject to whatever equitable rights exist between the Secured Party and the Borrower concerning the execution, granting of security or

advancing of funds which we are not aware of or have not been made privy to at the date of this opinion.

We would be pleased to discuss with you in more detail any of the matters referred to in this report.

Regards,

A handwritten signature in black ink, appearing to be 'Calvin Ho', written over the printed name.

Calvin Ho

CH/sys

SCHEDULE 'A'

1. General Security Agreement dated March 21, 2021, between Cacoeli Whitby LP by its general partner, 11250396 Canada Inc. and Cosman Mortgage Holding Corp.
2. General Security Agreement dated March 21, 2021 between 11275127 Canada Inc. and Cosman Mortgage Holding Corp.
3. General Security Agreement dated March 21, 2021 between 11250396 Canada Inc. and Cosman Mortgage Holding Corp.
4. Mortgage Charge from Cacoeli Whitby LLP by its general partner 11250396 Canada Inc. and 11275127 Canada Inc. to Cosman Mortgage Holding Corp., registered in the amount of \$2,800,000 as Instrument No. DR1984468 on March 22, 2021 over municipal address 146 Brock Street North, Whitby, ON; PIN 26535-0187 LT; and PIN 26535-0209 LT; and PIN 26535-0186.
5. Notice of Assignment of Rents from Cacoeli Whitby LP by its general partner 11250396 Canada Inc. to Cosman Mortgage Holding Corp. registered as Instrument No. DR1984469 for municipal address 146 Brock Street North, Whitby, ON, PIN 26535-0187 LT; and PIN 26535-0209 LT.
6. Notice of Assignment of Rents from Cacoeli Whitby LP by its general partner 11250396 Canada Inc. and 11275127 Canada Inc. to Cosman Mortgage Holdings Corp. registered as Instrument No. DR1984470 for municipal address 132 Brock St. N, Whitby, ON, PIN 26535-0186 LT; PT LT 2-3 PL H50030 Whitby as in D552683 T/W D552683; Town of Whitby.

SCHEDULE 'B'
ONTARIO PERSONAL PROPERTY SECURITY SEARCH

Secured Party	File No.	Collateral Classification	Registration No.	Expiry
Cosman Mortgage Holding Corp.	770769063	inv/equip/accts/other/mv	20210322 1025 1862 3811	03/22/2026

SCHEDULE "C"

General Parcel Review



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #40

PAGE 1 OF 3

PREPARED FOR Joshua01
ON 2024/09/16 AT 14:57:17

26535-0186 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION:

PT LT 2-3 PL H50030 WHITBY AS IN D552683 T/W D552683;; TOWN OF WHITBY

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

OWNERS' NAMES

11250396 CANADA INC.
11275127 CANADA INC.
COCOELI WHITBY LP

RECENTLY:

RE-ENTRY FROM 26535-0441

CAPACITY SHARE

GFAR 99.99%
GFAR 0.01%
FIRM

PIN CREATION DATE:

2011/01/31

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2011/01/28 **					
**SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHERTS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES: 2011/01/31 **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
D101979	1979/12/12	CHARGE		*** DELETED AGAINST THIS PROPERTY ***	STERLING TRUST CORP'N	
D101980	1979/12/12	ASSIGNMENT GENERAL		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: LEASES & RENTS, C0190825 DELETED ON 2019/02/27 BY JAYDEN K. (AS PER DISCHARGE D01120983)						
D193086	1985/03/12	AGR AM CH		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: D101979						
40R12737	1989/12/14	PLAN REFERENCE				C
D443688	1994/11/21	ASSIGNMENT GENERAL		*** DELETED AGAINST THIS PROPERTY ***		*
REMARKS: D370680						
D487538	1997/02/14	AGREEMENT			TOWN OF WHITBY	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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LAND
REGISTRY
OFFICE #40

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3

PREPARED FOR Joshua01

ON 2024/09/16 AT 14:57:17

26535-0186 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
D552683	2010/10/07	QUIT CLAIM TRANSFER		*** DELETED AGAINST THIS PROPERTY *** TURANSKY, RALPH EDWARD JAMES - ESTATE TURANSKY, BERNARD JOSEPH - ESTATE	JEROME ETKIN LIMITED BRILLINGER INVESTMENT LIMITED	
DR1023151	2011/09/01	TRANSFER		*** COMPLETELY DELETED *** JEROME ETKIN LIMITED	BRILLINGER INVESTMENT LIMITED	
DR1120983	2012/09/07	DISCH OF CHARGE		*** COMPLETELY DELETED *** LAURENTIAN BANK OF CANADA		
REMARKS: D101979.						
DR1123609	2012/09/18	TRANSFER		*** COMPLETELY DELETED *** BRILLINGER INVESTMENT LIMITED	2341587 ONTARIO INC.	
REMARKS: PLANNING ACT STATEMENTS						
DR1782274	2019/03/26	TRANSFER	\$550,000	2341587 ONTARIO INC.	11250396 CANADA INC. 11275127 CANADA INC. CACOELI WHITBY LP	C
REMARKS: PLANNING ACT STATEMENTS.						
DR1782275	2019/03/26	CHARGE PARTNERSHIP		*** COMPLETELY DELETED *** 11250396 CANADA INC. 11275127 CANADA INC. CACOELI WHITBY LP	2341587 ONTARIO INC.	
DR1782280	2019/03/26	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 11250396 CANADA INC. 11275127 CANADA INC. CACOELI WHITBY LP	2341587 ONTARIO INC.	
REMARKS: DR1782275-RENTS						
DR1816670	2019/08/06	NOTICE		*** COMPLETELY DELETED *** 2341587 ONTARIO INC.	11250396 CANADA INC. 11275127 CANADA INC. CACOELI WHITBY LP	
REMARKS: AMENDING DR1782275						
DR1984468	2021/03/22	CHARGE PARTNERSHIP	\$2,800,000	11250396 CANADA INC. CACOELI WHITBY LP 11275127 CANADA INC.	COSMAN MORTGAGE HOLDING CORP.	C
DR1984470	2021/03/22	NO ASSGN RENT GEN		11250396 CANADA INC. 11275127 CANADA INC. CACOELI WHITBY LP	COSMAN MORTGAGE HOLDINGS CORP.	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 3
PREPARED FOR joshuas01
ON 2024/09/16 AT 14:57:17

26535-0186 (LIT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
DR1984839	2021/03/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2341587 ONTARIO INC.		
DR2120831	2022/04/12	RESTRICTION-LAND		11250396 CANADA INC. 11275127 CANADA INC. CACCELI WHITBY LP		C
DR2122589	2022/04/19	NOTICE	\$3,200,000	11250396 CANADA INC. CACCELI WHITBY LP 11275127 CANADA INC.	COSMAN MORTGAGE HOLDING CORP.	C
DR2240777	2023/06/23	CHARGE PARTNERSHIP	\$250,000	11250396 CANADA INC. 11275127 CANADA INC. CACCELI WHITBY LP	PEREZ-YOUSSEUFIAN MEDICINE PROFESSIONAL CORPORATION	C
DR2240779	2023/06/23	NO ASSGN RENT GEN		11250396 CANADA INC. CACCELI WHITBY LP 11275127 CANADA INC.	PEREZ-YOUSSEUFIAN MEDICINE PROFESSIONAL CORPORATION	C
DR2279361	2023/11/16	CONSTRUCTION LIEN	\$135,215	TERRA BONA DEVELOPMENTS LTD.		C
DR2327707	2024/06/26	CERTIFICATE		TERRA BONA DEVELOPMENTS LTD.		C

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



26535-0187 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION:

LT 4 PL H50030 WHITBY; PT 5 PL H50030 WHITBY; PT LT 2 PL H50030 WHITBY; PT LT 3 PL H50030 WHITBY PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W D544453;
SUBJECT TO AN EASEMENT AS IN C0231663; TOWN OF WHITBY

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
OWNERS' NAMES
11250396 CANADA INC.
COCOELI WHITBY LP

RECENTLY:
RE-ENTRY FROM 26535-0403
CAPACITY SHARE
GP&R
FIRM

PIN CREATION DATE:
2000/04/07

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKO
EFFECTIVE	2000/07/29	THE NOTATION OF THE	BLOCK IMPLEMENTATION DATE" OF 1997/12/22 ON THIS PIN			
WAS REPLACED WITH THE	"PIN CREATION DATE"	OF 2000/04/07				
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND	DELETED INSTRUMENTS SINCE 2000/04/07 **					
**SUBJECT, ON FIRST REGISTRATION UNDER THE	LAND TITLES ACT, TO:					
**	SUBSECTION # (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES					
**	AND ESCHERIS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES: 2000/04/10 **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
C0100974	1962/02/13	BYLAW				C
REMARKS: SUBDIVISION CONTROL						
D70819	1978/06/15	BYLAW DEEM PLANP				C
40R12737	1989/12/14	PLAN REFERENCE				C
D487538	1997/02/14	AGREEMENT				C
D490776	1997/04/07	TRANSFER			TOWN OF WHITBY TURANSKY, RALPH EDWARD JAMES TURANSKY, BERNARD JOSEPH	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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LAND
REGISTRY
OFFICE #40

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3

PREPARED FOR joshuas01

ON 2024/09/16 AT 14:53:45

26535-0187 (LIT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
D541605	1999/10/25	AGREEMENT		CLIC INVESTMENTS (CANADA) INC.	TURANSKY, RALPH EDWARD JAMES TURANSKY, BERNARD JOSEPH	C
DR860379	2009/12/02	TRANSMISSION-LAND		*** COMPLETELY DELETED *** TURANSKY, BERNARD JOSEPH	TURANSKY, MONICA TURANSKY, BERNARD JOSEPH - ESTATE	
DR909960	2010/06/22	IR'S ORDER		LAND REGISTRAR, LRO NO. 40		C
REMARKS: AMEND OWNERSHIP FIELD						
DR920810	2010/07/23	TRANS PERSONAL REP		*** COMPLETELY DELETED *** TURANSKY, MONICA	TURANSKY, MONICA	
DR920973	2010/07/23	TRANSMISSION-LAND		*** COMPLETELY DELETED *** TURANSKY, RALPH EDWARD JAMES		
DR920977	2010/07/23	TRANS PERSONAL REP		*** COMPLETELY DELETED *** JOHNSTON, JOHN WILLIAM PATRICK	JOHNSTON, JOHN WILLIAM PATRICK TURANSKY, RALPH EDWARD JAMES-ESTATE	
DR972958	2011/02/28	TRANSFER		*** COMPLETELY DELETED *** LECKIE, LORRAINE KATHERINE TURANSKY, BRENDA KATHERINE TURANSKY, MONICA	TURANSKY, BRENDA KATHERINE LECKIE, LORRAINE KATHERINE 2206302 ONTARIO INC.	
DRI782289	2019/03/26	TRANSFER	\$2,800,000	2206302 ONTARIO INC.	11250396 CANADA INC. CACOELI WHITBY LP	C
REMARKS: PLANNING ACT STATEMENTS.						
DRI782290	2019/03/26	CHARGE PARTNERSHIP		*** COMPLETELY DELETED *** 11250396 CANADA INC. CACOELI WHITBY LP	2206302 ONTARIO INC.	
DRI782293	2019/03/26	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 11250396 CANADA INC. CACOELI WHITBY LP	2206302 ONTARIO INC.	
DRI796038	2019/05/24	AEL (GENERAL)		11250396 CANADA INC.		C
REMARKS: ADDS S/T CO231663						
DRI816671	2019/08/06	NOTICE		*** COMPLETELY DELETED *** 2206302 CANADA INC.	11250396 CANADA INC. CACOELI WHITBY LP	
REMARKS: AMENDING DRI782290						

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



Ontario ServiceOntario

LAND
REGISTRY
OFFICE #40

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 3

PREPARED FOR jeshuas01
ON 2024/09/16 AT 14:53:45

26535-0187 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR1984468	2021/03/22	CHARGE PARTNERSHIP	\$2,800,000	11250396 CANADA INC., CACOELI WHITBY LP 11275127 CANADA INC.,	COSMEN MORTGAGE HOLDING CORP.	C
DR1984469	2021/03/22	NO ASSGN RENT GEN		11250396 CANADA INC., CACOELI WHITBY LP	COSMEN MORTGAGE HOLDING CORP.	C
DR1984842	2021/03/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2206302 ONTARIO INC.		
DR2120831	2022/04/12	RESTRICTION-LAND		11250396 CANADA INC., 11275127 CANADA INC., CACOELI WHITBY LP		C
DR2122589	2022/04/19	NOTICE	\$3,200,000	11250396 CANADA INC., CACOELI WHITBY LP 11275127 CANADA INC.,	COSMEN MORTGAGE HOLDING CORP.	C
DR2240778	2023/06/23	CHARGE PARTNERSHIP	\$250,000	11250396 CANADA INC., CACOELI WHITBY LP	PEREZ-YOUSOUFIAN MEDICINE PROFESSIONAL CORPORATION	C
DR2240780	2023/06/23	NO ASSGN RENT GEN		1125036 CANADA INC., CACOELI WHITBY LP	PEREZ-YOUSOUFIAN MEDICINE PROFESSIONAL CORPORATION	C
DR2279361	2023/11/16	CONSTRUCTION LIEN	\$135,215	TERRA BONA DEVELOPMENTS LTD.		C
DR2327707	2024/06/26	CERTIFICATE		TERRA BONA DEVELOPMENTS LTD.		C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #40

26535-0209 (LT)

PAGE 1 OF 3
PREPARED FOR joshuas01
ON 2024/09/16 AT 14:56:01

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 36 PL H50030 WHITBY PT 6 40R12737, S/T D490776; TOWN OF WHITBY

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
OWNERS' NAMES
11250396 CANADA INC.
GPAR
CROELLI WHITBY DP

RECENTLY:
RE-ENTRY FROM 26535-0424
CAPACITY SHARE
GPAR
FIRM

PIN CREATION DATE:
2000/04/07

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
EFFECTIVE	2000/07/29	THE NOTATION OF THE	"BLOCK IMPLEMENTATION DATE" OF 1997/12/22 ON THIS PIN			
WAS REPLACED WITH THE	"PIN CREATION DATE"	OF 2000/04/07				
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND	DELETED INSTRUMENTS SINCE 2000/04/07 **				
**SUBJECT,	ON FIRST REGISTRATION UNDER THE	LAND TITLES ACT, TO:				
**	SUBSECTION 4(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHERATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES:	2000/04/10 **					
C0100974	1962/02/13	BYLAW				C
REMARKS: SUBDIVISION CONTROL						
40R8932	1985/08/22	PLAN REFERENCE				C
40R12737	1989/12/14	PLAN REFERENCE				C
D487538	1997/02/14	AGREEMENT				C
D490776	1997/04/07	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	TOWN OF WHITBY TURANSKY, RALPH EDWARD JAMES TURANSKY, BERNARD JOSEPH	C
DR860379	2009/12/02	TRANSMISSION-LAND		*** COMPLETELY DELETED *** TURANSKY, BERNARD JOSEPH TURANSKY, MONICA		

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3

PREPARED FOR jshuas01
ON 2024/09/16 AT 14:56:01

26535-0203 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR909960	2010/06/22	LE'S ORDER REMARKS: AMEND OWNERSHIP FIELD		LAND REGISTRAR, LRO NO. 40	TURANSKY, BERNARD JOSEPH - ESTATE	C
DR920810	2010/07/23	TRANS PERSONAL REP		*** COMPLETELY DELETED *** TURANSKY, MONICA	TURANSKY, MONICA	
DR920973	2010/07/23	TRANSMISSION-LAND		*** COMPLETELY DELETED *** TURANSKY, RALPH EDWARD JAMES	JOHNSTON, JOHN WILLIAM PATRICK TURANSKY, RALPH EDWARD JAMES-ESTATE	
DR920977	2010/07/23	TRANS PERSONAL REP		*** COMPLETELY DELETED *** JOHNSTON, JOHN WILLIAM PATRICK	TURANSKY, BRENDA KATHERINE LECKIE, LORRAINE KATHERINE	
DR972958	2011/02/28	TRANSFER		*** COMPLETELY DELETED *** LECKIE, LORRAINE KATHERINE TURANSKY, BRENDA KATHERINE TURANSKY, MONICA	2206302 ONTARIO INC.	
DRI1777719	2019/03/04	APL (GENERAL)		*** COMPLETELY DELETED *** 2206302 ONTARIO LIMITED		
REMARKS: DELETES S/T INTEREST IN D123981						
DRI782289	2019/03/26	TRANSFER	\$2,800,000	2206302 ONTARIO INC.	11250396 CANADA INC. CACOELI WHITBY LP	C
REMARKS: PLANNING ACT STATEMENTS.						
DRI782290	2019/03/26	CHARGE PARTNERSHIP		*** COMPLETELY DELETED *** 11250396 CANADA INC. CACOELI WHITBY LP	2206302 ONTARIO INC.	
DRI782293	2019/03/26	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 11250396 CANADA INC. CACOELI WHITBY LP	2206302 ONTARIO INC.	
DRI1816671	2019/08/06	NOTICE		*** COMPLETELY DELETED *** 2206302 CANADA INC.	11250396 CANADA INC. CACOELI WHITBY LP	
REMARKS: AMENDING DRI782290						
DRI1984468	2021/03/22	CHARGE PARTNERSHIP	\$2,800,000	11250396 CANADA INC. CACOELI WHITBY LP 11275127 CANADA INC.	COSMAN MORTGAGE HOLDING CORP.	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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PAGE 3 OF 3

PREPARED FOR jeshuas01
ON 2024/09/16 AT 14:56:01

26535-0209 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

BEG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR1984469	2021/03/22	NO ASSGN RENT GEN		11250396 CANADA INC., CACOELI WHITBY LP	COSMEN MORTGAGE HOLDING CORP.	C
DR1984842	2021/03/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2206302 ONTARIO INC.		
DR2122589	2022/04/19	NOTICE	\$3,200,000	11250396 CANADA INC., CACOELI WHITBY LP 11275127 CANADA INC.	COSMEN MORTGAGE HOLDING CORP.	C
DR2240778	2023/06/23	CHARGE PARTNERSHIP	\$250,000	11250396 CANADA INC., CACOELI WHITBY LP	PEREZ-YOUSSOUFIAN MEDICINE PROFESSIONAL CORPORATION	C
DR2240780	2023/06/23	NO ASSGN RENT GEN		1125036 CANADA INC., CACOELI WHITBY LP	PEREZ-YOUSSOUFIAN MEDICINE PROFESSIONAL CORPORATION	C
DR2279361	2023/11/16	CONSTRUCTION LIEN	\$135,215	TERRA BONA DEVELOPMENTS LTD.		C
DR2327707	2024/06/26	CERTIFICATE		TERRA BONA DEVELOPMENTS LTD.		C

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Parcel 1

PIN: 26535-0187 (LT)

D70819 BYLAW DEEM PLNP 1978/06/15 - By Law NO. 715-78

States that the municipality is authorized to designate any plan of subdivision or part thereof that has been registered for eight years or more as not being a plan of subdivision for subdivision control purposes;

It is deemed expedient in order to control adequately the development of land in the municipality that a by-law should be passed pursuant to section 29 of The Planning act RSO

Note: would need to go back to original abstract to determine the original Plan.

D487538 Encroachment Agreement - between the Estate of Katherine Turansky (previous owner) and the Town of Whitby to allow maintenance on the building that encroaches on city property designated for a Highway. The agreement operates as a license to the building to remain and to receive minor service from time to time as required

DR490776 re-describes the easement.

DR544453 is transfer of a right of way.

DR1796038 APL (GENERAL) REMARKS: ADDS S/T CO231663 2019/005/24

CO231663 is a Deed of Land that includes that provides a together with right of way for an easement over parts of lots 1 and 2 of Perry's Plan and a subject to right of way for an easement over the easterly 12 feet of Lot 36 on Perry's Plan.

DR1782289 Transfer from 2206302 Ontario Inc to 11250396 and Cacoeli Whitby LP

DR1796038 see above

DR1984468 Charge Partnership 2021/03/22

\$2,800,000 from 11250396 Canada Inc., Cacoeli Whitby LP, 11275127 Canada Inc. to Cosman Mortgage Holding Corp.

DR2120831 Restriction- Land 2022/04/19

No transfer, charge or other dealings either directly or indirectly by the registered owners of any of their interest in the lands described hereon or any part thereof, shall be created, registered or occur without the prior consent of Terra Bona Developments Ltd. In accordance with a Development Management Agreement dated February 4, 2021.

DR2122589 Notice – \$3,200,000 - Charge Amending and Extending Agreement for first mortgage.

DR2240778 Charge Partnership 2023/06/23 (second mortgage) - \$250,000 from 11250396 Canada Inc., Cacoeli Whitby LP to Perez-Youssoufian Medicine Professional Corporation

DR2279361 Construction Lien – Terra Bona Developments Ltd. for \$135,215

DR2327707 Certificate of Action – re Lien DR2279361

Parcel 2

PIN: 26535-209 (LT)

CO100974

Details of the By-law are obscured, appears to indicate that subdivision is restricted unless a proper plan is created and registered with the municipality in accordance with the relevant by-laws

40R8932 1985/08/22 -Registered reference plan for lot 36 plan in file

40R12737 1989/12/14 - Registered reference plan H-50030 attached to a separate easement instrument

D487538 Encroachment Agreement - between the Estate of Katherine Turansky (previous owner) and the Town of Whitby to allow maintenance on the building that encroaches on City property designated for a Highway. The agreement operates as a license to the building to remain and be received minor service from time to time as required

DR909960 LR'S ORDER correcting names of previous owners.

DR1782289 Transfer from 2206302 Ontario Inc to 11250396 and Cacoeli Whitby LP

DR1984468 Charge Partnership, \$2,800,000 Cosman Mortgage Holding Corp. mortgage

DR2122589 Notice – Charge Amending and Extending Agreement for the first mortgage.

DR2240778 Charge Partnership 2023/06/23 (second mortgage) - \$250,000 from 11250396 Canada Inc., Cacoeli Whitby LP to Perez-Youssoufian Medicine Professional Corporation

DR2279361 Construction Lien – Terra Bona Developments Ltd. for \$135,215

DR2327707 Certificate of Action – re Lien DR2279361

Parcel 3**26535-0186 (LT)**

D487538 Encroachment Agreement - between the Estate of Katherine Turansky (previous owner) and the Town of Whitby to allow maintenance on the building that encroaches on City property designated for a Highway. The agreement operates as a license to the building to remain and be received minor service from time to time as required

DR1782274 \$550,000 Transfer from 2341587 Ontario Inc. to 11250396 Canada Inc. and 11275127 Canada Inc.

DR2240778 Charge Partnership 2023/06/23 (second mortgage) - \$250,000 from 11250396 Canada Inc., Cacoeli Whitby LP to Perez-Youssoufian Medicine Professional Corporation

DR2279361 Construction Lien – Terra Bona Developments Ltd. for \$135,215

DR2327707 Certificate of Action – re Lien DR2279361

SCHEDULE "H"

CONSENT

TO: Perez-Youssoufian Medicine Professional Corporation

AND TO: Lakhwinder Singh Gill
Barrister and Solicitor

RE: Cacoeli Whitby LP and 11275127 Canada Inc. and Terra Bona Developments Inc.
Restrictive Covenant registered as **DR2120831**
132 Brock St N and 146-152 Brock St N, Whitby, Ontario L1N 4H4
PINS: 26535-0186 (LT) and 26535-0187 (LT) (the "**Property**")

With respect to debt under a Development Management Agreement dated February 4, 2021 secured by way of Restrictive Covenant and registered as Instrument No. **DR2120831** against the title to the Property, the undersigned hereby consents to registration of a new second Charge/Mortgage in favour of Perez-Youssoufian Medicine Professional Corporation in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) on the Property.

DATED this 23rd day of June, 2023.

**TERRA BONA DEVELOPMENTS
LTD.**

By:


Majid Tavakoli (Jun 23, 2023 09:27 EDT)

Name: Majid Tavakoli

Title: President

I have authority to bind the
corporation.

Consent to Register - Terra Bona Developments Ltd

Final Audit Report

2023-06-23

Created:	2023-06-23
By:	Karina Jenkins (kjenkins@cassbishop.ca)
Status:	Signed
Transaction ID:	CBJCHBCAABAAnzX6UblqKlhsspNUWm9E9OlmMlb-keq1


"Consent to Register - Terra Bona Developments Ltd" History

 Document created by Karina Jenkins (kjenkins@cassbishop.ca)

2023-06-23 - 1:19:59 PM GMT- IP address: 99.253.117.141

 Document emailed to majid@terrabona.ca for signature


2023-06-23 - 1:20:18 PM GMT

 Email viewed by majid@terrabona.ca

2023-06-23 - 1:26:39 PM GMT- IP address: 174.92.129.252

 Signer majid@terrabona.ca entered name at signing as Majid Tavakoli

2023-06-23 - 1:27:57 PM GMT- IP address: 174.92.129.252

 Document e-signed by Majid Tavakoli (majid@terrabona.ca)

Signature Date: 2023-06-23 - 1:27:59 PM GMT - Time Source: server- IP address: 174.92.129.252

 Agreement completed.

2023-06-23 - 1:27:59 PM GMT



Adobe Acrobat Sign

SCHEDULE "I"



**ONTARIO
 SUPERIOR COURT OF JUSTICE**

Terra Bona Developments Ltd.

PLAINTIFF

and

(Court seal)

Cacoell Whitby LP by its general partner 11250396 Canada Inc. 11275127 Canada Inc. , Cosman Mortgage Capital Corporation and Perez-Youssoufian Medicine Professional Corporation

DEFENDANTS

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December 22, 2023.

Issued by _____

Local registrar
 150 Bond Street East
 Oshawa, Ontario L1G 0A2

Electronically issued / Délivré par voie électronique : 22-Dec-2023
Oshawa Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00002446-0000

TO:

**Cacoeli Whitby LP by its general partner 11250396 Canada Inc.
2 Sheppard Avenue East, Unit 901
Toronto, Ontario
M5N 5Y7**

**11275127 Canada Inc.
2 Sheppard Avenue East, Unit 901
Toronto, Ontario
M5N 5Y7**

**Cosman Mortgage Capital Corporation
7050 Weston Road #400,
Woodbridge, Ontario
L4L 8G7**

**Perez-Yousoufian Medicine Professional Corporation
10 Trench Street
Richmond Hill, Ontario
L4C 4Z3**

CLAIM

1. The Plaintiff claims against the Defendants, Cacoeli Whitby LP by its general partner 11250396 Canada Inc. 11275127 Canada Inc.:
 - a. Payment of the sum of \$135,215.77, being the balance due and owing on account of labour and materials supplied by the Plaintiff to those Defendants pursuant to Sections 8 and 13 of the *Construction Act*, R.S.O. 1990 c. C.30, as amended;
 - b. In the alternative, damages for breach of contract in the amount of \$135,215.77
 - c. Payment of the statutory holdback retained by the Defendants and any additional sum representing the additional amounts retained or held back by the Defendants, which amounts may be owed to the Plaintiff;
 - d. For all the purposes aforesaid, and for all other purposes pursuant to the Act, that accounts be taken and directions be given under the supervision and direction of this Honourable Court;
 - e. Special damages in an amount to be proven at trial
 - f. A declaration that the Plaintiff is entitled to a lien in the amount of \$135,215.77, inclusive of H.S.T., against all of the estate, title and interest in any one or more of the Defendants, in the lands and premises (the "Premises") against which the Construction Lien hereinafter set forth in the attached Schedule "A" is registered;
 - g. a declaration that the Plaintiff's Claim for Lien attaches to any security posted in respect of same;
 - h. that in default of payment of the amount ordered by this Honourable Court against the Defendants, plus costs and interest, all the estate, title, and interest of the Defendants in the Premises be sold and the proceeds applied in and towards payment of the Plaintiff's claim together with interest and costs pursuant to the *Construction Act*.

2. The Plaintiff claims as against the Defendants, Cosman Mortgage Capital Corporation and Perez-Youssoufian Medicine Professional Corporation for:
 - a. a declaration of full priority over the mortgage of the Defendant, Cosman Mortgage Capital Corporation registered against the Premises on March 22, 2021, as Instrument No. DR1984468 in the Land Titles Office of the Region of Durham Land Registry Office (No. 40);
 - b. a declaration of full priority over the mortgages of the Defendant, Perez-Youssoufian Medicine Professional Corporation registered against the Premises on June 23, 2023, as Instrument No. DR2240777 and DR2240778 in the Land Titles Office of the Region of Durham Land Registry Office (No. 40) (the Perez-Youssoufian Mortgages);
 - c. in the alternative, a declaration of full priority over the above-referenced mortgages to the extent of any advance made in respect of the mortgage after the time the lien was preserved;
 - d. in the further alternative, a declaration of full priority over the above-referenced mortgages to the extent that any portion of the said mortgage advances exceeded or exceed the actual value of the Premises at the time the first lien arose;
3. The Plaintiff claims as against all the Defendants:
 - a. prejudgment and postjudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - b. costs of this action on a substantial indemnity basis plus H.S.T. thereon;
 - c. for all purposes aforesaid, and for all other purposes pursuant to the Act, that all proper directions be given, inquiries made, and accounts taken; and
 - d. such further and other relief and declarations as the nature of this case may require and as to this Honourable Court may seem just.
4. The Plaintiff is a Corporation operating in the City of Toronto, in the Province of Ontario, and at all material times carried on business as development management and advisory service provider,

which supplied labour, services, and associated works at the site in question within the City of Toronto.

5. The Defendants Cacoeli Whitby LP by its general partner 11250396 Canada Inc. abd 11275127 Canada Inc., (collectively, the Owner) are and were, at all materials times, either legally or beneficially, owners of the lands municipally known as 132 – 152 Brock Street North, Whitby, Ontario and legally described as set out in Schedule 'A' hereto ("the Subject Property")
6. From in or about February 22, 2021 to November 14, 2023, the Plaintiff supplied labour, services, and other associated works connected with the commercial development of the Subject Property (hereinafter referred to as "Project"), which labour and services were used by the Defendants for the improvement of the Subject Property.
7. In accordance with requests from the Defendants, the Plaintiff agreed to supply labour, services, and associated works as needed to the Project (the "Agreement"). Pursuant to the Agreement, the Plaintiff was to be paid a development management fee in the amount of \$450,000.00, plus HST, an additional density bonus, and was to be reimbursed for all development costs incurred under the Agreement. The particulars of the amounts owing to the Plaintiff under the Agreement for which payment has not been received are contained in the invoices which were rendered to the Defendants on or about their respective dates.
8. It was a term of the agreement that the Defendants would pay the amount of each invoice.
9. From the commencement of the Project, the Plaintiff regularly submitted to the Defendants invoices for all labour and services provided.
10. Despite the Plaintiff having duly submitted invoices in accordance with the Agreement, the Defendants have refused and/or neglected to remit payment in accordance with the invoices as required by the terms of the Agreement.
11. As of the date of this pleading, the Defendants have refused and/or neglected to pay certain invoices issued by the Plaintiff in connection with the Project in the sum of **\$135,215.77**, inclusive of HST.

12. By reason of the foregoing, the Plaintiff became entitled to a lien and/or charge upon the amount claimed herein as a result of the improvement and/or work contributed to or performed by the Plaintiff on the Subject Property. The Plaintiff is also entitled to interest and costs of this Action pursuant to the provisions of the Act.
13. On November 16, 2023, the Plaintiff caused to be filed a Claim for Lien under Section 34 of the Act. The Plaintiff's Claim for Lien was registered as Instrument No. DR2279361 in the Land Titles Office of the Region of Durham Land Registry Office (No. 40) against the Premises. The following is a reproduction of such Claim:

*Construction Lien Act
 CLAIM FOR LIEN
 Under Section 34 of the Act*

Name of Lien Claimant:

Terra Bona Developments Ltd.

Address for Service:

1899 Leslie Street, Toronto, Ontario M3B 2M3

Name and Address of Owner:

Cacoeli Whitby LP by its general partner
 11250396 Canada Inc. and 11275127 Canada
 Inc.
 2 Sheppard Avenue East, Unit 901
 Toronto, Ontario
 M5N 5Y7

Name and Address of person to whom lien claimant supplied services or materials:

Cacoeli Whitby LP by its general partner
 11250396 Canada Inc. and 11275127 Canada
 Inc.
 2 Sheppard Avenue East, Unit 901
 Toronto, Ontario
 M5N 5Y7

Time within which services or materials were supplied:

February 22, 2021 to November 14, 2023

Short description of services or materials that have been supplied:

Supply of all labour, materials, and services for the purpose of developing the Premises including, without limitation, obtaining necessary zoning, approvals, and/or permitting for the construction of the Premises.

Contract price or subsequent price (including HST): \$679,921.00

Amount claimed as owing in respect of services or materials that have been supplied (including HST): \$135,215.77

The lien claimant claims a lien against the interest of every person identified above as an owner of the premises described in Schedule A to this claim for lien.

Date: November 14, 2023

*(Signature of lien claimant or agent)
 I have authority to bind the corporation*

which Claim for Lien is verified by the claim of Majid Tavakoli, sworn on the 14th day of November, 2023.

14. The Plaintiff therefore claims payment from the Defendants in the amount of \$135,215.77, as claimed in the Claim for Lien, together with interest and costs.

15. The Property was improved by the Plaintiff on behalf of, with the consent of, and for the direct benefit Cacoeli Whitby LP by its general partner 11250396 Canada Inc. and 11275127 Canada Inc., and Cacoeli Whitby LP by its general partner 11250396 Canada Inc. and 11275127 Canada Inc., were, at all materials times, an "owner" within the meaning of the Act, and any amendments thereto. The Plaintiff is therefore entitled to a Lien and/or Charge against any holdback that was or should have been retained by Cacoeli Kennedy Steeles LP by its general partner 2748983 Ontario Ltd

with respect to the Project.

16. The the Perez-Youssoufian Mortgages were registered in contravention of the Restriction on title to the Subject Property, which was registered as Instrument No. DR2122589 in the Land Titles Office of the Region of Durham Land Registry Office (No. 40) on April 19, 2022 and are, therefore, invalid and unenforceable.

17. The Plaintiff proposes that this action be tried at the City of Oshawa.

Date of issue:

December 22, 2023

MARCH LAW
BARRISTERS & SOLICITORS

9100 JANE STREET,
VAUGHAN, ON L4K 0A4
TEL NO. (905) 738-1078
FAX NO. (905) 695-8489
LSUC #221025

SOLICITORS FOR THE PLAINTIFF

SCHEDULE 'A'

DESCRIPTION OF PREMISES:

PIN: 26535 - 0186 LT

Description: PT LT 2-3 PL H50030 WHITBY AS IN D552683 T/W D552683; TOWN OF WHITBY

PIN: 26535 - 0187 LT

Description: LT 4 PL H50030 WHITBY; LT 5 PL H50030 WHITBY; PT LT 2 PL H50030 WHITBY;
PT LT 3 PL H50030 WHITBY PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W
D544453; SUBJECT TO AN EASEMENT AS IN CO231663; TOWN OF WHITBY

PIN: 26535 - 0209 LT

Description: PT LT 36 PL H50030 WHITBY PT 6 40R12737, S/T D490776; TOWN OF WHITBY

Electronically issued / Délivré par voie électronique : 22-Dec-2023
Oshawa Superior Court of Justice / Cour supérieure de justice

Terra Bona Developments Ltd.
Plaintiff

-and-

Cacceoli Whitby LP, et al.
Defendants

Court File No./N° du dossier du greffe : CV-23-00002446-0000

ONTARIO SUPERIOR COURT OF JUSTICE
(Proceedings commenced in OSHAWA)

STATEMENT OF CLAIM

March Law
Barristers & Solicitors
9100 Jane Street
3rd Floor, Bldg 'A'
Vaughan, Ontario L4K 0A3
t: (905) 738-8181
f: (905) 695-8489

Lawyers for the Plaintiffs

SCHEDULE "J"

CONFIDENTIAL APPENDIX “1”

SCHEDULE “K”

POLLARD & ASSOCIATES INC.

31 Wright Street
Richmond Hill, Ontario, L4C 4A2

Notice of Receiver (Section 245(1))

In the matter of the receivership of the property of Cacoeli Whitby LP also known as Cacoeli Whitby Limited Partnership, 11275127 Canada Inc. and 11250396 Canada Inc., (collectively the "Debtors")

Take notice that:

1. On the 30th day of August, 2024, the undersigned Pollard & Associates Inc. became the Court Appointed Receiver of all of the assets, undertakings, and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").
2. The undersigned became a Receiver in respect of the Property by virtue of the Court Order of the Honourable Justice Penny dated August 30, 2024.
3. The following information relates to the receivership:

Address of insolvent person: 4936 Yonge Street, Suite 249
Toronto, Ontario, M2N 6S3

Principal line of business: Land Development

Locations of business: 4936 Yonge Street, Suite 249
Toronto, Ontario, M2N 6S3

Approximate amount owned by insolvent person to each creditor who holds a security on the property described above:

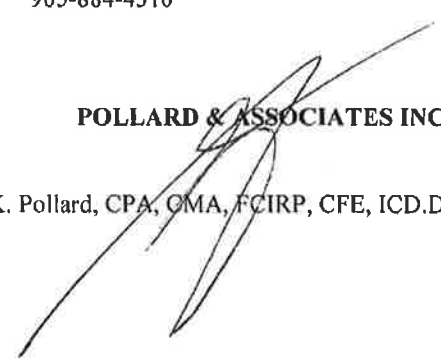
• Cosman Mortgage Holdings Corp	\$ 3,750,145
• Perez-Youssoufian Medicine Professional Corporation	250,000
• Terra Bona Developments Ltd	135,215

Contact person for receiver: Michael La Rosa, Senior Manager
Telephone: 905-884-8191
Fax: 905-884-4310

DATED at Richmond Hill this 5th day of September 2024

POLLARD & ASSOCIATES INC

Per: Angela K. Pollard, CPA, CMA, FCIRP, CFE, ICD.D



POLLARD & ASSOCIATES INC.

31 Wright Street,
Richmond Hill, Ontario, L4C 4A2

Statement of the Receiver (Section 246(1))

In the matter of the receivership of the property of Cacoeli Whitby LP also known as Cacoeli Whitby Limited Partnership, 11275127 Canada Inc. and 11250396 Canada Inc.

Take notice that:

1. On the 30th day of August, 2024, the undersigned become the Court Appointed Receiver of all of the assets, undertakings and properties of Cacoeli Whitby LP also known as Cacoeli Whitby Limited Partnership, 11275127 Canada Inc. and 11250396 Canada Inc. (collectively the "Debtors" or "Cacoeli") acquired for, or in relation to the business carried on by the Debtors, including all proceeds thereof (the "Property").
2. Attached, as Appendix A is a list identifying the name of each creditor of the Debtors in reference to the Property and the amount owed to each creditor of the insolvent person.
3. The undersigned has commenced acting in accordance with the Court Order of the Honourable Justice Penny dated August 30, 2024. A copy of the Court Order is attached as Appendix B.
4. The intended plan of the Receiver is to:
 - (a) Comply with the Order of the Court dated August 30, 2024 and all future Orders as complicated in dealing with the assets of the Debtors; and
 - (b) The Receiver intends to complete the statutory requirements.

DATED at Richmond Hill this 5th day of September, 2024

POLLARD & ASSOCIATES INC.

Per:

Angela K. Pollard, CPA, CMA, FCIRP, CFE, ICD.D



Schedule “A”

Creditor List

Pollard & Associates Inc.

Date of Report: 06/09/2024

Cacoeli Whitby LP

RICHMOND HILL

All

Generated By: Angela K. Pollard

T	Creditor's Name and Address	Ref No	170 Report	Material Change	Amended Payments	Meeting Requested	Amount Declared	Amount Filed	Amount Admitted	CS
S	Cosman Mortgage Holding Corp. Attn: Oren Chaimovitch 100-95 Barber Greene Rd, North York, Ontario, M3C 3E9, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$3,750,145.00	\$0.00	\$0.00	N
S	Perez-Yousoufian Medicine Professional Corporation 22 Lavender Valley Rd, King City, Ontario, L7B 0B9, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$250,000.00	\$0.00	\$0.00	N
S	Terra Bona Developments Ltd. 1899 Leslie St, North York, Ontario, M3B 2M3, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$135,215.00	\$0.00	\$0.00	N
S	Town Of Whitby Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$90,932.52	\$0.00	\$0.00	N
Secured		Sub count of creditors	4	Sub Total			\$4,226,292.52	\$0.00	\$0.00	
U	Cacoeli Asset Management Inc 4936 Yonge St Unit 249, North York, Ontario, M2N 6S3, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$528,973.00	\$0.00	\$0.00	N
U	Corbett Land Strategies 212-483 Dundas St W, Oakville, Ontario, L6M 1L9, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$56,343.95	\$0.00	\$0.00	N
U	Ellexicon 55 Taunton Rd E, Ajax, Ontario, L1T 3V3, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$1,350.01	\$0.00	\$0.00	N
U	Ferris & Associates Inc. 302-11 Church St, Toronto, Ontario, M5E 1W1, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$9,718.00	\$0.00	\$0.00	N
U	GBCA Architects 200-362 Davenport Rd, Toronto, Ontario, M5R 1K6, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$15,368.06	\$0.00	\$0.00	N
U	Mark Bui 3477 Kennedy Rd, Unit 5, Scarborough, Ontario, M1V 3Z7, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$770,000.00	\$0.00	\$0.00	N
U	Miller Thomson LLP 5800-40 King St W, Toronto, Ontario, M5H 3S1, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$26,712.65	\$0.00	\$0.00	N
U	Perez-Yousoufian Medicine Professional Company 22 Lavender Valley Rd, King City, Ontario, L7B 0B9, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$250,000.00	\$0.00	\$0.00	N
U	Regional Municipality of Durham 575 Roseland Rd E, Whitby, Ontario, L1N 2M8, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$318.86	\$0.00	\$0.00	N
U	Russell Cheeseman 212-277 Lakeshore Rd E, Oakville, Ontario, L6J 6J3, Canada		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$12,128.13	\$0.00	\$0.00	N
Unsecured		Sub count of creditors	10	Sub Total			\$1,670,912.68	\$0.00	\$0.00	
		Total count for all creditors	14	Grand Total			\$5,897,205.18	\$0.00	\$0.00	

Schedule “B”

Court File No. **CV-24-00723457-00CL**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	FRIDAY, THE
)	
JUSTICE PENNY)	30 th DAY OF AUGUST, 2024

COSMAN MORTGAGE HOLDING CORP.

Applicant

- and -

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED PARTNERSHIP,
11275127 CANADA INC. and 11250396 CANADA INC.**

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by 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 Pollard & Associates Inc. as receiver (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and property of the Debtors defined below, including, without limitation, of the lands and premises registered in the name of 11250396 Canada Inc. (“**11250396**”) in its capacity as general partner of Cacoeli Whitby LP (the “**Whitby LP**”) and 11275127 Canada Inc. (“**11275127**”, which together with 11250396 and the Whitby LP are collectively referred to as the “**Debtors**” and each a “**Debtor**”), municipally known as 132 Brock Street North and 146 – 152 Brock Street North, Whitby, Ontario and more particularly described as follows:

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LT 4 PL H50030 WHITBY; LT 5 PL H50030 WHITBY; PT LT 2 PL H50030 WHITBY; PT LT 3 PL H50030 WHITBY PTS 2 & 3 40R12737; S/T D490776 (PT 3); T/W D544453; SUBJECT TO AN EASEMENT AS IN C0231663; TOWN OF WHITBY
as described in PIN 26535 - 0187 LT

PT LT 36 PL H50030 WHITBY PT 6 40R 12737, S/T D490776; TOWN OF WHITBY
as described in PIN 26535 – 0209 LT

PT LT 2-3 PL H50030 WHITBY AS IN D552683 T/W D552683; TOWN OF WHITBY
as described in PIN 26535 – 0186 LT

(collectively, the “**Real Property**”),

was heard this day by judicial videoconference.

ON READING the affidavit of Jason Cosman sworn July 25, 2024 and the exhibits thereto, and on hearing the submissions of counsel for the Applicant and such other counsel as were present, and on hearing the submissions of the Respondent, appearing in person, and on reading the consent of Pollard & Associates Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record 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 243(1) of the BIA and section 101 of the CJA, Pollard & Associates Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors, including, without limitation, the Real Property, including all proceeds therefrom (together, the “**Property**”).

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RECEIVER'S POWERS

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 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 Debtors in respect of or out of the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cause the Debtors to cease to carry on all or any part of the Debtors' business in respect of or out of the Property and to cause the Debtors to cease to perform any contracts of the Debtors; in respect of the Property;
- (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 purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

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- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors, for any purpose pursuant to this Order;
- (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 Debtors, 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;
- (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;
- (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, all before applicable taxes; 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;

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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, shall not be required;

- (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;
- (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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (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 Debtors, and without interference from any other Person.

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DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel 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.

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 Debtors, 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 5 or in paragraph 6 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.

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

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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.

NO PROCEEDINGS AGAINST THE RECEIVER

7. 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 DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

10. 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 Debtors, without written consent of the Receiver or leave of this Court.

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CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

12. 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

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 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*.

PIPEDA

14. 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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,

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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 RECEIVER'S LIABILITY

16. 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

17. 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.¹

18. 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 Ontario Superior Court of Justice.

19. 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

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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

20. 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 \$200,000.00 (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.

21. 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.

22. 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.

23. 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.

SERVICE AND NOTICE

24. 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 of the Rules of Civil Procedure (the "Rules") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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 pollardandassociates.ca/engagements/cacoeliwhitbylp.

25. 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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

26. 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.

27. THIS COURT ORDERS that the Receiver is hereby authorized and empowered, but not obligated, to cause the Debtors, or any of them to make an assignment in bankruptcy, on 5 days' notice, and nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or any of them.

28. 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

- 13 -

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.

29. 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.

30. THIS COURT ORDERS that the Applicant shall have its costs of this application, 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 Debtors' estate with such priority and at such time as this Court may determine.

31. 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.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry and filing.

 3.

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SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Pollard & Associates Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 11250396 Canada Inc. ("11250396") in its capacity as general partner of Cacoeli Whitby LP (the "Whitby LP") and 11275127 Canada Inc. ("11275127", which together with 11250396 and the Whitby LP are collectively referred to as the "Debtors" and each a "Debtor") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ day of _____, _____ (the "Order") made in an action having Court file number _____ 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.

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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__.

Pollard & Associates Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Angela Pollard

President

SCHEDULE "L"

Estate # 31-459983

POLLARD & ASSOCIATES INC.31 Wright Street,
Richmond Hill, Ontario, L4C 4A2Statement of the Receiver (Section 246(2))

In the matter of the receivership of the property of Cacoeli Whitby LP also known as Cacoeli Whitby Limited Partnership, 11275127 Canada Inc., and 11250396 Canada Inc., (collectively the "Debtors")

Take notice that:

1. On the 30th day of August, 2024, the undersigned became the Court Appointed Receiver of all of the assets, undertakings and properties of the Debtors acquired for or used in relation to a business carried on by the Debtors, including all proceeds thereof.
2. The Receiver commenced a sales process to sell the properties municipally known as 132 Brock Street North and 146 – 152 Brock Street North, Whitby, Ontario (the "Properties"). The Receiver entered into a listing agreement and arranged for the Properties to be listed on MLS on October 10, 2024.
3. The Receiver has continued with the assistance of the real estate agent to market the Properties for sale. The Receiver has reviewed the market conditions and has reduced the listing price in order to generate interest in the Properties.
4. The Receiver continues to comply with the Order of the Court dated August 30, 2024.
5. An interim statement of receipts and disbursements is attached as Schedule "A".

DATED at Richmond Hill this 23rd day of February, 2025

POLLARD & ASSOCIATES INC.

Per:

Angela K. Pollard, CFA, CMA, FCIRP, CFE, ICD.D
Licensed insolvency Trustee

Schedule “A”

Court File No. CV-24-00723457-00CL
Estate No. 31-459983

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

COSMAN MORTGAGE HOLDING CORP.

Applicants

-and-

CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
PARTNERSHIP, 11275127 CANADA INC. and 11250396 CANADA INC.

Respondents

COURT APPOINTED RECEIVER
INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

January 31, 2025

Receipts	\$	\$
Receivers Certificates		111,000.00
Rental Income		
Rental Income	11,960.19	
HST	<u>1,554.81</u>	13,515.00
Funds from bank account		511.33
Interest		<u>156.45</u>
Total receipts		<u>\$ 125,182.78</u>
Disbursements		
Fees paid to the OSB		80.42
Expenses		
Insurance	3,796.25	
Appraisal fees	7,000.00	
Snow removal	7,170.00	
Accountant fees	<u>1,000.00</u>	18,966.25
Property tax arrears		90,932.52
General expenses		
Bank charges	28.00	
HST	<u>2,591.35</u>	2,619.35
Total disbursements		<u>\$ 112,598.54</u>
Total Receipts over Disbursements		<u><u>\$ 12,584.24</u></u>

Court File No. CV-24-00723457-00CL
Estate No. 31-459983

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

BETWEEN:

COSMAN MORTGAGE HOLDING CORP.

Applicants

-and-

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
 PARTNERSHIP, 11275127 CANADA INC. and 11250396 CANADA INC.**

Respondents

**COURT APPOINTED RECEIVER
 INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

January 31, 2025

Trust Account Balance

\$ 12,584.24

Note:

1. The Receiver issued Receiver's Certificates in the total amount of \$111,000 to Cosman Mortgage Holding Corp.
2. The Receiver arranged for the pre-receivership outstanding tax and hst returns to be prepared and filed.

SCHEDULE "M"

CITATION: Hansalex Corp. v. Cacoeli Whitby Limited Partnership		
ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION) CIVIL ENDORSEMENT FORM		
BEFORE	Robert Centa J.	Court File Number: CV-21-00656186-0000
Title of Proceeding:		
Hansalex Corp.		Plaintiff
-v-		
Cacoeli Whitby Limited Partnership by its General Partner 11250396 Canada Inc., Jedidiah Liu, Kasey Wong, and Mark Bui		Defendants
Cacoeli Whitby Limited Partnership by its General Partner 11250396 Canada Inc.		Plaintiffs by counterclaim
v		
Hansalex Corp., Atria Development Corporation and Hans Jain		Defendants by counterclaim

Case Management: <input type="checkbox"/> Yes If so, by whom:	X No
---	------

Participants and Non-Participants:

Party	Counsel	E-mail Address	Phone #	Participated
1) Plaintiffs	Brett Moldaver	brett@moldaverbarristers.com		Y
2) Defendants	Tina Kaye	tkaye@millerthomson.com		Y

Date Heard: December 20, 2024

Nature of Hearing (mark with an "X"):

☐ Motion ☐ Appeal ☐ Case Conference ☐ Pre-Trial Conference ☐ Application

Format of Hearing (mark with an "X"):

☒ In Writing ☐ Telephone ☒ Videoconference ☐ In Person

Relief Requested:

Adjournment of trial dates

Disposition made at hearing or conference (operative terms ordered):

Trial scheduled to commence on February 5, 2025, is adjourned *sine die*.

Brief Reasons, if any:

The parties requested this case conference to seek a consent adjournment of this trial pending the completion of the receivership of Cacoeli Whitby LP aka Cacoeli Whitby Limited Partnership, 11275127 Canada Inc. and 11250396 Canada Inc., pursuant to an order of Penny J. dated August 30, 2024.

In the circumstances, adjourning the trial *sine die*, makes good sense and I grant that order.

Additional pages attached: ☐ Yes ☒ No

December 20, 2024
Date of Endorsement



Signature of Judge

CITATION: Hansalex Corp. v. Cacoeli Whitby Limited Partnership

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM

BEFORE	Robert Centa J.	Court File Number: CV-21-00656186-0000
---------------	-----------------	---

Title of Proceeding:

Hansalex Corp.	Plaintiff
-v-	
Cacoeli Whitby Limited Partnership by its General Partner 11250396 Canada Inc., Jedidiah Liu, Kasey Wong, and Mark Bui	Defendants
Cacoeli Whitby Limited Partnership by its General Partner 11250396 Canada Inc.	Plaintiffs by counterclaim
v	
Hansalex Corp., Atria Development Corporation and Hans Jain	Defendants by counterclaim

Case Management: <input type="checkbox"/> Yes If so, by whom:	<input checked="" type="checkbox"/> No
---	--

Participants and Non-Participants:

Party	Counsel	E-mail Address	Phone #	Participated
1) Plaintiffs	Brett Moldaver	brett@moldaverbarristers.com		Y
2) Defendants	Tina Kaye	tkaye@millerthomson.com		Y

Date Heard: November 27, 2023

Nature of Hearing (mark with an "X"):

☐ Motion ☐ Appeal ☐ Case Conference ☒ Pre-Trial Conference ☐ Application

Format of Hearing (mark with an "X"):

☒ In Writing ☐ Telephone ☒ Videoconference ☐ In Person

Relief Requested:

Pre-trial conference

Disposition made at hearing or conference (operative terms ordered):

Trial is adjourned to February 5, 2025 on the terms set out below.

Brief Reasons, if any:

The parties have agreed to adjourn the trial dates on the following terms, which were confirmed in writing to me today:

1. The trial will be adjourned to February 5, 2025.
2. The trial date will be peremptory to the defendants.
3. The defendants will be at liberty to source an expert with said report to be delivered by February 20, 2024 (peremptory date) and the Defendants will otherwise comply with the *Rules* in this regard.
4. The plaintiffs, if inclined to obtain a responding expert report, will have until September 15, 2024, to so do. Any reply report is due by November 15, 2024.
5. The defendants undertake and agree that the Defendants or any of them will not sell, transfer or otherwise dispose of the properties municipally known as 132 and 146-152 Brock Street North, Whitby Ontario and bearing LT PINS: (i) 26535-0187 (LT), (ii) 26535-0209 (LT), and 26535-0186 (LT) (collectively, the "Property") prior to the trial date as scheduled without providing 60 days' written notice to the plaintiff, to be delivered to the plaintiff's counsel Brett Moldaver at brett@moldaverbarristers.com and copied to leonard.lee@atria.ca. For greater certainty, the 60 days' notice period runs from the earliest date of closing under any agreement for sale and notices shall be provided for any extensions or changes thereto.
6. In the event of a sale of the Property, the defendants/vendor/owners agree that they will direct their agents (including lawyers and real estate brokers) to ensure that from the net proceeds of sale payable to the vendor/defendants/owner equal to the sum of \$350,000 be held in trust by the defendants' lawyers (the "Funds"), from any net proceeds of the sale, that is after all mortgages registered against the Property have been discharged, any and all closing costs and charges otherwise against the Property have been paid or satisfied in full and any debts owing to third

parties are satisfied in full; no debts owing to the defendants or any of them will be paid in advance of the transfer of the Funds. The Funds are to be held in trust pending the outcome of the trial and/or resolution and/or court order and/or agreement of the parties in writing otherwise resolving the within action. The transfer of the Funds in trust or anything contained in this agreement, does not in any way, act as an admission of liability nor does it adversely affect the defendants' rights or position regarding the within action or any claims that the defendants may have/advance regarding the within action. For greater certainty, the defendants agree to transfer the Funds on the sale of the property to be held in trust pending the outcome of the trial and/or resolution of the matter, without prejudice to any rights or remedies they have and/or that they may advance at trial or otherwise in relation to the within action.

7. The obligations set out in paragraphs 5 and 6 herein are undertakings and collectively referred to as "Undertaking" and this Undertaking is being provided without prejudice to the defendants' rights or remedies they have and/or that they may advance at trial or otherwise in relation to the within action and this undertaking is only in force and effect until final adjudication of this matter, agreement of the parties, or court order otherwise disposing of the action.

Additional pages attached: ☐ Yes ☒ No

November 27, 2023
Date of Endorsement



Signature of Judge

SCHEDULE "N"

RECEIVER CERTIFICATE

CERTIFICATE NO. 1

AMOUNT \$ 20,000

1. THIS IS TO CERTIFY that Pollard & Associates Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 11250396 Canada Inc. ("11250396") in its capacity as general partner of Cacoeli Whitby LP (the "**Whitby LP**") and 11275127 Canada Inc. ("11275127", which together with 11250396 and the Whitby LP are collectively referred to as the "**Debtors**" and each a "**Debtor**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 30th day of August, 2024 (the "Order") made in an action having Court file number CV-24-00723457-00CL has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ 20,000, being part of the total principal sum of \$ 200,000 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 monthly not in advance on the 15th day of each month after the date hereof at a notional rate per annum equal to the rate of 18 per cent.

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.

- 2 -

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.

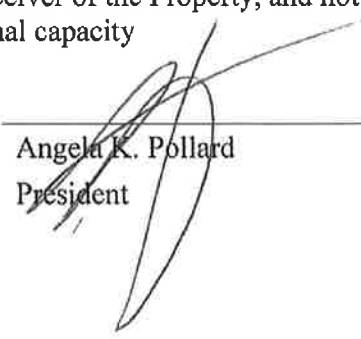
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 16th day of September, 2024.

Pollard & Associates Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Angela K. Pollard
President



RECEIVER CERTIFICATE

CERTIFICATE NO. 2

AMOUNT \$ 91,000

1. THIS IS TO CERTIFY that Pollard & Associates Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 11250396 Canada Inc. ("11250396") in its capacity as general partner of Cacoeli Whitby LP (the "Whitby LP") and 11275127 Canada Inc. ("11275127", which together with 11250396 and the Whitby LP are collectively referred to as the "Debtors" and each a "Debtor") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 30th day of August, 2024 (the "Order") made in an action having Court file number CV-24-00723457-00CL has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ 91,000, being part of the total principal sum of \$ 200,000 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 monthly not in advance on the 15th day of each month after the date hereof at a notional rate per annum equal to the rate of 18 per cent.

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.

- 2 -

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.

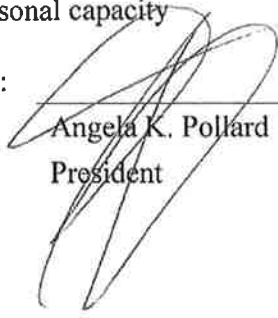
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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 16th day of September, 2024.

Pollard & Associates Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:



Angela K. Pollard
President

RECEIVER CERTIFICATE

CERTIFICATE NO. 3

AMOUNT \$ 36,000

1. THIS IS TO CERTIFY that Pollard & Associates Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 11250396 Canada Inc. ("11250396") in its capacity as general partner of Cacoeli Whitby LP (the "Whitby LP") and 11275127 Canada Inc. ("11275127", which together with 11250396 and the Whitby LP are collectively referred to as the "Debtors" and each a "Debtor") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 30th day of August, 2024 (the "Order") made in an action having Court file number CV-24-00723457-00CL has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ 36,000, being part of the total principal sum of \$ 200,000 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 monthly not in advance on the 15th day of each month after the date hereof at a notional rate per annum equal to the rate of 18 per cent.

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.

- 2 -

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.

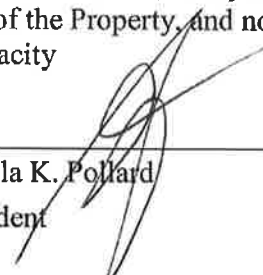
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 27th day of February, 2025.

Pollard & Associates Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Angela K. Pollard
President



SCHEDULE "O"



Listing Proposal | September 24th, 2024

132 & 146 – 152 Brock Street North, Whitby, Ontario

Prepared For:

Angela Pollard
Pollard & Associates Inc
31 Wright Street,
Richmond Hill, Ont
L4C 4A2

Prepared By:

Alastair Strachan*
Senior Vice President
Lennard Commercial Realty
416.346.9500
astrachan@lennard.com

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01

Downtown Whitby Development Site

Registered Owners

CACOELI WHITBY LP; 11275127 CANADA INC.; 11250396 CANADA INC.

Legal Description

PT LT 2-3 PL H50030 WHITBY AS IN D552683 T/W D552683; TOWN OF WHITBY & LT 4 PL H50030 WHITBY; LT 5 PL H50030 WHITBY; PT LT 2 PL H50030 WHITBY; PT LT 3 PL H50030 WHITBY PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W D544453 SUBJECT TO AN EASEMENT AS IN CO231663 TOWN OF WHITBY

Location

Downtown Whitby – Subject property bounded by Brock Street on the east with Byron Street to the west, Elm Street to the south and Mary Street West to the north

PIN #

265350186 & 265350187

Lot Size

.873 acres

Municipal Services

The subject site is fully serviced

Land Use Controls

Official Plan

Major Commercial

Zoning

C3-DT-1 & H-C3-DT (Central Commercial & Downtown)

Highest And Best Use

As per Appraisal and Planning reports provided, the Highest and Best Use of the Subject Property is a high-density mixed-use development

Existing Improvements

The Subject Site Is Improved With several Commercial Buildings Including A Car Dealership And An Automotive Detailing Shop.

Property Taxes

Roll number 030.015.00700.0000 - 132 Brock Street. Interim 2024 \$5,214.19 - assessment value CNT \$435,000
Roll number 030.015.00800.0000 - 146 Brock Street. Interim 2024 \$13,901.35 - assessment value CNT \$1,025,300, RTN \$268,700

Existing Leases

146 Brock Street North

1. Tenant: Larry Stevenson
Expiry : March 31st, 2025
Option To Renew: One - One Year Term At Market Rates With Arbitration
Annual Rental: \$18,000
Landlords Right To Terminate : 6 Months Notice, 60 Months From Commencement Date

132 Brock Street North
2. Tenant: Jacked Up Coffee Roasting Corp
Expiry: December 31st, 2025
Options To Renew: Two Five Year Options At Market Rates With Arbitration
Annual Rental: \$34,200
Landlords Right To Terminate : 6 Months Notice, 18 Months From Commencement Date

Property Overview
Aerial Photo – Downtown Area

Lennard:



Lennard:

Lennard:



Environmental Summary

Lennard:

In preparation for environmental inquiries from potential buyers, we have asked AEL Environmental, a well known and well qualified firm, to review the existing environmental reports and to provide a 'going forward' plan.

Their recommendations and comments are shown on the following pages.

Lennard:

September 18, 2024

To: Lennard Commercial Realty, Brokerage
Attention: Alastair Strachan
Phone: (416) 346-9500
Email: astrachan@lennard.com

RE: Proposal for O. Reg. 153/04 Phase One ESA, O. Reg. 153/04 Phase Two ESA Estimate, Record of Site Condition at 132 – 152 Brock Street North, Whitby, Ontario (SITE)

Dear Alastair,

We are pleased to provide the following proposal for an O. Reg. 153/04 Phase One Environmental Site Assessment (ESA), an estimate of an O. Reg. 153/04 Phase Two ESA, and submission of a Record of Site Condition (RSC) for the Site listed above.

AEL understands your goals for the site to be as follows: to carry out environmental due diligence on the Site in support of redevelopment of the Site from commercial to residential.

1. Scope of Work

In order to complete an RSC, the client is required to complete at least a Phase One ESA completed to the standards as laid out in O. Reg. 153/04. Further, if any Areas of Potential Environmental Concern (APECs) are identified within the Phase One ESA, these must be addressed prior to submission of the RSC (e.g., in a Phase Two ESA and/or additional work as needed).

1.1 O. Reg. 153/04 Compliant Phase One Environmental Site Assessment (ESA)

AEL recommends the following scope of work as outlined below:

- Review of available historical information and other resources including online air photos (current and historic) and reports regarding any environmental works completed to date on Site, obtainable by AEL within project delivery date.
- Completion of Freedom of Information (FOI) requests and responses pertaining to the site to be submitted to relevant regulatory bodies.
- Completion and analysis of Owner's Survey.
- Site reconnaissance (walkover) conducted by AEL personnel, as directed and supervised by an AEL Qualified Person, including walk through of the property and any structures present on the property.
- Conceptual Site Model (CSM) reporting.
- Historical land files search back to crown lands. This can be obtained from the previous phase one ESA completed by GHD in 2020.
- Identification of Areas of Potential Environmental Concern (APECs).
- The preparation of a report of all results and recommendations completed to O. Reg. 153/04 standards, signed by Qualified Person in accordance with O. Reg. 153/04.

The Phase One ESA may reveal issues which need to be addressed through additional investigations prior to submission of the RSC. These additional investigations have not been included in the proposed scope of work, as they are unknown at this time. Any changes or additions to the proposed scope of work would be discussed with the client prior to the initiation of subsequent investigations.

1.2 O. Reg. 153/04 Compliant Phase Two Environmental Site Assessment (ESA)

A cost estimate cannot be refined until after completion of an updated Phase One ESA. The Phase One ESA will determine all APECs both on and off-site, as there may be additional concerns not already identified. A complete scope of work will be finalized once the Phase One ESA work has been undertaken.

As a minimum rough estimate AEL recommends the client would consider the following scope of work as a potential minimum base program:

- Obtain public and private locates to determine the location of underground utilities, ordered from Ontario One Call and a private locator. AEL would attend the Site prior to drilling to place and clear borehole locations with the private locator to ensure safety during the investigation.
- Oversee the advancement of six (6) boreholes, of which three (3) will be completed as monitoring wells, to a maximum depth of 6 m (20 feet) below ground surface (bgs). Please note additional depth of drilling may be required depending on site specific stratigraphy to obtain groundwater samples and advancement is charged additionally upon authorization from the client.
- Use GPS to identify all borehole/monitoring well locations to determine accurate mapping locations and elevations at the Site.
- Field screen all soil samples for the presence of Volatile Organic Compounds (VOCs) and Petroleum Hydrocarbons (PHCs) using an EAGLE portable gas detector. A combination of visual and olfactory cues, along with field screening results will be used to determine which soil samples are to be submitted to the laboratory.
- Submit selected soil samples for the analysis of a combination of PHCs and BTEX, VOCs, metals and inorganics and PAHs. Soil samples to be submitted to the laboratory will be determined based on field screening results. The above noted contaminants of concern will be identified through the Phase One ESA investigative process and may change based on the findings.
- Development of the three (3) newly installed monitoring wells and one (1) of the four existing monitoring wells (1 to 4 of the historic wells may be sampled if determined to be viable in 2024, 3 of the monitoring wells were not screened across the groundwater table in 2020, hence if groundwater levels are found to be the same, would not be viable for RSC submission for PHCs) by purging and collection of groundwater samples.
- Submit groundwater samples for the analysis of a combination of PHCs and BTEX, VOCs, metals and inorganics and PAHs. The above noted contaminants of concern will be identified through the Phase One ESA investigative process and may change based on the findings.
- 10% of samples will be submitted as duplicate samples for the purposes of Quality Assurance/Quality Control (QA/QC).
- All samples to be submitted to a laboratory certified by the Canadian Association for Laboratory Accreditation (CALA).
- Preparation of an O. Reg. 153/04 Phase Two ESA report summarizing the findings and providing recommendations, signed by a Qualified Person under O. Reg. 153/04.
- All matters not listed in the terms of reference or general conditions were specifically excluded from AEL responsibilities and reporting.

Pricing and scope of work will be adjusted following the Phase One ESA. Should additional areas of environmental concern arise during the course of the Phase One investigation, the scope of work and associated costing for the Phase Two will be adjusted based on discussion and confirmation with the client prior to initiation of the O. Reg. 153/04 Phase Two ESA program. Pricing does not include additional sampling as may be required based on findings, remediation or soil disposal of drill cuttings. A price can be provided upon completion of drilling for analysis and disposal of drilling wastes.

1.3 Record of Site Condition (RSC)

Once all APECs have been addressed, AEL will complete the RSC filing.

In addition to AEL's reports and submission document, the following will need to be included in the RSC submission to the Ministry of the Environment, Conservation and Parks (MECP) and supplied by the client:

- Current Plan of Survey, prepared, signed and sealed by a surveyor,
- A copy of any deed, transfer or other document by which the RSC property was in whole or part acquired by the owners;
- A letter, prepared by a lawyer after reviewing a current plan of survey of the property that has been prepared, signed and sealed by a surveyor and all other necessary documents, containing the legal description of the property and a list of its owners and a description of the nature of their interest and any municipal address, assessment roll number and property identifier number applicable to the property, in a form approved by the Director,
- A letter, in a form approved by the Director, of the owner's authorization for AEL's Qualified Person to make the statements and to sign the RSC on the owner's behalf.

The client will provide the above noted documents at their own expense and time.

AEL assumes submission of the RSC including addressing one round of MECP comments at each stage. Additional rounds of MECP responses will be considered additional to the above scope of work and are not included in the current pricing.

2. Schedule

O. Reg. 153/04 compliant Phase One ESAs require a minimum of 45 business days as FOI requests require a minimum of 30-45 business days for processing by the relevant regulators. Additional delays associated with regulatory processes are beyond the control of AEL. FOI requests pertaining to the site must be submitted to relevant regulatory bodies in order to comply with O. Reg. 153/04 standards. Similarly, other closures (e.g., libraries or other agencies that hold public records) may have an unknown impact on the schedule for work completion – these are beyond the control of AEL. Rush reports are not available due to the inability to rush searches completed by various agencies.

O. Reg. 153/04 compliant Phase Two ESAs require a minimum of 30-45 business days from date of authorization.

Preparation of RSC will require approximately 15 business days from the date of report completion. Once the RSC is filed, the MECP has 30 days (excluding weekends and holidays) to respond to the submission, as per O. Reg. 153/04. Under O. Reg. 153/04, the MECP can request additional information to review in relation to the RSC submission. If this occurs, this will extend the length of review time.

3. Conditions

The following conditions apply:

- In order to comply with O. Reg. 153/04, basic initial processing fees for FOI searches are included. The regulatory body may require additional fees, above and beyond the processing fees, based on search times and photocopying. These fees are site specific and cannot be known in advance. If additional fees are required, AEL will forward a copy of the letter to the client which will include the site-specific payment details. Based on AEL's experience with FOIs the estimate could range from free of charge to several hundreds of dollars, depending on the volume of records found. AEL recommends keeping a contingency budget of a minimum of two hundred dollars to prepare for larger FOI search results.
- AEL has included: 1) search fees for fire insurance plans and related historical documents, 2) ordering of one (1) associated product. There may be multiple fire insurance plans/related products regarding the site which may require additional fees, above and beyond these fees. These fees are site specific and cannot be known to AEL in advance of the search. If additional fees are required, AEL will notify the client, and the client will determine how they wish to proceed.
- AEL has assumed a total of five (5) municipal addresses are associated with the site unless otherwise stated. If additional municipal addresses are included, additional cost may be incurred at the client's expense.
- In addition, in order to be O. Reg. 153/04 compliant, the Site must be free of snow cover, in order to view site surfaces for evidence of staining or discoloration, cracks or any other condition that may indicate the presence of contamination or permit the movement of potential contaminants to the subsurface. If the Site is snow covered at time of initial Site walkover, a secondary Site walkover will be required prior to finalization of the O. Reg. 153/04 Phase One ESA at an additional expense.
- Pricing and scope of work for the Phase Two will be adjusted following the Phase One ESA. Should additional areas of environmental concern arise during the course of the Phase One investigation, the scope of work and associated costing for the Phase Two will be adjusted based on discussion and confirmation with the client prior to initiation of the O. Reg. 153/04 Phase Two ESA program.
- Phase Two pricing does not include additional sampling as may be required based on findings, remediation or soil disposal of drill cuttings. A price can be provided upon completion of drilling for analysis and disposal of drilling wastes.
- All reports will be delivered electronically to the email address on signed form below. Printed copies are available for an additional cost.
- Any additional investigations as may be required based on findings at the Site are not included in the current pricing, scope of work or schedule.

4. Conclusion

AEL is committed to delivering cost-effective and reliable service, using industry-leading technology and best practices. More than 90% of AEL's business comes through repeat clients and referrals, a testimony to clients' continued satisfaction with our service. AEL team members hold themselves to a standard of excellence and commit to communicating honestly and reliably from start to finish on every project.

We trust that this information is sufficient for your present purposes. The conditions as laid out in the attached Terms of Engagement apply. Please return the signed acknowledgment that you want us to proceed. If you have any questions, please do not hesitate to call.

Respectfully submitted;



Charma Kozole, P.Eng., QPESA | Senior Engineer

As with the environmental reports, in preparation for dealing with potential buyers, we have requested a review of the existing Municipal Planning reports and some commentary on what may be possible for a new owner in terms of redevelopment.

This review has been conducted by Weston Consulting, a large and well known municipal planning firm with offices in Vaughan and Toronto. Their report is attached on the following pages.

Lennard Commercial Realty, Brokerage
55 University Ave #200
Toronto, Ontario
M5J 2H7

September 20, 2024
File 12056

Attn: Alastair Strachan

RE: Planning Opinion Letter
132 and 146-152 Brock Street North
Town of Whitby

Weston Consulting has been engaged to prepare this Planning Opinion Letter for the properties municipally known as 132 and 146 – 152 Brock Street North in the Town of Whitby (herein referred to as the "subject lands"). We understand that your objective is to obtain a Planning Opinion to support marketing efforts for the sale of the subject lands on behalf of a receiver.

This Letter offers a preliminary Planning Opinion that includes a comprehensive overview of the existing land use conditions and context, an analysis of relevant planning policies, and a summary of existing development applications. This information aims to provide a well-informed opinion regarding the development potential of the subject lands.

1. SITE DESCRIPTION AND SURROUNDING CONTEXT

The subject lands are located on the west side of Brock Street North, north of Elm Street (Figure 1). The site is approximately 0.35 hectares (0.87) in size, with approximately 70 metres of frontage on Brock Street North. The site features seven buildings, along with associated parking facilities. Three of the existing buildings on site, located at 148, 150 and 152 Brock Street North, have been identified as containing significant historical importance to the Town, although they are not currently listed or designated (further discussed in Section 3.1 of this Letter). Access to the site is facilitated through four ingress/egress access points, three on Brock Street North and one from Elm Street via an access easement with adjacent properties to the south.

The existing land uses surrounding the subject lands include the following:

- North: Directly north are low-rise mixed-use buildings fronting on the south side of Mary Street. Beyond Mary Street, the area primarily consists of low-rise residential properties, comprising of single-detached houses and townhomes.
- East: The lands to the east are predominantly occupied by commercial uses, and their associated parking, fronting onto the east side of Brock Street North. Further east, the area features low-density residential uses consisting primarily of single-detached dwellings, intermixed with neighbourhood commercial uses. Additionally, a six-storey apartment building is located on the east side of Ash Street, North of Dundas Street East.

- **South:** Directly to the south is a taxi service and a vacant lot. Further to the south the area consists predominantly of low-rise built forms and commercial uses, fronting along both the north and south sides of Dundas Street.
- **West:** To the west, the lands are primarily characterized by commercial uses, and their associated parking, fronting onto the east and west sides of Byron Street North. Further west, low-density residential uses consisting primarily of single-detached dwellings are intermixed with neighbourhood commercial uses. Additionally, the Whitley Pediatric Hospital is located further southwest from the site.



Figure 1: Aerial Photo of Subject Lands

2. PLANNING POLICY FRAMEWORK

This section of the Letter offers an overview of the relevant policy and regulatory framework pertaining to the subject lands and its surrounding area context.

2.1 Envision Durham Official Plan (2024)

On September 03, 2024, the Minister of Municipal Affairs and Housing approved Envision Durham, the new Regional Official Plan (ROP¹), in part, with modifications. Map 1 of the ROP identifies the subject lands as being located within a *Regional Centre* and within a *Strategic Growth Area* (Figure 2). *Regional Centres* and *Strategic Growth Areas* are intended to provide more intensive, mixed-use, and complete communities that serve as focal points for residential intensification, providing essential commercial and recreational functions for the broader surrounding community.

The ROP acknowledges the unique historical and contextual significance of *Regional Centres*. The subject lands are located in a *Regional Centre* with traditional downtown characteristics, featuring a mix of uses, main shopping streets, a grid pattern of local roads, and a mix of low- and mid-rise buildings, surrounded by lower density neighbourhoods. It is the policy of the ROP that *Regional Centres* shall accommodate a mix of high-rise and mid-rise built forms that are contextually appropriate, ensuring appropriate transition in building height, density, and massing to the surrounding areas. A mix of uses are encouraged to provide for a complete and vibrant community.

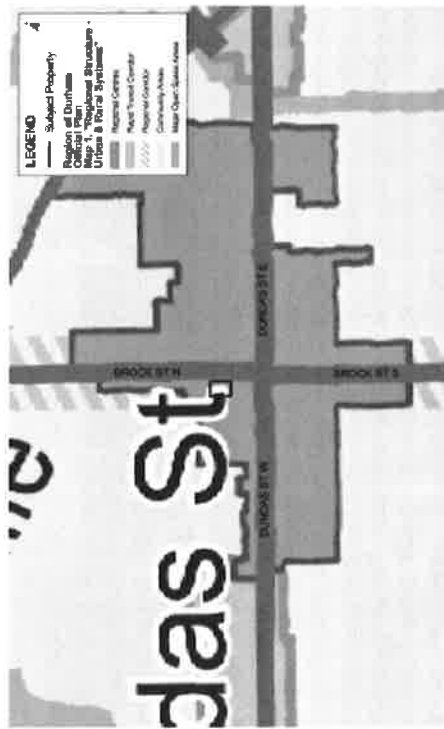


Figure 2: Region of Durham Official Plan Map 1 - Regional Structure - Urban & Rural Systems

Additionally, Map 3a of the ROP identifies Brock Street North as a *High Frequency Transit Network*. The subject lands are also located north of Dundas Street, which is identified as a *Rapid Transit Spine* (Figure 3). The *High Frequency Transit Network* is intended to provide fast and reliable bus transit service, while *Rapid Transit Spines* are planned to facilitate rapid transit in the long term, connecting *Strategic Growth Areas* throughout the Region. *Regional Centres* located off rapid transit corridors are intended to have a minimum transit supportive density target of 100 – 150 people and jobs per gross hectare, allowing for contextually appropriate high-rise and mid-rise development. However, the ROP notes that if the *Regional Centre* is also within a historic downtown a Municipal Official Plan may establish alternative density and height targets.

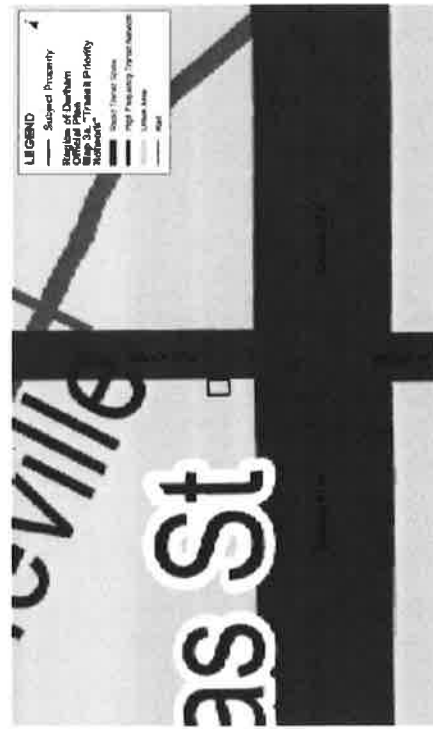


Figure 3: Region of Durham Official Plan Map 3a - Transit Priority Plan

2.2 Town of Whitby Official Plan (2024 Consolidation)

Schedule A of the Town of Whitby Official Plan ("OP") designates the subject lands as *Major Commercial* (Figure 4). This land use designation encompasses larger, multi-functional commercial areas that serve the Municipality and

surrounding region. A full range of retail services are permitted. Mixed-use commercial/residential uses may also be permitted, provided they are designed to be compatible with the general character of the area and adjacent uses.

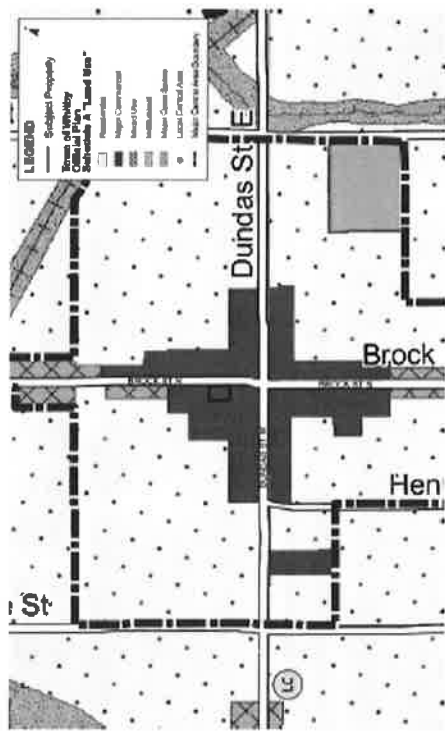


Figure 4: Town of Whitby Official Plan Schedule A - Land Use

Schedule B of the OP identifies the subject lands as being located within the *Downtown Whitby Intensification Area* (Figure 5). The *Intensification Area* is intended to be planned and developed to provide a broad range of uses, including commercial, major retail, and residential uses. The policies of the Downtown Whitby Secondary Plan articulate how redevelopment and intensification will occur within this area (further discussed in Section 2.2.1 of this Letter).

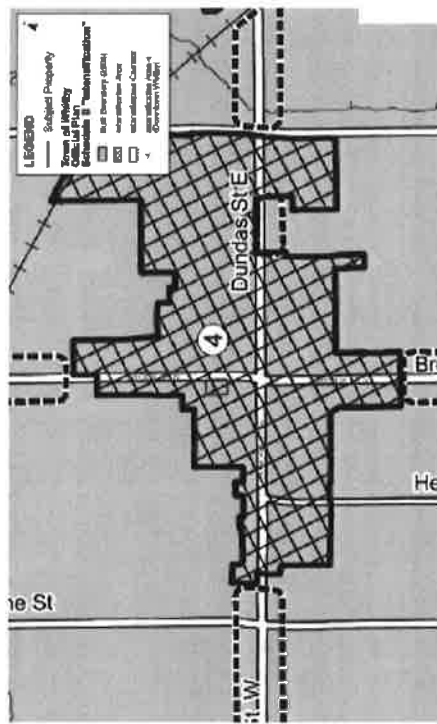


Figure 5: Town of Whitby Official Plan Schedule B - Intensification

2.2.1 Downtown Whitby Community Secondary Plan

On December 21, 2023, the Region of Durham issued a Notice of Decision to approve the Council adopted, Town-initiated Official Plan Amendment #126 ("OPA 126") for the updated Downtown Whitby Community Secondary Plan ("Secondary Plan"). It is important to note that OPA 126 was appealed to the Ontario Land Tribunal and that the subject

Schedule H of the Secondary Plan identifies the subject lands as within the *Major Central Area Boundary* and within an *Intensification Area* (Figure 6). Lands located within these areas are intended for a range of residential, commercial, and employment uses at higher densities. Schedule H of the Secondary Plan also designates the subject lands as *Heritage Mixed Use Area*. Redevelopment in this land use designation is to maintain and conserve the historic commercial character and the low-rise built form within the *Heritage Mixed Use* designation. Schedule I (Figure 7) identifies a maximum building height of 3 storeys for the portion of the site fronting on Brock Street North and 6 storeys for the rear portion of the site. No maximum density has been established for this designation and will be determined through built form requirements for height, setbacks, and step backs as applicable.

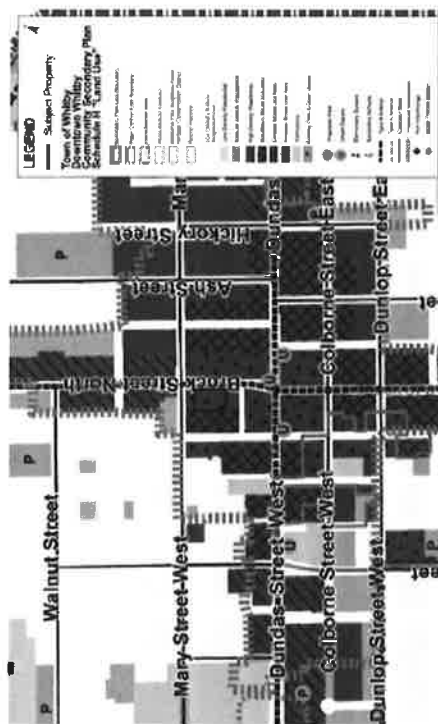


Figure 6: Downtown Whitby Secondary Plan Schedule H - Land Use

Redevelopment within the *Heritage Mixed Use* designation is to maintain the main-street business environment and enhance the pedestrian experience through placemaking and public realm improvements. Mixed-use infill development is encouraged to be comprised of ground level commercial units with residential units located above. Infilling of vacant and underutilized properties is encouraged through compatible residential intensification. The height and density of residential and mixed-use intensification is to have consideration for the local context and character of the surrounding built forms and should provide appropriate transition and character to respect the established character of the area.

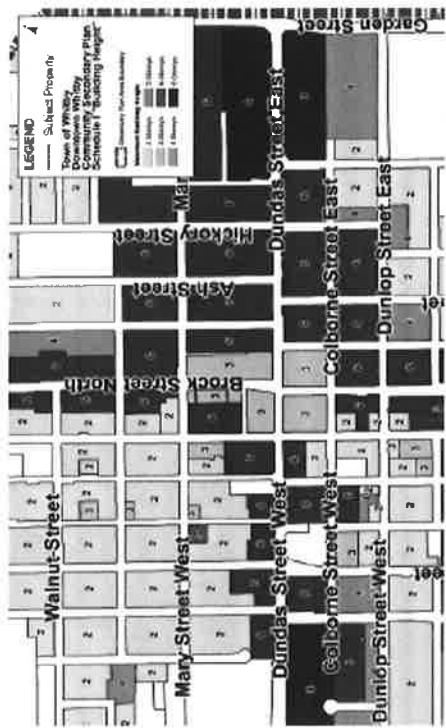


Figure 7: Downtown Whitby Secondary Plan Schedule 1 - Building Height

2.2.2 Whitby Official Plan Review

The Town of Whitby is currently undertaking their municipal comprehensive review of their Official Plan to provide policies and direction on how the Town intends to grow until 2025. The Official Plan review is in the initial stages, with the Town initiating Phase One of their engagement plan earlier this year. Residents were invited to share their priorities for how Whitby should grow over the next 30 years. The Town is now undertaking Phase Two of engagement and is accepting feedback on future growth and development in three specific growth areas identified in the Envision Durham ROP. Further engagement opportunities are being planned for Fall 2024.

2.3 Town of Whitby Zoning By-law 2585

Through the approval of By-law 3070-91, the Town of Whitby Zoning By-law 2585 ("Zoning By-law") was amended to include Section 26 – Downtown Secondary Plan. The provisions of Section 26 apply to all lands within the Town which are subject to a *Downtown (DT)* zone. The Zoning By-law zones the eastern portion of the subject lands as *Central Commercial 3 – Downtown Zone – Exception 1 (C3-DT-1)* and the western portion as *Holding – Central Commercial 3 – Downtown Zone (H-C3-DT)* (Figure 8). The C3-DT zone permits a broad range of commercial and institutional uses, as well as residential apartment units in conjunction with one or more of the permitted non-residential uses. Exception 1 limits the building height of the eastern portion of the site to a maximum of 3-stories. The maximum permitted building height for the western portion of the subject lands is 6-stories.

The western portion of the site is subject to a Holding Symbol that prevents the site from being developed until a By-law has been adopted by Council to remove the "H." In order to request removal of the Hold, it must be demonstrated that sanitary sewer, municipal water, and stormwater servicing facilities and/or capacities are available to service proposed development. Prior to the removal of the "H," the uses existing uses are permitted.

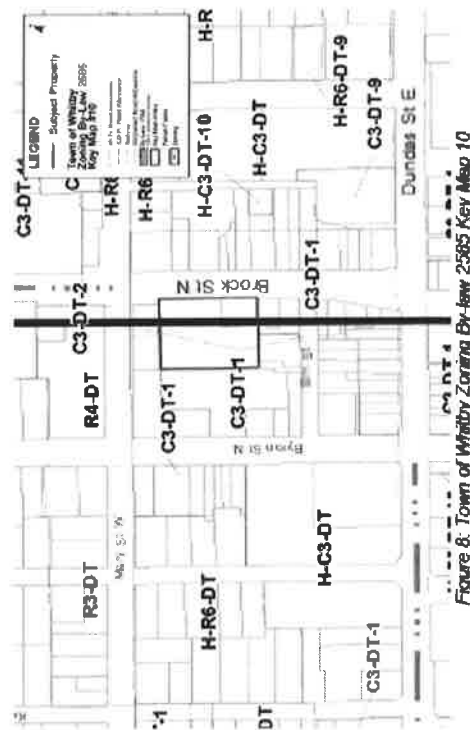


Figure 8: Town of Whitby Zoning By-law 2585 Key Map 10

3. CURRENT DEVELOPMENT APPLICATIONS

It is important to note that multiple attempts were made to contact City Staff regarding the active application and supporting materials; however, our requests were deferred to the Town's legal counsel due to the site being subject to an Ontario Land Tribunal Hearing (as discussed in Section 3.2 of this Letter). The summary provided in this Letter is based on the information available to us at the time this Letter was authored.

3.1 Active Development Applications

Official Plan Amendment (OPA-2022-W/03) and Zoning By-law Amendment (Z-11-22) applications were submitted to the Town in April 2022. The proposed development contemplates the redevelopment of the subject lands for a mixed-use building consisting of 11-storeys (45 metres in height), with 930 square metres of ground floor commercial/non-residential space fronting onto Brock Street North. The proposed development consists of 125 residential units with 741 square metres of amenity space. A total of 125 parking spaces are proposed, to be located within two levels of underground parking. Vehicular access to the site is proposed from Brock Street North and through the existing access easement to the south, connecting the site to Elm Street.

The Official Plan Amendment seeks to increase the maximum permitted net residential density from 200 units per net hectare to 354 units per net hectare and increase the maximum permitted building height from 3 to 6-storeys, to 11-storeys. The Zoning By-law Amendment Application was submitted to allow for site specific permission to permit the proposed development.

The application proposes a potential partnership with the Region and the Town to work with the Canada Mortgage and Housing Corporation (CMHC) – National Housing Co-Investment Fund (NHCF) to provide 40% of the units as affordable housing and to achieve long term, low interest loans for the construction of affordable housing.

It is important to note that three of the existing buildings on site, located at 148, 150 and 152 Brock Street North, have been identified as containing significant historical importance to the Town. At the time this Letter was authored, these buildings were not listed on the Town of Whitby's Municipal Heritage Register. A Cultural Heritage Impact Assessment was completed in support of the proposed development. It is our understanding that the Report recommended the

demolition of the building at 148 Brock Street, as it contains less historical significance and requires extensive remediation work. The buildings at 150 and 152 Brock Street North are proposed to be maintained and incorporated into the proposed development.

A Statutory Public Meeting was held on September 12, 2022. During this meeting members of the public raised a variety of concerns regarding the proposed 11-storey development. While some expressed support for increased density to sustain a vibrant downtown centre, commenters were concerned about the proposed height exceeding the limits set by the Downtown Whitby Secondary Plan, citing potential impacts on privacy, sunlight, and the existing heritage character of the area. The preservation of historical buildings was a recurring theme, commenting on the desire to protect the unique character and walkability of downtown. Traffic and infrastructure issues were also highlighted, with residents questioning whether adequate studies had been conducted to assess the impact of increased traffic from the development. Commenters were most concerned about the height and its effect on the heritage character of the downtown area.

3.2 OLT Appeal

An appeal was filed with the Ontario Land Tribunal ("OLT") under Case No. OLT-22-004776 due to failure to adopt the requested Official Plan Amendment and neglect to make a decision on the Zoning By-law Amendment application. The hearing was originally scheduled to take place on March 11, 2024, with an estimated hearing length of 10 days. A second appeal was also filed with the OLT under Case No. OLT-22-004776 to appeal the approval of OPA 126, regarding the Downtown Whitby Community Secondary Plan (as discussed in Section 2.2.1 of this Letter).

In June 2024, a Case Management Conference ("CMC") was held where counsel for the appellant sought to administratively consolidate the OPA 126 appeal with its other matter before the OLT regarding the proposed development applications. The Tribunal provided confirmation that the two matters would be administratively consolidated. The counsel for the appellant also requested that a full hearing on the merits of the consolidated appeal be scheduled and heard together for a total length of two-weeks. The parties committed to scoping the issues further and were directed to submit an updated draft Procedural Order and Issues List by July 5, 2024.

The Tribunal has scheduled a Hearing of the Consolidated Appeals OLT Case File No(s). (OLT-22-004776 and OLT-24-000115) commencing on Tuesday May 20, 2025, to Friday May 30, 2025.

4. PLANNING ANALYSIS AND OPINION

Based on our review of the Town of Whitby Official Plan, Downtown Whitby Community Secondary Plan and Zoning By-law 2585 the subject lands have development potential that is greater than the current condition of the site. As of right, a 3 to 6-storey mixed-use building is permitted per the applicable policies. The active 11-storey development application exceeds the permissions of the Secondary Plan and Zoning By-law and does not have appropriate consideration for the existing and planned context of the surrounding area. It is recommended that a more context-sensitive approach to height and density is considered for potential redevelopment of the site.

To determine the optimal use of the site, further evaluation of the site context and discussions with Town Staff would be required. It is our opinion that proposed redevelopment of the subject lands should balance the preservation of the site's historically significant buildings with the need for new development. Based on the information contained herein, the following next steps should be considered:



1. Consultation with City Staff: Further consultation with Town of Whitby Staff is recommended to confirm the findings herein. It is also recommended that the application materials submitted in support of the current development application are requested for your records.
2. Heritage Consultation: Further engagement with a Heritage Consultant and Heritage Planning Staff is recommended to explore options for preserving and integrating the historically significant buildings into the revised development concept.
3. Reassessment of the Development Proposal: A revised proposal should be considered, potentially scaling back the height and density to better align with existing policies and community context.
4. Monitor the OLT Proceedings: Following the reassessment of the development proposal, determine a position for the upcoming OLT hearing regarding the active development application and policies of the Downtown Whitby Community Secondary Plan.
5. Facilitate Community Engagement: Once the revised development concept is prepared, organize additional public meetings to present the revised plan and gather community feedback.

5. CONCLUSION

This Planning Opinion Letter was prepared to support marketing efforts to sell the subject lands on behalf of a receiver. This Letter provides a preliminary analysis of applicable land use planning policies and an update on the status of active development applications and appeals with the Ontario Land Tribunal. The summary, conclusions and opinions of this Letter are based on the applicable land use planning policies and information available to us at the time this Letter was authored. We note that the opinions expressed in this Letter are based on our professional planning opinion. As recommended, further consultation with Town of Whitby Staff is recommended to confirm the findings herein.

Should you have any questions, or wish to discuss this further, please contact Bryanne Robinson at extension 512 or Mark Emery at extension 240.

Yours truly,
Weston Consulting
Per:

Mark N. Emery, BES, MCIP, RPP
President

- c. Bryanne Robinson, Weston Consulting
Trevor Doe, Weston Consulting



Adjoining Ownerships

Lennard:

There are three adjoining property ownerships:

128 Brock St. N.

- Owned by Go Raj Transportation Inc
- Purchased in June of 2024 for \$1,000,000
- New owner plans to open a retail shop of some type, possibly women's clothing

124 Brock St. N. (NAW Cnr Brock and Elm)

- Owned by 1628609 Ontario Inc.
- Owner is Joan Ann Rogers who is a real estate agent with Royal Heritage Realty
- The original building burned down seven years ago and she is rebuilding with the intent of leasing it out or possibly selling it.

North Side Elm Street abutting 124 Brock to the east and 146 Brock St to the north

- Owned by Joseph and James Turansky
- Attempting to make contact
- (The Geowarehouse database shows this property with the address – 152 Brock St North – it also has the address 116 Elm Street. – the MPAC report following shows the # 152 address)

Lennard:

Adjoining Ownerships



128 BROOK ST N, WHITBY | PIN 265350165

Property Details

GeoWarehouse Address:

128 BROOK ST N

WHITBY

L1N4H4

PIN:

265350165

Land Registry Office: DURHAM (40)

Land Registry Status: Active

Registration Type: Certified (Land Titles)

Ownership Type: Freehold



Ownership

Owner Name:

GO RAJ TRANSPORTATION INC.

Legal Description

PT LT 1 PL H50030 WHITBY, PT LT 2 PL H50030 WHITBY AS IN D20553, WHITBY TOGETHER WITH AN EASEMENT OVER PT LOT 1, PLAN H-50030 WHITBY, PT LOT 2, PLAN H50030 WHITBY AS IN D20553, WHITBY DESIGNATED AS PART 1, ON PLAN J05-31, 17 AS IN D2015270, SUBJECT TO AN EASEMENT OVER PART 1, 48R-31-121 IN FAVOUR OF PART LOT 1, PLAN H50030 WHITBY, PART LOT 2, PLAN H50030 WHITBY AS IN D243222 AS IN D2162369

Lennard:

Lot Size

Area: 3412.16 sq.ft (0.078 ac)

Perimeter: 238.5 ft.

Measurements: 30.03ft. x 70.07ft. x 50.06ft. x 65.08ft. x 18.72ft. x 5.39ft. x 1.0ft.

Lot Measurement Accuracy: LOW

These lot boundaries may have been adjusted to fit within the overall parcel fabric and should only be considered to be estimates.



Assessment Information

ASN

150953001500600

Transaction Year

2024

2023

2022

2021

Previous Assessment: N/A

Phased-In Assessment

\$599,000

\$599,000

\$599,000

\$599,000

Frontage: 50.0 ft.

Depth: N/A

Based On: January 1, 2016

Property Code: 471

Current Assessment: \$599,000

Description: Retail or office with residential unit(s) above or below - less than 10,000 s.f. gross building area (GBA), space or outdoor parking, with 6 or less apartments, other downtown core

Sales History

Sale Date	Sale Amount	Type	Party To	Notes
Jun 20, 2024	\$1,000,000	Transfer	GO RAJ TRANSPORTATION INC.;	
Aug 31, 2007	\$100,000	Transfer	2134105 ONTARIO INC.;	
Jul 18, 1985	\$75,000	Transfer	RIEGER, RONALD JOHN;	

Lennard:

Adjoining Ownerships



124 BROCK ST N, WHITBY | PIN 265350184

Property Details

GeoWarehouse Address:	124 BROCK ST N WHITBY L1N4H4 PIN: 265350184
Land Registry Office:	DURHAM (40)
Land Registry Status:	Active
Registration Type:	Certified (Land Titles)
Ownership Type:	Freehold



Ownership

Owner Name:
1628608 ONTARIO INC.

Legal Description

PT LT 1 PL H60030 WHITBY; PT LT 2 PL H60030 WHITBY AS IN D243222; WHITBY SUBJECT TO AN EASEMENT OVER PART 2 40R31121 IN FAVOUR OF PT LOT 1 PLAN H60030 WHITBY; PT LOT 2 PLAN H-60030 WHITBY AS IN D200563 AS IN DR2152370 TOGETHER WITH AN EASEMENT OVER PART LOT 1 PLAN H-60030 PART 1 40R-31121 AS IN DR2162369

Lennard:

Lot Size

Area:	5295.84 sq.ft (0.122 ac)
Perimeter:	360.59 ft.
Measurements:	16,560 ft. x 22,078 ft. x 99,516 ft. x 85,788 ft. x 51,198 ft. x 70,078 ft. x 31,038 ft. x 5,396 ft.
Lot Measurement Accuracy :	LOW
These lot boundaries may have been adjusted to fit within the overall parcel fabric and should only be considered to be estimates.	



Assessment Information

ARN
16093001500500

Transaction Year	Previous Assessment	N/A
2024	\$532,000	Photo-Scan Assessment
2023	\$532,000	
2022	\$532,000	
2021	\$532,000	

Frontage:	51.14 ft.	Description:	Vacant commercial land
Depth:	N/A	Property Code:	105
Based On:	January 1, 2016	Current Assessment:	\$532,000

Sales History

Sale Date	Sale Amount	Type	Party To	Notes
Feb 01, 2005	\$700,000	Transfer	1628608 ONTARIO INC.;	
Jun 08, 1998	\$290,000	Transfer	J.C. FAMILY MANAGEMENT LTD.;	

Lennard:

Adjoining Ownerships

Lennard:



152 BROCK ST N, WHITBY | PIN 265350183

Property Details

GeoWarehouse Address:

152 BROCK ST N

WHITBY

L1N4H4

PIN: 265350183

Land Registry Office: DURHAM (40)

Land Registry Status: Active

Registration Type: Registry

Ownership Type: Freehold



Ownership

Owner Name:

Not Available

Party To:

TURANSKY, BERNARD JOSEPH; TURANSKY, RALPH EDWARD JAMES

Legal Description

PT LT 1 PL H50030 WHITBY; PT LT 2 PL H50030 WHITBY; WHITBY

Lennard:

Lot Size

Area: 7642.37 sq ft (0.175 ac)

Perimeter: 351.05 ft.

Measurements: 68.22ft x 75.84ft x 88.51ft x 78.31ft x 33.89ft.

Lot Measurement Accuracy: LOW

These lot boundaries may have been adjusted to fit within the local parcel fabric and should only be considered to be estimates.



Assessment Information

ARN

180903001512901

Taxation Year	Previous Assessment	N/A
2024	\$510,000	Phased-In Assessment
2023	\$510,000	
2022	\$510,000	
2021	\$510,000	

Frontage: 76.57 ft.

Depth: N/A

Based On: January 1, 2016

Property Code: 480

Current Assessment: \$510,000

Description: Surface parking lot - excludes parking facilities that are used in conjunction with another property

Sales History

Sale Date	Sale Amount	Type	Party To	Notes
Apr 07, 1997	\$2	Transfer	TURANSKY, BERNARD JOSEPH; TURANSKY, RALPH EDWARD JAMES;	See Notes 1
Nov 01, 1971	\$1	Transfer	THE CORPORATION OF THE TOWN OF WHITBY;	
Jul 31, 1970	\$2	Transfer	JONKHEER, WILHELMINA; JONKHEER, GEIRT;	

Notes:

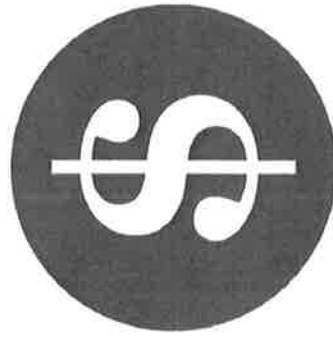
1. The following Pins were transferred together with the subject Property

265350187, 265350209

02

Marketing Plan

Our SELLING STRATEGY is a combination of :



PRICING STRATEGY

&

MARKETING STRATEGY



Listing Price

Over the past several years, it has become commonplace for many commercial properties to be listed for \$1.00 - the idea being to invite offers from buyers as they see fit. This is has been primarily done to ensure that properties were not undersold in a rising market.

This approach is not recommended as we are no longer in a rising market..

Recommended Pricing Strategy

The subject property is currently being appraised by an AACI and it is recommended that the initial listing price be towards or, at the upper end of that appraised value. This asking price to be held for an initial period of 30 days following which, the seller and agent will discuss results and adjust the price accordingly for a further period of about 30 days. Then the same again with marketing continuing throughout, until a suitable buyer is identified.

It is worth noting that with interest rates / inflation moving down, the likelihood of the real estate development market improving, is increased.

Our marketing program is designed to effectively expose the property to the marketplace as a whole and to specifically focus on a defined target group of prospects as quickly as possible.

MARKETING ACTIVITIES

Marketing Brochure: Hi quality digital brochure illustrating potential development possibilities.



Sample can be seen [HERE](#)

Target Prospects

- A:** Real estate developers who are active in Durham region will be specifically targeted as these groups have local expertise in addition to normal development expertise
- B:** Real estate agents who have listed and or sold land or development sites over the past two years in the GTA.
- C:** Commercial real estate agents in the GTA who regularly deal in land, development sites, office property, industrial property, retail property and some others.

Websites: The property will appear on various websites including:

- Lennard.com
- Realtor.ca
- Costar.com

Marketing Strategy (Continued) Marketing Program

Lennard:

MLS / Other Agents: The property will be placed on MLS

Signage: 'FOR SALE' signs will be placed on the property in locations to be approved by the Seller.

Personal Connections: Details on the unit will be sent to Alastair's database of commercial real estate contacts including owners, tenants, consultants, financiers and others.

Lennard Commercial Network: Once the marketing material is completed it will be distributed to the Lennard Commercial network.

Regular E-Mail Blasts: Details will be sent to targeted groups from a list of 15,000+ parties who are active in commercial real estate on an ongoing basis.

The Marketing Plan Sample Marketing Materials

Brochures Property Information Package



For Sale: Full Time Redevelopment Site

1199 The Queensway
Outstanding Executive Office / Retail Location

100,000 sq. ft. of space for sale
100,000 sq. ft. of space for sale
100,000 sq. ft. of space for sale

Lennard: 100,000 sq. ft. of space for sale

1199 The Queensway
Executive office or retail building available for sale at Kipling Ave. & the Queensway, with close proximity to the Kipling Subway, Gardiner Expressway

Property Highlights:

- Adjacent to Transit Corridor High Rise Residential Development
- Adjacent to Kipling Subway Station - 11.2 km from the Station
- Full Floor to Full Floor
- 100,000 sq. ft. of space for sale
- 100,000 sq. ft. of space for sale
- 100,000 sq. ft. of space for sale

Call Room:
100,000 sq. ft. of space for sale

Lennard: 100,000 sq. ft. of space for sale



For Sale: Industrial Property

1290 Speers Rd
Industrial Investment Opportunity

100,000 sq. ft. of space for sale
100,000 sq. ft. of space for sale
100,000 sq. ft. of space for sale

Lennard: 100,000 sq. ft. of space for sale

1290 Speers Rd

Property Highlights:

- 100,000 sq. ft. of space for sale
- 100,000 sq. ft. of space for sale
- 100,000 sq. ft. of space for sale

Call Room:
100,000 sq. ft. of space for sale

Lennard: 100,000 sq. ft. of space for sale

Lennard:

Signage

**Residential Redevelopment
Opportunity - 26 Acres
For Sale**

416.346.9500

Alastair Strachan*

Lennard:

*Sales Representative
Lennard Commercial Realty, Brokerage

Lennard:

Reporting to Pollard & Associates Inc.

Lennard:

A spreadsheet of all interested parties will be maintained during the sales process and made available as needed.

330

Lennard:

35

03

Listing & Contract Terms

Listing & Contract Terms

Lennard:

Listing Terms

The listing term will commence upon the execution of a listing agreement and be in effect for a term of nine months

Marketing Costs

Direct marketing costs will be borne by Lennard Commercial Realty, including the design, preparation and distribution of all marketing material.

Asking Price

The subject property is currently being appraised by an AACI and it is recommended that the initial listing price be towards or at the upper end of that appraised value. This asking price to be held for an initial period of 30 days following which, the seller and agent will discuss results from marketing activities and adjust the price accordingly for a further period of about 30 days. Then the same again with marketing continuing throughout, until a suitable buyer is identified.

Commission Rates

If Alastair Strachan is the sole agent – 4% of the total sale price plus H.S.T. If there is another agent – 4.5% of the total sale price plus H.S.T.

Lennard:



04

Schedule 'A'

GeoWarehouse

Report

132 Brock Street N. GeoWarehouse Report



132 BROCK ST N, WHITBY | PIN: 265350186

Property Details

GeoWarehouse Address:

132 BROCK ST N
WHITBY
L1N4H4

PIN: 265350186

Land Registry Office: DURHAM (40)

Land Registry Status: Active

Registration Type: Certified (Land Titles)

Ownership Type: Freehold



Ownership

Owner Name:

CACOELI WHITBY LP-11275127 CANADA INC.; 11250396 CANADA INC.

Lot Size

Area: 5521.88 sq.ft (0.127 ac)

Perimeter: 298.58 ft.

Measurements: 65.00ft x 85.14ft x 64.08 x 85.03ft.

Lot Measurement Accuracy: LOW

These lot boundaries may have been adjusted to fit within the overall parcel fabric and should only be considered to be estimates.



Assessment Information

ARN
18000-3001500700

Taxation Year	Previous Assessment	N/A
2024	\$435,000	Placed in Assessment
2023	\$435,000	
2022	\$435,000	
2021	\$435,000	

Frontage: 85.0 ft.

Depth: 65.0 ft.

Based On: January 1, 2018

Description: Specialty automotive shop/auto repair/collision service/ car or truck wash

Property Code: 421

Current Assessment: \$435,000

Sales History

Sale Date	Sale Amount	Type	Party To	Notes
Mar 26, 2019	\$550,000	Transfer	CACOELI WHITBY LP-11275127 CANADA INC.; 11250396 CANADA INC.;	
Sep 18, 2012	\$200,000	Transfer	2341587 ONTARIO INC.;	
Sep 01, 2011	\$139,432	Transfer	BRILLINGER INVESTMENT LIMITED;	
Oct 07, 2010	\$2	Quit Claim - Transfer	BRILLINGER INVESTMENT LIMITED;	
			JEROME ETKIN LIMITED;	

152 Brock Street N. GeoWarehouse Report



Property Details

GeoWarehouse Address:

152 BROCK ST N
WHITBY
L1N4H4

PN: 265350187

Land Registry Office: DURHAM (40)

Land Registry Status: Active

Registration Type: Certified (Land Titles)

Ownership Type: Freehold



152 BROCK ST N, WHITBY | PIN 265350187

Ownership

Owner Name:

CACOEI WHITBY LP-11250396 CANADA INC.



Lennard:



Lot Size

Area: 32560.8 sq. ft. (0.747 ac)

Perimeter: 790.68 ft.

Measurements: 231.75ft. x 98.38ft. x 87.18ft. x 64.9ft. x 145.99ft. x 164.23ft.

Lot Measurement Accuracy: LOW

These lot boundaries may have been adjusted to fit within the overall parcel fabric and should only be considered to be estimates.

Assessment Information

ARN

180503001500800

Taxation Year

2024

2023

2022

2021

Previous Assessment

Physical Assessment

\$1,294,000

\$1,294,000

\$1,294,000

\$1,294,000

Frontage: 145.85 ft.

Depth: N/A

Based On: January 1, 2018

Property Code: 471

Current Assessment \$1,294,000

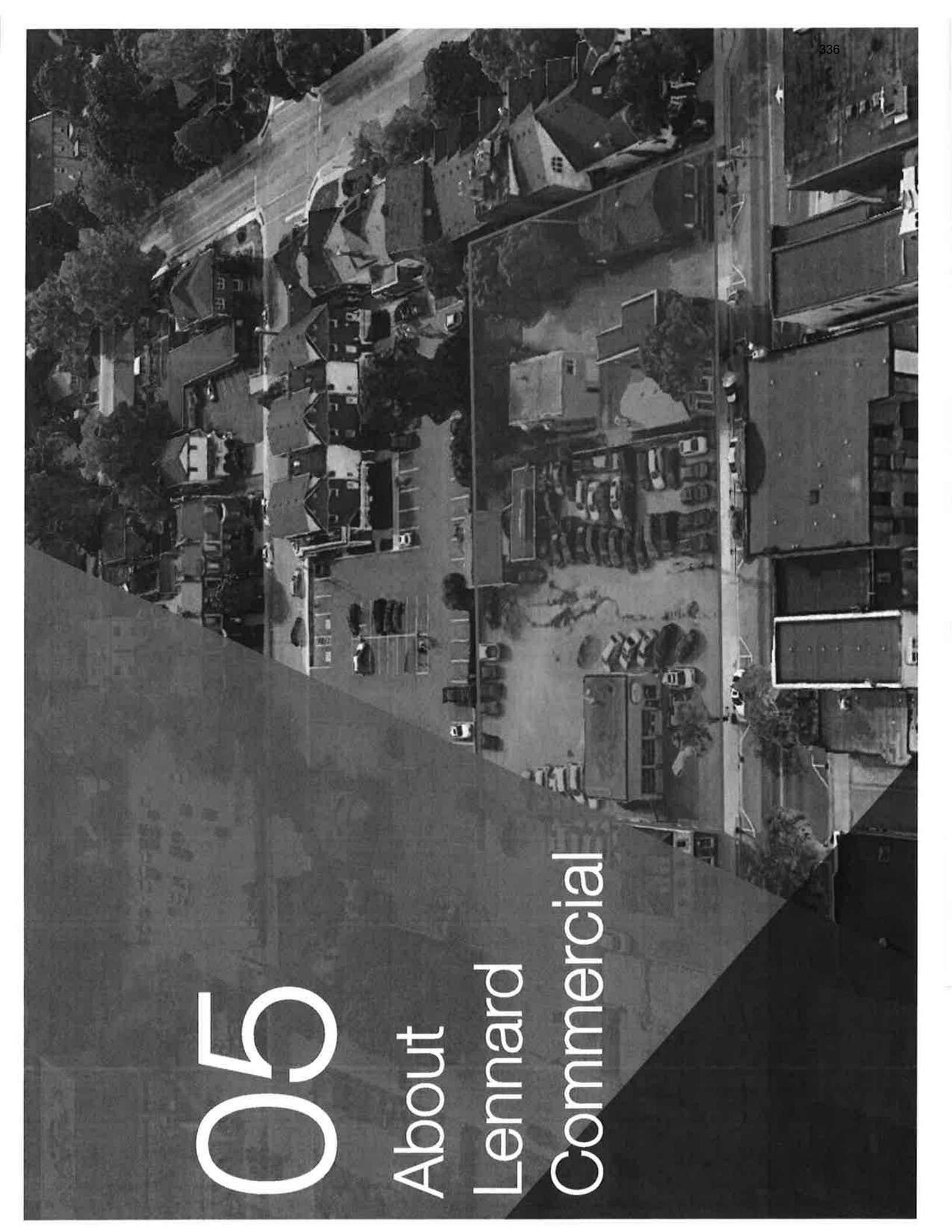
Description: Retail or office with residential units) above or below - less than 10 000 s.f. gross building area (GBA), street or on-site parking, with 5 or less apartments, older downtown core

Sales History

Sale Date	Sale Amount	Type	Party To	Notes
Mar 26, 2019	\$2,800,000	Transfer	CACOEI WHITBY LP; 11250396 CANADA INC.,	The following pins were transferred together with the subject property 265350209
Feb 28, 2011	\$960,000	Transfer	2206302 ONTARIO INC.;	
Jul 23, 2010	\$2	Transfer by Personal Representative	LECKIE, LORRAINE KATHERINE; TURANSKY, BRENDA KATHERINE.	
Jul 23, 2010	\$0	Transmission by Personal Representative	TURANSKY, RALPH EDWARD JAMES-ESTATE; JOHNSTON, JOHN WILLIAM PATRICK	
Jul 23, 2010	\$2	Transfer by Personal Representative	TURANSKY, MONICA;	
Dec 02, 2009	\$0	Transmission by Personal Representative	TURANSKY, BERNARD JOSEPH - ESTATE; TURANSKY, MONICA;	
Apr 07, 1997	\$2	Transfer	TURANSKY, BERNARD JOSEPH; TURANSKY, RALPH EDWARD JAMES.	

Lennard:

lennard.com



05

About
Lennard
Commercial

About Lennard Commercial Team Organization & Resources

Lennard:

Pollard & Associates Inc.



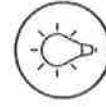
Alastair Strachan
Senior Vice President
Lennard Commercial Realty



Kandice Smith
Office Manager
Lennard Commercial Realty



Zied Challakhi
Marketing Coordinator
Lennard Commercial Realty



MARKETING



RESEARCH



IT

Lennard:

Alastair H. Strachan - Biography

Lennard:



Alastair H. Strachan

Senior Vice President,
Sales Representative

Specialty

Industrial sales & Leasing, Redevelopment sites.

Contact

astrachan@lennard.com
416.346.9500

Location

GTA West

Alastair joined A.E. LePage in 1973 as the Company's first Researcher specializing in Industrial Property. Entering the sales force in 1974, Alastair quickly established himself as a successful Salesperson. With twenty - five years in the Company's "President's Round Table" and five appearances in the "National Top Ten", Alastair has a long track record selling and leasing industrial properties.

In 1992, Alastair took over management of the Toronto Industrial brokerage business and during the next ten years, was appointed National Practice Leader for Industrial, providing leadership and taking responsibility for, the Industrial business of Royal LePage Commercial (the successor company to A.E. LePage and now Cushman & Wakefield ULC) on a national basis.

In 2004, Alastair left management and returned to the brokerage side of the business.

In June of 2021, Alastair left Cushman & Wakefield and joined the dynamic group at Lennard Commercial Realty.

In addition to his mainstream industrial real estate business, Alastair has a lengthy and strong expertise in the valuation and disposition of redevelopment sites and vacant land and has advised clients such as Chrysler, General Motors, McGuiness Distilleries, and many private clients on the disposition of their redevelopment properties in the GTA.

Lennard:

lennard.com

About Lennard Commercial

Alastair H. Strachan: Sample of Properties Sold

Lennard:

Address	City	Lot Size	Square Feet	Sale Price
36 & 42 Northline Road	North York	-	66,993	-
186 Old Kennedy Road & 31 Victory Ave	Markham	9.6 Acres		\$50,000,000.00
10254 Hurontario Street	Brampton	47 Acres		\$46,000,000.00
2 Algoma Street/70 Grand Ave.	Etobicoke	14.50 Acres	500,000	\$26,500,000.00
2450 Stanfield Road	Mississauga	40.00 Acres	286,000	\$20,500,000.00
13242 Hurontario Street	Caledon	120 Acres		\$20,000,000.00
1075 Ellesmere Road	Scarborough	9.03 Acres	154,000	\$17,850,000.00
King & Dufferin	Toronto	7.50 Acres	400,000	\$17,000,000.00
7622 Keele Street	Vaughan	13.44 Acres	310,000	\$15,700,000.00
135 Vanderhoof Avenue	East York	7.50 Acres	125,000	\$11,425,000.00
East Side Heart Lake Road	South Caledon	100 Acres		\$10,000,000.00
1751 Wentworth Street	Whitby	6.28 Acres	103,351	\$8,115,000.00
4544 Dufferin Street	Toronto	4.50 Acres	81,000	\$8,000,000.00
13320 Kennedy Road	South Caledon	117 Acres		\$8,000,000.00
401 Richmond Street	Toronto	2.50 Acres	202,000	\$7,700,000.00
925 Brock Road	Pickering	21.00 Acres	274,400	\$7,250,000.00
8100 Dixie Road	Brampton	25.00 Acres	199,000	\$7,000,000.00
7655 Bramalea Road	Brampton	57.00 Acres	154,000	\$6,285,000.00
100 Guided Court	Etobicoke	6.50 Acres	96,627	\$5,600,000.00
196 Bartley Drive	North York	4.60 Acres	88,000	\$5,250,000.00
500 Carlingview Drive	Etobicoke	5.70 Acres	90,000	\$5,020,000.00
1407 Warden Avenue	Scarborough	13.00 Acres	-	\$4,750,000.00
100 Lesmill Road	North York	2.10 Acres	42,500	\$4,600,000.00
1450 Birchmount Road	Scarborough	6.20 Acres	67,500	\$4,250,000.00
4973 Countryside Drive	Brampton	25.00 Acres		\$4,250,000.00
2 Billingham Road	Toronto	0.25 Acres	12,000	\$4,000,000.00
362 Wallace	Toronto	3.12 Acres	-	\$3,650,000.00
S/S Milner Avenue	Scarborough	5.50 Acres	-	\$3,355,000.00
929 Warden Avenue	Scarborough	4.00 Acres	20,000	\$2,975,000.00
2677 Drew Road	Mississauga	2.95 Acres	52,000	\$2,837,500.00

Lennard:

About Lennard Commercial

Alastair H. Strachan: Sample of Properties Sold

Lennard:

Address	City	Lot Size	Square Feet	Sale Price
1 Precision Road	Etobicoke	4.10 Acres	26,200	\$2,800,000.00
14 Mendota Road	Etobicoke	0.90 Acres	21,000	\$2,600,000.00
187-191 Niagara Street	Toronto	0.20 Acres	10,000	\$2,325,000.00
1 Atlantic Avenue	Toronto	3.10 Acres	50,000	\$2,300,000.00
9 Doney Crescent	Vaughan	9.00 Acres	vacant	\$2,250,000.00
786 King Street West	Toronto	0.14 Acres	12,000	\$2,200,000.00
50 Cowdray Court	Toronto	2.45 Acres	35,000	\$2,103,000.00
7-9 Plastics Avenue	Etobicoke	1.34 Acres	5,983	\$2,085,000.00
9 Robb Blvd.	Orangeville	10.30 Acres	64,000	\$2,000,000.00
44 Atomic Avenue	Etobicoke	2.46 Acres	57,000	\$2,000,000.00
E/S Harry Walker Pkwy.	Newmarket	10.00 Acres	vacant	\$1,950,000.00
685 Warden Avenue	Scarborough	5.80 Acres	80,000	\$1,850,000.00
2 Billingham Road	Etobicoke	-	11,000	\$1,650,000.00
Ambro Industrial Park	Brampton	15.00 Acres	vacant	\$1,600,000.00
909 Kipling Avenue	Etobicoke	1.00 Acres	24,000	\$1,600,000.00
70 Production Drive	Scarborough	1.50 Acres	14,745	\$1,425,000.00
33 Davies Avenue	Toronto	0.90 Acres	7,500	\$1,260,000.00
548 Front Street West	Toronto	0.03 Acres	2,844	\$1,250,000.00
E/S Howden Road	Scarborough	2.10 Acres	-	\$1,162,500.00
44 Apex Road	North York	2.50 Acres	25,000	\$1,150,000.00
W/S Newkirk Road	Richmond Hill	2.00 Acres	-	\$1,136,000.00
344 Newkirk Road	Richmond Hill	2.00 Acres	28,000	\$1,050,000.00
1032 Queen Street West	Toronto	0.07 Acres	7,500	\$960,000.00
103 Walnut Avenue	Toronto	0.07 Acres	7,152	\$830,000.00
7 Queen Elizabeth Blvd	Etobicoke	0.50 Acres	6,400	\$750,000.00
468 Gilbert Avenue	York	0.27 Acres	10,000	\$750,000.00
108 Maplecrete Road	Vaughan	-	5,600	\$620,000.00

Lennard:

About Lennard Commercial

Alastair H. Strachan: Sample of Properties Sold

Lennard:

Address	City	Lot Size	Square Feet	Sale Price
7 Dohme Avenue	East York	-	12,407	\$610,000.00
392 Gilbert Street	Toronto	0.50 Acres	7,400	\$610,000.00
W/S Newkirk Road	Richmond Hill	2.00 Acres	-	\$600,000.00
595 Welling Street West	Toronto	0.07 Acres	3,176	\$600,000.00
1B Harold Street	Etobicoke	0.54 Acres	2,460	\$570,000.00
7939 Keele Street	Vaughan	2.00 Acres	-	\$560,000.00
20 Drummond Street	Toronto	0.25 Acres	5,700	\$525,000.00
506 Royal York Road	Etobicoke	0.19 Acres	-	\$442,000.00
26 Taber Road	Etobicoke	0.30 Acres	4,800	\$380,000.00
80 Nashdene Road	Toronto	-	1,450	\$163,000.00

Lennard:

Full Service Platform Company Profile

Lennard:

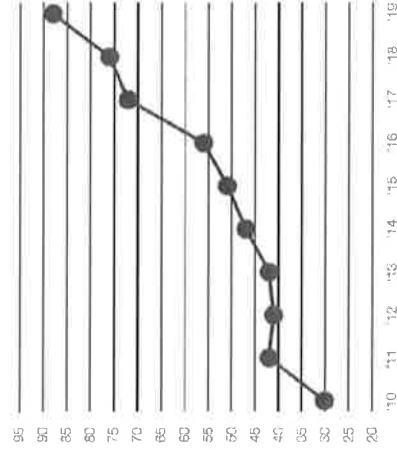
Lennard Highlights

At Lennard, we pride ourselves on our personalized service and commitment to our clients. We are dynamic, flexible and constantly employing progressive and creative strategies for improvement.

Lennard's deals per year have **doubled in the last decade!**

53% Increase!

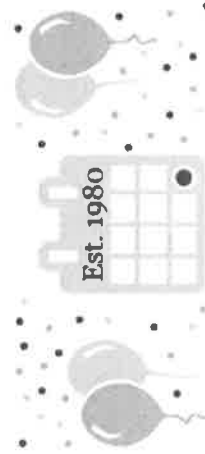
Lennard's **agent growth** has exploded in the last ten years.



Lennard is an **all services shop**, able to meet unique challenges.

- Owner & Investor
- Landlords & Tenants
- Land Development

Lennard has been a growing business for **40 years**.



Lennard agents have access to **industry leading** tools:

- Access to 15+ *Market Research* Tools
- Database of Over 147,530 *Tenants*
- Real-Time Market Analytics & Statistics
- Proprietary NPV & Lease Analysis Tools

Lennard:

Full Service Platform Company Profile

Lennard:

About

The Lennard Experience

We always put people first. Our work-life balance philosophy empowers us and helps us achieve mutually beneficial and remarkable results. There is no short-term gain at Lennard, long-lasting relationships are what keep our business growing. Our entrepreneurial spirit keeps us grounded and always in tune with the community we are part of. Our extensive experience and broad expertise, in conjunction with our key connections and strategic partners makes us the team of choice for organizations large and small.

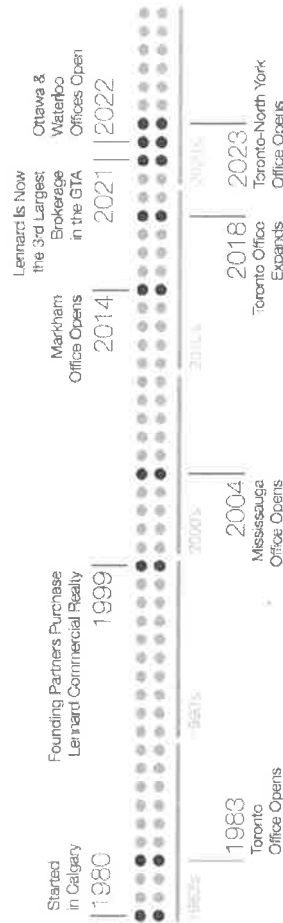
Our History

Lennard was founded in 1980 by Gordon H. Lennard in Calgary, Alberta. After a remarkable career as a Senior Executive with CIBC, Gordon ventured into commercial real estate, establishing Lennard Corporation. Soon after its inception, the Toronto office was opened on June 29, 1983. Jim Russell joined the company in Calgary in 1984 and moved to Toronto in 1986 to build up Lennard's Toronto team. Jim was joined shortly thereafter by Andy Baker and Dan Hunt, and on April 20, 1999 Jim, Andy and Dan purchased the company from Gordon and Beth Lennard and created what we know today as Lennard Commercial Realty.

The three entrepreneurs dreamed of building a multi-disciplinary Canadian commercial real estate brokerage like no other. A brokerage:

- with only high-performing, successful and well-respected professionals
- with the best tools and support but without any corporate red tape
- inspired by a culture promoting freedom, collaboration and work-life balance

Today, over 40 years later and with more than 170 employees across 6 offices in Ontario, Lennard's entrepreneurial spirit still thrives and we continue to grow.



Lennard:

Full Service Platform Company Profile

Lennard:

Associations

Lennard Commercial is an active, contributing member of NAIOP.

NAIOP provides access to over 18,000 real estate service providers across 51 chapters in North America, providing coverage for all aspects of commercial real estate.

NAIOP chapter members provide a broad range of top quality real estate services at the local and national levels. Your project is supported by up to date information on current trends and innovations anywhere in North America.



Lennard is proud to be a part of many associations, some of these include:

- ARIDO – Association of Registered Interior Designers of Ontario
- BOMA – Building Owners & Managers Association of Toronto
- CAWIC – Canadian Association of Women in Construction
- CIPREC – Canadian Institute of Public Real Estate Companies
- CIPEI, CCIM – Commercial Investment Real Estate Institute
- CREA – Canadian Real Estate Association
- CREW - Toronto Commercial Real Estate Women
- GTHBA – Greater Toronto Home Builders' Association
- NACORE – International Association of Corporate Real Estate Executives
- OAAIC – Ontario Association - Appraisal Institute of Canada
- OIS – Ontario Investment Service
- OREA – Ontario Real Estate Association
- RealPac – Real Property Association of Canada
- Realtor.ca
- RECO – Real Estate Council of Ontario
- REIC – Real Estate Institute of Canada
- SIOR – Society of Industrial and Office Realtors
- Toronto Venture Group
- TREB – Toronto Real Estate Board
- WIRE – Women in Real Estate
- WXN - Women's Executive Network

Other associations can be found on our website, lennard.com/about/associations.

Lennard:

Recognitions & Awards

Lennard has been nominated to the Canada's 10 Most Admired Corporate Cultures Program for several consecutive years.

Lennard has been awarded the NAIOP REX (Real Estate Excellence) Office Deal of the Year, for its unique 77,000 SF transaction with Thomas Cook (Red Label Vacations) at 75 Eglinton Avenue East.

Lennard has also been a finalist for the NAIOP REX Office Deal of the Year and NAIOP REX Industrial Deal of the Year, for design build negotiations on behalf of Winners, and for work with Transcontinental Printing, respect.

Lennard has won Oxford Properties Largest New Transaction Award.

Lennard is the listing agent for Polaris Portfolio of properties in the Airport Corporate Centre, a portfolio consisting of 8 buildings and over 1.1 million square feet.

Lennard National brand provides services to such tenants as Transcontinental Inc., Nestlé, Richardson Partners Financial, KONE Elevators, Global Public Affairs, Teranet, CIBC Mellon, Canadian Press, and Strategic Coach.

Lennard continues to publish its quarterly market report, The Q™, with a large circulation in the GTA among Canada's top real estate thinkers.

Full Service Platform Company Profile

Lennard:

Real Estate Resources

The following is a list of resource services that can be accessed. Lennard can also incorporate other research tools into the project architecture.



AltusGroup

Altus Data Studio

A powerful online real estate research tool that tracks available space, occupancy and operating costs, current deals and new developments.



AltusGroup | RealNet

RealNet & RealNet New Homes

An online research tool that tracks all commercial sales transactions over \$1M. Detailed research on over \$130B worth of commercial property transactions.

Lennard:

Lennard Proprietary TRS Database & Tools
A database that consolidates and organizes thousands of real estate transactions to establish important market background information.



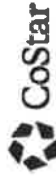
TRREB, OREB & MLS

Multiple Listings Service tracks available space throughout Ontario including the Toronto Regional Real Estate Board and the Ottawa Real Estate Board.



MapYourProperty

An all-in-one online platform for planning, zoning, and development mapping.



Costar

Our source for commercial real estate intelligence. Provides information on Office, Investment, Retail, Industrial, Land availabilities and lease analysis.



The "Q" Market Commentary

Our highly regarded quarterly report tracks current Office, Industrial and Investment commercial real estate trends in all markets across the GTA.



GeoWarehouse

GeoWarehouse contains detailed information about investment properties, such as current and past owners, Lot sizes, current and past listing prices and property taxes.



Kitchener-Waterloo Real Estate Board

Multiple Listings Service tracks available space in Kitchener-Waterloo and interboards with 21 other Real Estate Boards across Ontario.



Urbanation

Industry leading research on the condominium, rental, and commercial property markets.

Lennard:



Prepared By:

Alastair Strachan*

Senior Vice President

Lennard Commercial

416.346.9500

astrachan@lennard.Com

SCHEDULE "P"

Downtown Whitby Mixed Use Redevelopment Site

For Sale: 0.89 Acres

132 & 146 Brock Street N

Being Sold Under Receivership

Lennard:


Alastair Strachan**, SVP
416.346.9500
astrachan@lennard.com


lennard.com

132 & 146 Brock Street N, Whitby



132 & 146 Brock Street N, Whitby

 Available Acreage
0.89 ac. (approximately)

 Sale Price
\$4,425,000

Interim Taxes

132 Brock St - \$5,214.19

146 Brock St - \$13,901.35



Listing Agent

Alastair Strachan*

Senior Vice President

416.346.9500

astrachan@lennard.com

*Sales Representative **Broker

Property Highlights

- Downtown Whitby redevelopment site
- Existing income of about \$52,200 from two tenants - lease termination rights
- Planning permission for 97,000 SF
- Being sold under Receivership
- Rectangular, flat site, serviced
- Application for Redevelopment
- Municipal planning overview report available



Lennard: Alastair Strachan*, Senior Vice President | 416.346.9500 • astrachan@lennard.com

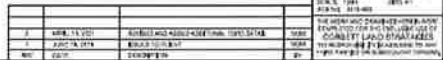
*Sales Representative

lennard.com

132 & 146 Brock Street N, Whitby



Survey



Lennard:

Alastair Strachan*, Senior Vice President
416.346.9500
astrachan@lennard.com

602-350 Burnhamthorpe Road W, Mississauga
905.625.5020
lennard.com

*Sales Representative **Broker

Statements and information contained are based on the information furnished by principals and sources which we deem reliable but for which we can assume no responsibility. Lennard Commercial Realty, Brokerage.

SCHEDULE "Q"

CONFIDENTIAL APPENDIX “2”

SCHEDULE "R"



Town of Whitby By-law # 8172-25

By-Law to Authorize the Acquisition of Lands from Pollard & Associates Inc. as Court-appointed Receiver

Being a By-law to acquire ownership of lands municipally known as 132 and 146 Brock Street North and legally described as firstly LT 4 PL H50030 Whitby; LT 5 PL H50030 Whitby; PT LT 2 PL H50030 Whitby; PT LT 3 PL H50030 Whitby PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W D544453 Subject to an easement as in CO231663, being all of PIN 26535-0187 (LT); secondly PT LT 36 PL H50030 Whitby PT 6 40R12737, S/T D490776, being all of PIN 26535-0209 (LT); and thirdly PT LT - 2-3 PL H50030 Whitby as in D552683 T/W D552683, being all of PIN 26535-0186 (LT), all in the Town of Whitby, Regional Municipality of Durham (collectively the "Lands") from Pollard & Associates Inc. solely in its capacity as Court-appointed receiver (the "Receiver") of Cacoeli Whitby LP, 11275127 Canada Inc. and 11250396 Canada Inc. (collectively, the "Debtors").

Whereas Section 9 of the Municipal Act, 2001, S.O. 2001, c.25 as amended, grants municipalities the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

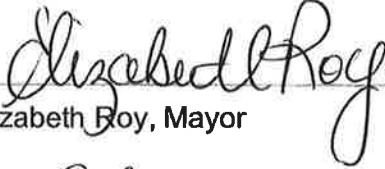
And whereas the Council of The Corporation of the Town of Whitby has authorized the acquisition of the Lands from the Receiver in accordance with Financial Services Department Report, FS 49-25;


Now therefore, the Council of the Corporation of the Town of Whitby hereby enacts as follows:

1. General

- 1.1. That the land legally described as firstly LT 4 PL H50030 Whitby; LT 5 PL H50030 Whitby; PT LT 2 PL H50030 Whitby; PT LT 3 PL H50030 Whitby PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W D544453 Subject to an easement as in CO231663, being all of PIN 26535-0187 (LT); secondly PT LT 36 PL H50030 Whitby PT 6 40R12737, S/T D490776, being all of PIN 26535-0209 (LT); and thirdly PT LT - 2-3 PL H50030 Whitby as in D552683 T/W D552683, being all of PIN 26535-0186 (LT), all in the Town of Whitby, Regional Municipality of Durham be conveyed to the Corporation of the Town of Whitby from the Receiver.
- 1.2. That the Chief Administrative Officer and the Commissioner, Financial Services/Treasurer are hereby authorized to execute all documents to effect the acquisition of the said Lands.

By-law read and passed this 24th day of March, 2025.


Elizabeth Roy, Mayor


Christopher Harris, Town Clerk

SCHEDULE "S"



Cacoeli Whitby LP

From Angela Pollard <akpollard@pollardandassoc.ca>

Date Wed 3/19/2025 10:49 AM

To Eric Wierdsma <eric.wierdsma@ghd.com>; Robert Neck <robert.neck@ghd.com>

Cc Calvin Ho <cho@laishleyreed.com>; Santaguida, Francesco <santaguidaf@whitby.ca>; Wong, Fuwing <wongf@whitby.ca>; Scott, Laura <scottla@whitby.ca>

Mr. Wierdsma & Mr. Neck

Further to our recent conversation, on August 30, 2024, a Court Order was issued by the Honourable Mr. Justice Penny appointing Pollard & Associates Inc., Receiver over the assets, undertaking and property of Cacoeli Whitby LP also known as Cacoeli Whitby Limited Partnership, 11275127 Canada Inc., and 11250396 Canada Inc. (the "Court Order"). We have enclosed a copy of the Court Order for your records.

As outlined in the Court Order, Pollard & Associates Inc. was appointed receiver of lands and premises registered in the name of 11250396 Canada Inc. in its capacity as general partner of Cacoeli Whitby LP and 11275127 Canada Inc., municipally known as 132 Brock Street North and 146 - 152 Brock Street North, Whitby, Ontario.

Pollard & Associates Inc., as Court Appointed Receiver of Cacoeli Whitby LP hereby authorizes The Corporation of the Town of Whitby to contact GHD and hereby provides its consent to GHD to provide a reliance letter or reliance letters or assurances directly to The Corporation of the Town of Whitby in relation to the environmental reports prepared by GHD for the property located at 132 Brock Street North and 146 - 152 Brock Street North, Whitby.

If you should have any questions or concerns, please contact the undersigned.

Angela K. Pollard, CMA, CPA, FCIRP, CFE, ICD.D, LIT
Pollard & Associates Inc.
31 Wright Street
Richmond Hill, Ontario, L4C 4A2
905-884-8191

SCHEDULE "T"

POLLARD & ASSOCIATES INC.

solely in its capacity as Court-appointed receiver of all of the assets, properties and undertakings of Cacoeli Whitby LP, 11250396 Canada Inc., and 11275127 Canada Inc. (collectively, the "Debtors") and on behalf of the Debtors and not in its personal capacity and without any personal or corporate liability

- and -

THE CORPORATION OF THE TOWN OF WHITBY

AGREEMENT OF PURCHASE AND SALE

MARCH 18, 2025

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE is made as of March 18, 2025.

BETWEEN:

POLLARD & ASSOCIATES INC., solely in its capacity as Court-appointed receiver of Cacoeli Whitby LP, 11275127 Canada Inc. and 11250396 Canada Inc. (collectively, the "**Debtors**") and on behalf of the Debtors and not in its personal capacity and without any personal or corporate liability

(the "**Vendor**" or "**Receiver**")

- and -

THE CORPORATION OF THE TOWN OF WHITBY

(the "**Purchaser**")

RECITALS:

A. Pursuant to the Appointment Order (as defined herein), the Vendor has been appointed the receiver of the current and future assets, undertaking and properties of the Debtors;

B. Pursuant to the Appointment Order and approval of the Court (as defined herein), the Vendor has the power and authority to, *inter alia*, sell, convey and transfer the Debtors' assets, undertaking and properties;

C. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Purchased Assets (as defined herein), subject to and in accordance with the terms and conditions contained herein and the approval of the Court.

NOW THEREFORE in consideration of the premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Parties (as defined herein) hereto covenant, agree and declare as follows:

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ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms will have the following meanings:

"Acceptance Date" means the date upon which this Agreement is executed and delivered by the Receiver and the Purchaser;

"Agreement" means this agreement, and all schedules attached to this agreement, in each case as they may be amended or supplemented from time to time, and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement. Unless otherwise indicated, references to **"Articles"**, **"Sections"** and **"Schedules"** are to articles and sections and schedules of this agreement;

"Applicable Law" means collectively, (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and (ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority having the force of law;

"Appointment Order" means the Order made by the Honourable Justice Penny of the Court on August 30, 2024 appointing the Vendor as the receiver of the Debtors;

"Approval and Vesting Order" means an order or orders to be made by the Court upon terms acceptable to the Parties, acting reasonably, that alone or in combination, among other things, (i) authorizes the Vendor to enter into this Agreement and sell the Purchased Assets pursuant to and in accordance with this Agreement and approves same, and (ii) provides that, upon Closing, all the Debtors' right, title and interest in the Purchased Assets sold pursuant to this Agreement shall irrevocably vest in the Purchaser or as the Purchaser may further direct, free and clear of all registered or unregistered liens, claims and encumbrances;

"Business Day" means any day, other than Saturday, Sunday or any statutory holiday in the Province of Ontario;

"Closing" means the completion of the Transaction;

"Closing Date" means a date no later than ten (10) days after the issuance of the Approval and Vesting Order agreed to in writing by the Parties, acting reasonably, or such other date, after issuance of the Approval and Vesting Order, that the Parties may agree, in writing, acting reasonably;

"Court" means the Ontario Superior Court of Justice (Commercial List);

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"Governmental Authority" means any agency, board, bureau, court, commission, department, legislature, parliament or tribunal, or any federal, provincial, territorial, municipal, local or other governmental entity or authority, but does not mean The Corporation of the Town of Whitby acting as Purchaser in this Agreement;

"Liability" or "Liabilities" means any and all liabilities, obligations, charges, costs, debt and indebtedness, of any and every kind and nature whatsoever, absolute or contingent, liquidated or unliquidated;

"Parties" means the Vendor and the Purchaser;

"Person" means any individual, partnership, limited partnership, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority, however designated or constituted;

"Property" means the lands and premises described in Schedule A hereto;

"Purchased Assets" has the meaning attributed to such term in Section 2.1;

"Purchase Price" means the aggregate of the amounts to be paid pursuant to Section 3.1;

"Tax" or "Taxes" means any federal, provincial, state, local, foreign or other income, gross receipts, profits, franchise, transfer, sales, use, customs, payroll, occupation, health, property, excise, valued added (including goods and services tax) or other taxes, fees, duties, assessments, withholdings or governmental charges of any nature (including interest, penalties and additions to such taxes or charges);

"Terms and Conditions of Sale" means the terms and conditions of sale of the Vendor pertaining to the tender of offers to be received in accordance with the Sale Process;

"Time of Closing" means 11 a.m. on the Closing Date or such other time on the Closing Date as agreed to by the Parties;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement;

"Vendor's Solicitors" means Laishley Reed LLP;

1.2 Schedules

The following schedules form part of this Agreement:

- (a) Schedule "A" - Description of Purchased Assets

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1.3 Headings

The division of this Agreement into separate Articles, Sections and Schedules, the provision of a table of contents and the insertion of headings is for convenience of reference only and will not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and will be paid in Canadian currency.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by Applicable Law, the Parties waive any provision of law that renders any provision of this Agreement invalid or unenforceable in any respect. The Parties will engage in good faith negotiations to replace any provision that is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision that it replaces.

1.7 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.8 "Including"

All usage of the word "including" in this Agreement will mean "including without limitation" or "including but not limited to" throughout this Agreement.

1.9 Statutory References

Any reference to a statute will mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided.

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1.10 Date for Any Action

When calculating the period of time within which or following which any act is to be done or step taken, the date that is the reference day in calculating such period will be excluded. If the last day of such period is not a Business Day, the period will end on the next Business Day.

1.11 Recognized Meanings

Words or abbreviations that have well known or trade meanings are used herein in accordance with their recognized meanings.

1.12 Arm's Length Negotiations

The Parties acknowledge that they are dealing with one another at arm's length. This Agreement will not be construed in favour of or against either Party by reason of the extent to which either Party or its professional advisors participated in the preparation of this Agreement.

**ARTICLE 2
PURCHASE AND SALE OF ASSETS**

2.1 Purchased Assets

Subject to the provisions of this Agreement and pursuant to the Approval and Vesting Order, the Vendor will sell, assign and transfer to the Purchaser and the Purchaser will purchase from the Vendor, effective as of the Time of Closing on the Closing Date, all of the right, title and interest of the Debtors, if any, in and to all of the Debtors' Property further described in Schedule "A" hereto. All of the foregoing are hereinafter collectively called the "**Purchased Assets**").

2.2 Acknowledgments by Purchaser

The Purchaser acknowledges that:

- (a) the interest of the Debtors in the Purchased Assets may be limited and the Vendor will be obliged to convey to the Purchaser only such interest as the Debtors have therein and no interest of any third party, provided that nothing in this subsection 2.2(a) shall be applied or construed so as to derogate from the title or interest acquired by the Purchaser pursuant to and in accordance with the Approval and Vesting Order. To the extent that any obligation of the Vendor requires the co-operation or assistance of any third party, the Vendor will not be required to compel any such co-operation or assistance for the purposes of making any conveyance to the Purchaser.

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- (b) the Purchaser shall be solely responsible for obtaining all consents required by the Purchaser in accordance with the terms hereof to the assignment and transfer to the Purchaser of the Purchased Assets. The Vendor agrees that it will do or cause to be done such things as are reasonably requested by the Purchaser in order to assist the Purchaser to obtain required consents provided that the Vendor shall have no obligation to obtain any consents or to provide or pay any consideration or incur any costs to obtain such consents;
- (c) the Purchaser has inspected the Purchased Assets, has relied entirely upon its own inspection and investigation, and is purchasing the Debtors' right, title and interest, if any, in and to the Purchased Assets on an "as is, where is" basis as they exist at Closing with no recourse to the Vendor and that there is no representation, warranty or condition, express or implied, statutory or otherwise, as to the title, encumbrances, description, fitness for any purpose, merchantability, quality, quantity, state, condition (environmental or otherwise), defect (patent or latent), existence, location, value, the validity or enforceability of any rights (including intellectual property rights), any requirement to licences, permits, approvals, consents for transfer, ownership, occupation or use, compliance with any governmental laws, regulations, by-laws and orders or in respect of any other matter or thing whatsoever, except for the express warranties and representations contained in Article 4. Without limiting the generality of the foregoing, no condition, warranty or representation provided for or implied by any statute or regulation of the Province of Ontario has been or will be given by the Vendor, and the Purchaser expressly waives all express or implied conditions, warranties and representations by the Vendor;.
- (d) Without limiting the generality of paragraph (c), the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all representations and warranties with respect to the following matters:
 - (i) the description, title, condition, state of repair and fitness for any purpose of the Purchased Assets;
 - (ii) the compliance of the Property with: zoning by-laws and regulations; or applicable fire and building codes, including without limitation, the existence of any outstanding work orders, deficiency notices, orders to comply or the like;
 - (iii) any easements, rights of way or other registered or unregistered interest in the Property which impacts the plot use enjoyment or development opportunities connected with the Property;

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- (iv) that the present use or any future use of the Property intended by the Purchaser is or will be lawful or permitted;
 - (v) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (vi) that the Receiver has any right, title or interest in any goodwill associated with the Property, or the use of any name associated with the operation of the Property;
 - (vii) the compliance of the Property with environmental laws or the existence or non-existence of hazardous materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property; and
 - (viii) the existence of, or intention to commence, expropriation proceedings by a Governmental Authority in regard to any part or parts of the Purchased Assets (the Purchaser acknowledges having been advised that the Receiver has an indication that such proceedings have been commenced).
- (c) any asset lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, and no condition, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;
- (f) the Vendor is entering into this Agreement solely in its capacity as Court-appointed receiver of the assets, undertakings and properties of the Debtors pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;
- (g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, and save and except any objection going to the root of title which the law allows to be made and which is made after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to all applicable laws, by-laws

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and regulations affecting its use. If any such valid objection going to the root of title shall be made by the Purchaser prior to the Closing Date, which the Receiver is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by Notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit shall be forthwith returned to the Purchaser without deduction and each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;

- (h) the Purchaser shall accept title to the Purchased Assets subject to the original Grant from the Crown, the exceptions and qualifications contained in paragraphs 7, 8, 9, 10, 12 and 14 of Subsection 44 (1) of the Land Titles Act; any liens, security interests, encumbrances, encroachments, easements, rights-of-way, restrictions, leases, agreements with Governmental Authorities, agreements with adjoining property owners, and any outstanding work orders, building permits, deficiency notices or orders to comply or the like issued by any Government Authority, and
- (i) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver.

2.3 The Purchaser further acknowledges and agrees that:

- (a) there shall not be, surviving Closing, any express or implied representation or warranty by the Receiver or any condition as to title, merchantable quality, fitness for any purpose or otherwise, except to the extent expressly provided for in this Agreement;
- (b) the Approval and Vesting Order shall provide that the Receiver, upon the conditions to Closing, as set forth in Section 6.1 and Section 6.3 of this Agreement, having been satisfied or (subject to Section 6.3) waived by the Receiver and the Purchaser, respectively, in accordance with the terms of this Agreement, shall file a certificate with the Court substantially in the form attached to the Approval and Vesting Order (the "Receiver's Certificate") and that title to the Purchased Assets shall vest in the Purchaser (or a Permitted Assign and/or a nominee titleholder for the Purchaser or such Permitted Assign) effective immediately upon the execution of the Receiver's Certificate;
- (c) despite issuance of the Approval and Vesting Order, the Purchaser (or such Permitted Assign and/or nominee title holder for the Purchaser or such Permitted Assign) shall have no rights thereunder, nor any right, title or interest in the

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Purchased Assets until the Receiver's Certificate is executed by the Receiver, as aforesaid; and

- (d) by no later than ten (10) Business Days following the date of this Agreement, the Purchaser shall provide an assignment and assumption agreement along with a written direction to the Receiver setting forth the name in which title to the Property will be taken. The Purchaser shall cause any nominee title holder to execute and deliver any instruments to be registered on title under the terms of this Agreement;
- (e) the Receiver shall make available to the Purchaser at the office of the Receiver, immediately following Closing, copies of all correspondence, records, files, books of account, operating manuals, plans, surveys and other documents pertaining to the operation of the Property in the Receiver's possession, other than documents, books and records which the Receiver is required by law to retain or which the Receiver reasonably believes it has a duty to retain (and the Receiver shall make copies for the Purchaser of all such documents);
- (f) the Receiver shall make available to the Purchaser at the office of the Receiver, immediately following Closing, all duplicate keys and master keys for the Property that are within the Receiver's possession;
- (g) all other documents which are required and which the Purchaser has reasonably requested prior to Closing to give effect to this Transaction in accordance with the terms of this Agreement.

All documentation referred to in this section, except as otherwise provided herein, shall be in form and substance acceptable to the Purchaser and the Receiver each acting reasonably.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price to be paid by the Purchaser to the Vendor for the Purchased Assets shall be [REDACTED] ("Purchase Price").

3.2 Deposit Price

The Purchaser has delivered to the Vendor a deposit in the amount of SEVEN HUNDRED TWENTY THOUSAND Dollars (\$720,000.00) by electronic funds transfer using

the Large Value Transfer System (the "Deposit") to be held in trust pending completion of this Agreement and to be credited toward the Purchase Price on completion, without interest earned, received or paid on the Deposit or credited to the Purchaser on the Closing Date. (the "Deposit")

3.3 Allocations re Purchase Price

On or before the Closing Date, the parties shall reasonably agree as to the manner in which the Purchase Price shall be allocated as between the Purchased Assets. The allocation between the Purchased Assets shall not be based upon or related to the amount used as a threshold for calculating any adjustments, as provided herein. In the event that the parties are unable to agree as to such allocation then each shall be free to make its own allocation of the Purchase Price acting reasonably.

3.4 Payment

The Parties agree that, at the Time of Closing, the Purchaser shall pay the balance of the Purchase Price, subject to the adjustments as provided for herein, by wire or electronic funds transfer from a Canadian chartered bank to the Vendor's Solicitor, in trust or as it might otherwise direct in writing, in the amount of the balance due on closing.

3.5 Taxes, Purchase Exemption Certificates and Elections

The Purchaser will be liable for and will pay at the Time of Closing all applicable retail sales taxes (including any harmonized sales taxes and goods and services taxes under the *Excise Tax Act* (Canada) (the "HST") and all other transfer taxes, duties or other like charges payable upon or in connection with the purchase of the Purchased Assets by the Purchaser, unless the Purchaser provides the Vendor with valid exemption certificates acceptable to the Vendor, acting reasonably. Regardless of whether or not the Purchaser provides the Vendor with any such exemption certificates, the Purchaser shall indemnify the Vendor from and against all claims, liabilities, costs and fees (including legal fees on a full indemnity basis) arising out of the Purchaser's failure to pay any such taxes. If available at law, the Vendor and the Purchaser will jointly execute on or prior to the Time of Closing an election under Section 167 of the *Excise Tax Act* (Canada) to permit the Purchased Assets to be transferred free of HST and the Vendor and the Purchaser will file such elections with the Canada Revenue Agency with their respective HST returns for the period in which the Closing Date occurs. The Vendor acknowledges and agrees that, pursuant to subsection 221(2) of the *Excise Tax Act* (Canada) and provided that the Purchaser, or its lawful permitted assignee, is a registrant with a valid HST number as at the Time of Closing, the Purchaser shall be permitted to self-assess and remit the applicable HST.

3.6 Realty Taxes

- (a) Notwithstanding any other provision of this Agreement, the Purchaser acknowledges and agrees that there shall be no adjustment in favour of the Purchaser for any increase in realty taxes for the Property resulting from changes in the assessed value of the Property in respect of any period prior to the Closing Date. Without limiting the foregoing, the Purchaser acknowledges and agrees that, notwithstanding any other provision of this Agreement, the Receiver shall have no obligation or liability of any kind whatsoever for payment of any additional or supplementary taxes that may become payable in respect of the year of Closing and/or prior taxation years as a result of Reassessments.
- (b) In the event that there are any realty tax appeals, reassessments or vacancy rebate applications for any year prior to and including 2024, the Receiver may, at its option, continue such appeals, reassessments and/or applications and shall be entitled to receive any refund, rebate, credit, reimbursement or payment ("Refund") resulting therefrom except to the extent that such Refund is properly payable to any tenants of the Property and shall make any payments in respect of realty taxes for the period prior to the Closing Date arising therefrom to the applicable Governmental Authority. Any Refund for the 2024 calendar year (after deduction of out-of-pocket expenses expended by the Purchaser and/or the Receiver in conducting any such appeal, reassessment or application, including any commissions payable to agents or consultants) shall, except to the extent that any portion of such Refund is properly paid to the tenants of the Property, be readjusted as of the Closing Date after the conclusion of any assessment appeal or application review. The Purchaser agrees to co-operate with the Receiver with respect to all such appeals, reassessments and applications and to provide the Receiver with reasonable access to any necessary documents or materials required to continue any such appeals, reassessments or applications. To the extent the Purchaser receives any Refund relating to realty taxes (whether in cash, by credit on its current tax bill or otherwise) for the period prior to the Closing Date, the Purchaser shall forthwith pay an amount equal to the Refund to the Receiver and/or endorse and deliver to the Receiver all such Refund payment cheques forthwith upon receipt; provided that in all cases, readjustments with the Tenants as the result of any Refunds may be effected by the Purchaser prior to the payment of any Refund to the Receiver or to the Purchaser (subject to the prior approval of the Vendor acting reasonably) and the amount otherwise owing to the Vendor in accordance with the foregoing shall be reduced by any amount paid to any tenants as a result of any such adjustments. To the extent the Receiver receives payment of any Refund relating to realty taxes for the period prior to the Closing Date which is properly payable to tenants of the Property, the Receiver shall hold such

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Refund in trust for the tenants entitled thereto and shall promptly pay the amounts owing to the Purchaser in trust, in order that the Purchaser may make such payments to such tenants on account of such Refund (which the Purchaser covenants to do).

- (c) The Purchaser further acknowledges and agrees that the Approval and Vesting Order to be requested by the Receiver shall provide that title to the Purchased Assets shall vest in the Purchaser subject to any potential liability for increased realty taxes (including, without limitation, any increases in taxes and/or supplementary taxes in respect of the current taxation year and taxation years *prior* to Closing) as a result of the Reassessments and that all such potential liability for increased and/or supplementary taxes will be a "permitted encumbrance" under the Approval and Vesting Order.

3.7 Registration and Other Costs

Except as otherwise provided herein, each of the Receiver and the Purchaser shall be responsible for its own costs (including without limitation costs of its solicitors and respective real estate agents and brokers) in respect of this Transaction. The Purchaser shall be responsible for the cost of registering notice of the Approval and Vesting Order, including all applicable land transfer taxes, and for any other sales and transfer taxes (including but not limited to Provincial Sales Tax and HST) payable in connection with the transfer of the Purchased Assets to the Purchaser pursuant hereto.

3.8 Electronic Registration

If the Transaction will be completed by electronic registration (through use of the "Teraview Electronic Registration System" or "TERS") the following provisions shall govern:

- (a) The Purchaser shall retain a solicitor who is authorized to use the Teraview Electronic Registration System and who is in good standing with the Law Society of Upper Canada. The Receiver and the Purchaser shall cause their respective solicitors to enter into a document registration agreement ("DRA") in the most recent form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents to govern the electronic registration of any documents intended to be registered in connection with the completion of this Transaction.
- (b) The delivery and exchange of the closing documents and money provided for in this Agreement and the release of them to the Purchaser and the Receiver, as the case may be: (i) shall not occur at the same time as registration of the Approval and Vesting Order (and any other documents intended to be registered in

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connection with the completion of this Transaction); and (ii) shall be governed by the DRA, pursuant to which the solicitor receiving the closing documents and/or funds will be required to hold them in escrow and will not be entitled to release them except in accordance with the terms of the DRA.

- (c) Any documents not intended for registration on title to the Property may be delivered to the other party's solicitor by electronic mail, provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto. The party transmitting any such documents shall also deliver the original documents to the recipient party's solicitor within two (2) Business Days after the Closing Date, if the delivery of the original documents has been requested by the recipient party or its solicitor.
- (d) If the Purchaser is unable to register the Approval and Vesting Order electronically on the Closing Date as the result of any malfunction, delay or temporary unavailability of the Teraview Electronic Registration System, then the Closing Date shall be automatically extended until the next day on which such system is operating so as to permit electronic registrations in the Land Titles Office.
- (e) Notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this paragraph called the "Tendering Party") upon the other party (in this paragraph called the "Receiving Party") when the solicitor for the Tendering Party has:
 - (i) delivered all applicable closing documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
 - (ii) advised the solicitor for the Receiving Party in writing that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the provisions of this Agreement;
 - (iii) completed all steps required by TERS to complete the Transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the Application to Register the Approval and Vesting Order (and any other registrable documents) for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing such documents for registration by the Receiving Party's solicitor);

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without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents and/or funds and without the requirement to have an independent witness evidencing the foregoing.

ARTICLE 4

REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 By Vendor

The Vendor represents, warrants and covenants to the Purchaser as follows and acknowledges that the Purchaser is relying on such representations, warranties and covenants in connection with the terms and conditions of this Agreement:

- (a) subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the power and authority to sell the Purchased Assets to the Purchaser, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order;
- (b) the Vendor has done no act to encumber the Purchased Assets except in accordance with the Appointment Order and has not disposed of the Purchased Assets; and
- (c) the Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).

4.2 No Other Representations

Except as set forth in this Agreement, the Vendor makes no covenants, representations or warranties whatsoever, including with respect to the condition of the Purchased Assets and the sufficiency or condition of the Debtors' title thereto.

4.3 By Purchaser

The Purchaser represents, warrants and covenants to the Vendor that:

- (a) the Purchaser is a municipal corporation duly incorporated, organized and a subsisting corporation under the laws of the Province of Ontario and, subject to Section 6.1 (d) of this Agreement, the Purchaser shall have all necessary corporate power and authority to enter into this Agreement and carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder shall be duly authorized by all necessary corporate action on the part of the Purchaser and this Agreement and the documents to be delivered pursuant hereto are valid and binding obligations

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of the Purchaser enforceable against the Purchaser in accordance with their respective terms;

- (b) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada) and at the Time of Closing will be a registrant for the purposes of the *Excise Tax Act* (Canada) with a valid HST number; and
- (c) until the completion of the Transaction at Time of Closing, all documents and information received by the Purchaser, its representatives, auditors or counsel, from the Vendor or the Debtors or their respective representatives, auditors or counsel, will be treated as strictly confidential and will not be disclosed to others by the Purchaser except to the Purchaser's agents, employees, professional advisors and bankers on a "need to know" basis for the purposes of the Transaction. The Purchaser further agrees that unless and until the terms of this Agreement become public knowledge in connection with the Approval and Vesting Order, the Purchaser shall keep such terms confidential and shall not disclose the same to anyone except the Purchaser's agents, employees, professional advisors or bankers on a "need to know" basis in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

4.4 Representations and Warranties on Closing Date

All representations and warranties set forth in this Article 4 will be true and correct on and as of the Time of Closing with the same force and effect as if made on and as of such date.

4.5 No Finder's Fee

Each of the Parties represents and warrants to each other that such Party has not taken, and agrees that it will not take any action that would cause any other Party to become liable to any claim or demand for a brokerage, finder's fee or other similar payment in regard to the Transaction.

4.6 Survival of Covenants, Representations and Warranties

To the extent that they have not been fully performed at or prior to the Time of Closing, the covenants contained in this Agreement and in all certificates and documents delivered pursuant hereto will survive the Closing contemplated hereby.

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ARTICLE 5 ASSUMPTION OF LIABILITIES

5.1 Assumed Obligations

The Purchaser shall not assume any Liabilities of the Debtors or the Vendor other than as expressly set out herein. The Purchaser agrees to assume each of the following on Closing:

- (a) Subdivision, site-plan, development or other municipal agreements; and
- (b) Minor encumbrances, including without limitation, servitudes, encroachments, easements, rights-of-way, restrictive covenants or other similar rights in land granted to or reserved by other persons, rights-of-way for sewers, electric lines, telegraphs and telephone lines and other similar purposes.

5.2 Tenancies

- (a) The Purchaser agrees to assume any existing tenancies in accordance with the terms of the tenancies. The Receiver makes no representations whatsoever with respect thereto and the Receiver shall provide to the Purchaser on Closing only documentation relating to those tenancies which it has in its possession. The Receiver shall not be required to provide any documentation signed by the tenants confirming the status of the tenancies or provide a notification to the tenants regarding future rent payments. The Receiver shall further not be obliged to credit on closing any current or pre-paid rent, or other adjustments in favour of the Purchaser other than for rent actually received by the Receiver
- (b) On Closing, the Receiver shall deliver to the Purchaser: (i) copies of all leases in its possession or control; and (ii) directions to tenants (which need not be individually addressed or individually signed) authorizing and directing the tenants to pay future rents to the Purchaser or its management agent if it so directs.

ARTICLE 6- CONDITIONS

6.1 Conditions in Favour of the Purchaser

The Purchaser's obligations under this Agreement are conditional upon the performance of or compliance with the following terms and conditions (which are included in this Agreement for the benefit of the Purchaser and where applicable, may be waived in writing in whole or in part by the Purchaser at any time):

- (a) the representations and warranties of the Vendor set forth in Article 4 hereof shall be true and correct as of the Time of Closing and have the same force and effect as if made at and as of such time;

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- (b) at the Time of Closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before a court of competent jurisdiction, to prevent or otherwise adversely affect the purchase and sale of the Purchased Assets or any portion thereof pursuant to this Agreement;
- (c) the Vendor shall have executed and delivered all necessary agreements, instruments and documentation, and complied with all the terms, covenants and conditions of this Agreement to be performed or complied with by the Vendor to conclude the Transaction at or prior to the Time of Closing.
- (d) Notwithstanding Section 6.2(a), on or before 16:30h on March 25th, 2025, the Purchaser completing all acts, matters, things necessary or desirable to effect the purchase of the Property from the Vendor, including, without limitation, consideration and approval of this Agreement by Council for The Corporation of the Town of Whitby (i.e., the Purchaser) as well as consider the enactment of the applicable by-law to purchase the Property in accordance with the terms and conditions set out in this Agreement, duly and properly passing all necessary by-laws or resolutions.
- (e) the Vendor authorizes the Purchaser to contact the authors of the Environmental Reports and the Vendor shall provide its consent on or before March 25, 2025 to the authors for the Environmental Reports to provide a reliance letter or reliance letters or assurances directly to the Purchaser in relation thereto.

For certainty, nothing in this condition 6.1(e) creates a representation or warranty or condition, expressed or implied, statutory or otherwise on behalf of the Vendor with respect to the environmental condition of the Purchased Assets.

- (f) the Vendor shall provide the Purchaser with all consents or authorizations (written or otherwise) and/or Court orders necessary or desirable to enable the Vendor to assign, and the Purchaser to assume carriage of any rights and responsibilities, of the Vendor in the Ontario Land Tribunal ("OLT") matters to which the Debtors are identified as an applicant, appellant or party related to the Purchased Assets, as described in the table below upon Closing.

	OLT Case Number	Debtor(s) party to the OLT Case Number
i)	OLT-22-004776	11250396 Canada Inc. Cacoeli Whitby LP (aka Cacoeli Whitby Limited Partnership)

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ii)	OLT-22-004777	11250396 Canada Inc. Cacoeli Whitby LP (aka Cacoeli Whitby Limited Partnership)
iii)	OLT-24-000115	11250396 Canada Inc. Cacoeli Whitby LP (aka Cacoeli Whitby Limited Partnership)

6.2 Purchaser's Right to Terminate

(a) If any of the conditions contained in Section 6.1 (a), (b) and (c) are not performed or fulfilled at or prior to the Time of Closing to the reasonable satisfaction of the Purchaser or where applicable, waived by the Purchaser, the Purchaser may terminate this Agreement by notice to the Vendor, and in such event the Deposit shall be returned to the Purchaser forthwith without interest or deduction, and the Vendor and the Purchaser will be released from all obligations hereunder.

(b) If any of the conditions contained in Section 6.1 (d) are not performed or fulfilled on or before 16:30h on March 25th, 2025 to the reasonable satisfaction of the Purchaser or where applicable, waived by the Purchaser, the Purchaser may terminate this Agreement by notice to the Vendor, and in such event the Deposit shall be returned to the Purchaser forthwith without interest or deduction, and the Vendor and the Purchaser will be released from all obligations hereunder.

6.3 Conditions in Favour of the Vendor

The Vendor's obligations under this Agreement are conditional upon the performance of or compliance with the following terms and conditions (which are included in this Agreement for the benefit of the Vendor and where applicable, may be waived in writing in whole or in part by the Vendor at any time):

- (a) the representations and warranties of the Purchaser set forth in Article 4 hereof shall be true and correct as of the Time of Closing and have the same force and effect as if made at and as of such time;
- (b) the Purchaser shall have executed and delivered all necessary agreements, instruments and documentation and complied with all the terms, covenants and conditions of this Agreement to be performed or complied with by the Purchaser to conclude the Transaction at or prior to the Time of Closing;

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- (c) at the Time of Closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before a court of competent jurisdiction, to prevent or otherwise adversely affect the purchase and sale of the Purchased Assets or any portion thereof pursuant to this Agreement;
- (d) the Purchaser shall have received any required consents to the assignment and its intended use of the Purchased Assets to the Purchaser from the applicable Governmental Authorities;
- (e) no legal or regulatory action or proceeding will be pending or threatened by any Person to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby.

6.4 Vendor's Right to Terminate

If any of the conditions contained in Subsections 6.3(a) or 6.3(b) are not performed or fulfilled at or prior to the Time of Closing to the satisfaction of the Vendor or where applicable, waived by the Vendor, the Vendor may terminate this Agreement by notice to the Purchaser, and in such event the Vendor and the Purchaser will be released from all obligations hereunder other than in respect of the Deposit. If any of the conditions contained in Subsections 6.3(c), 6.3(d) or 6.3(e) are not performed or fulfilled at or prior to the Time of Closing to the satisfaction of the Vendor or where applicable, waived by the Vendor, the Vendor may terminate this Agreement by notice to the Purchaser, and in such event the Deposit shall be returned to the Purchaser forthwith without interest or deduction, and the Vendor and the Purchaser will be released from all obligations hereunder.

ARTICLE 7 - CLOSING

7.1 Closing Date

The Closing of the Transaction will take place at the Time of Closing using the TERS system on the Closing Date in accordance with section 3.9 of this Agreement.

7.2 Deliveries at the Closing by the Vendor

At or prior to the Time of Closing, the Vendor shall execute and/or deliver to the Purchaser:

- (a) an issued or entered copy of the Approval and Vesting Order;
- (b) a statutory declaration or certificate of a senior officer of the Receiver (in either case without personal liability on the part of the individual making such certificate

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or declaration) regarding Section 116 of the *Income Tax Act* (Canada) to the effect that the Receiver is not a "non-resident" of Canada within the meaning of the Act;

- (c) a certificate of a senior officer of the Receiver (without personal liability on the part of the individual making such certificate) certifying that each of the representations and warranties of the Receiver set forth in Section 4.1 are true and accurate in all material respects on the Closing Date, except as disclosed therein;
- (d) on Closing, the Vendor agrees that the Vendor's solicitor shall provide the Purchaser with a signed solicitor's undertaking to remit payment, from the balance due on closing, to the appropriate authority for outstanding realty taxes and water arrears (including any applicable penalty and interest) and to provide evidence of same to the Purchaser forthwith following Closing.
- (e) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

7.3 Deliveries at the Closing by the Purchaser

At or prior to the Time of Closing, the Purchaser shall execute and/or deliver to the Vendor:

- (a) payment of the balance of the Purchase Price required to be paid on Closing pursuant to Section 3.1;
- (b) evidence satisfactory to the Vendor of payment of all taxes required to be paid by the Purchaser pursuant to Section 3.5 or valid purchase exemption certificates pursuant to Section 3.5;
- (c) the indemnity of the Vendor by the Purchaser pursuant to Section 8.4;
- (d) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

ARTICLE 8 ADDITIONAL AGREEMENTS OF THE PARTIES

8.1 Proceedings for the Approval and Vesting Order

- (a) The Vendor shall provide the Purchaser and its counsel with a reasonable opportunity to comment upon the form of the Approval and Vesting Order and supporting material to be filed in Court by the Vendor relating to the Transaction. The Vendor agrees that all such documents shall be consistent with the terms and

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conditions of this Agreement. The Vendor shall immediately provide the Purchaser with copies of all motion materials served upon it relating to this Agreement and the Purchased Assets.

- (b) The Purchaser shall, at its own expense, promptly provide to the Vendor all information, documents and assistance within the Purchaser's possession or control as the Vendor may reasonably require to apply for the Approval and Vesting Order.

8.2 Co-operation and Transition

The Parties shall co-operate fully in good faith with each other and their respective legal advisors, accountants and other representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement.

8.3 Possession of Assets

On the Closing Date, the Purchaser shall take possession of the Purchased Assets at the Time of Closing. Notwithstanding anything to the contrary contained in this Agreement, possession of the Property shall be given to the Purchaser (or Permitted Assign) in accordance with the terms of the Approval and Vesting Order.

8.4 Tax Indemnity

The Purchaser shall indemnify and save the Vendor harmless for and from all losses, costs and damages suffered by the Vendor as a result of any tax, interest and/or penalty levied against the Vendor by Canada Revenue Agency or any other Governmental Authority in connection with the Transaction, including any requirement of the Vendor to remit to the Receiver General of Canada any HST, interest and/or penalties on the Purchase Price, including any adjustments thereto.

8.5 Change in Circumstances

Notwithstanding any other provision of this Agreement, no default by any person other than the Vendor under any lease, Permitted Encumbrances or contract (including, without limitation, any bankruptcy or event of insolvency) or repudiation or termination thereof other than as a result of the default of the Receiver or proceeding for relief therefrom, at any time after the Acceptance Date, and no other change, other than as a result of the default by the Receiver of any of its obligations under this Agreement, adverse to the Purchased Assets or the Property or their value at any time after the Acceptance Date (subject to the provisions of Section 9.10) shall entitle

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the Purchaser to terminate this Agreement or to an abatement of the Purchase Price or any other right or remedy whatsoever, the Purchaser agreeing to accept the risk of the foregoing.

ARTICLE 9 -GENERAL

9.1 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this section. Notices and other communications shall be addressed as follows:

(a) if to the Vendor:

Pollard & Associates Inc.
31 Wright Street
Richmond Hill, Ontario
L4C 4A2

Attention: Angela K. Pollard
E-mail: akpollard@pollardandassoc.ca
Attention: Michael La Rosa
E-mail: mlarosa@pollardandassoc.ca
Fax: 905-884-4310

with a copy to:

Laishley Reed LLP
3 Church Street, Unit 505
Toronto, Ontario
M5E 1M2

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Attention: Calvin Ho
E-mail: cho@laishleyreed.com
Fax: 416-981-0060

(b) if to the Purchaser at:

Templeman LLP
205 Dundas Street E, Unit 200
Belleville, Ontario
K8N 5A2

Attention: Kevin Walsh & William Procter
E-mail: kwalsh@tmlegal.ca & wprocter@tmlegal.ca

with a copy c/o:

The Corporation of the Town of Whitby
575 Rossland Road E
Whitby, Ontario
L1N 2M8

Attention: Town Solicitor
E-mail: legal@whibby.ca

9.2 Entire Agreement

Except as specifically set forth in this Agreement, there are no representations, warranties, agreements or covenants made by any of the Parties hereto and not contained herein and this Agreement supersedes any prior agreement, whether written or oral, between the Parties and constitutes the entire agreement of the Parties with respect to the purchase and sale of the Purchased Assets.

9.3 Further Assurances

Each of the Parties hereto will, from time to time and at all times hereafter upon every reasonable written request to do so, make, do, execute and deliver, or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of any Party or counsel for any Party for more effectually implementing and carrying out the true intent and meaning of this Agreement.

9.4 Successors and Assigns

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This Agreement will be binding upon the Parties hereto, their respective heirs, executors, administrators, successors or permitted assigns. The Purchaser shall not assign the Agreement without the Vendor's prior written approval, acting reasonably.

9.5 Counterparts

This Agreement may be executed in several counterparts, including by facsimile or other means of electronic communication and all such counterparts will constitute one agreement, binding on the Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

9.6 No Waiver of Breach

No failure of any Party to this Agreement to pursue any remedy resulting from a breach of this Agreement by another Party will be construed as a waiver of that breach by that Party or any other Party or as a waiver of any subsequent or other breach.

9.7 Solicitors as Agents and Tender

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Receiver's Solicitors on behalf of the Receiver and any tender of Closing Documents (other than documents required to be registered electronically) may be made upon the Receiver's Solicitors and the Purchaser's Solicitors, as the case may be, at their respective offices or in the relevant Land Registry Office.

9.8 Expenses and Legal Fees

Each of the Parties hereto will assume the payment of and be responsible for all expenses, costs and legal fees incurred by reason hereof by such Party whether incurred prior to or subsequent to the date hereof and neither Party will be obligated in any way whatsoever to pay or contribute to any such expenses or costs incurred by the other Party hereto.

9.9 Time of Essence

Time will be of the essence of this Agreement.

9.10 Risk

Up to the Time of Closing, all risk of loss or damage by fire or any other cause or hazard to the Purchased Assets will remain with the Vendor, which will hold all insurance policies and proceeds thereof in trust for the Debtors and the Purchaser. In the event of any material destruction or damage by fire or any other cause or hazard to any of the Purchased Assets prior to

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the Time of Closing, which destruction or damage is of such a nature that the Purchaser determines that it no longer wishes to complete the Transaction, acting in its sole and unfettered discretion, then the Purchaser, at its sole option, may within five (5) days of receiving written notice of such destruction or damage, which written notice refers to this provision of this Agreement, terminate this Agreement without liability or obligation to the Vendor. Forthwith thereafter, the Deposit, without interest, shall be returned to the Purchaser.

9.11 Acceptance

The offer represented by this Agreement shall be open for acceptance by the Vendor until 2:00 p.m. on Tuesday, March 18, 2025 subject to Court approval. Any such acceptance shall be effected by the Vendor delivering a fully executed copy or counterpart of this Agreement to the Purchaser. The Purchaser shall not be at liberty to retract, withdraw, vary or countermand an offer once this Agreement is delivered by the Purchaser to the Vendor.

IN WITNESS WHEREOF the Parties hereto have duly executed and delivered this Agreement as of the date first above written.

POLLARD & ASSOCIATES INC., solely in its capacity as Court-appointed receiver of Cacoeli Whitby LP, 11275127 Canada Inc. and 11250396 Canada Inc. and on behalf of the Debtors and not in its personal capacity and without any personal or corporate liability

Date: March 18, 2025.

Per: 

Name: *Angela R. Pollard*

Title: *President*

I have authority to bind the Vendor

THE CORPORATION OF THE TOWN OF WHITBY

Date: March 18, 2025.

Per: 

Name: Matthew Gaskell

Title: Chief Administrative Officer

Date: March 18, 2025

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Per: 

Name: Fuwing Wong

Title: Commissioner, Financial Services
and Treasurer

We have authority to bind the Purchaser
subject to Section 6.1(d) of this Agreement

DOC ID: APS - v8a FINAL - 132 146 Brock St N Whitby - 18 March 2025

SCHEDULE "A"
DESCRIPTION OF PURCHASED ASSETS

Registered Owners	Municipal Address	PIN	Legal Description
11250396 Canada Inc. and Cacoeli Whitby LP	146 Brock Street North, Whitby, Ontario	26535-0187 LT	LT 4PL H50030 Whitby; LT 5 PL H50030 Whitby; PT LT 2 PL H50030 Whitby; PT LT 3 PL H50030 Whitby PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W D544453 Subject to an easement as in CO231663; Town of Whitby
11250396 Canada Inc. and Cacoeli Whitby LP	132 Brock Street North, Whitby, Ontario	26535-0209 LT	PT LT 36 PL H50030 Whitby PT 6 40R12737, S/T D490776; Town of Whitby
11250396 Canada Inc, 11275127 Canada Inc and Cacoeli Whitby LP		26535-0186 LT	PT LT 2-3 PL H50030 Whitby as in D552683 T/W D552683; Town of Whitby

COSMAN MORTGAGE HOLDING CORP. and
Applicant

CACOELI WHITBY LP aka CACOELI WHITBY LIMITED PARTNERSHIP et al.
Respondents Court File No. CV-24-00723457-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD
(RETURABLE MAY 21, 2025)**

LAISHLEY REED LLP
Barristers & Solicitors
3 Church Street, Suite 505
Toronto, ON M5E 1M2

Calvin J. Ho LSO#: 40875B
Tel: 416.981.9430
Fax: 416.981.0060
Email: cho@laihshleyreed.com

Lawyers for the Court Appointed
Receiver, Pollard & Associates Inc.

TAB 3

Court File No. CV-24-00723457-00CL
Estate File No.: 31-459983

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

THE HONOURABLE

)

WEDNESDAY, THE 21st

)

MADAME JUSTICE STEELE

)

DAY OF MAY, 2025

)

B E T W E E N :

COSMAN MORTGAGE HOLDING CORP.

Applicant

- and -

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
PARTNERSHIP, 11275127 CANADA INC. and 11250396 CANADA INC.**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Pollard & Associates Inc. in its capacity as receiver and manager (the “**Receiver**”), without security, of (i) the real property municipally known as 132 Brock Street North, Whitby, Ontario, and 146 – 152 Brock Street North, Whitby, Ontario (the “**Real Property**”); (ii) all rents, issues and profits, due now or in the future, by virtue of any lease or agreement in respect of the Real Property; and (iii) all chattels, erections and improvements, fixed or otherwise, now or hereafter put upon the Real Property and owned by 11250396 Canada Inc. in its capacity as general partner of Cacoeli Whitby LP and 11275127 Canada Inc. (collectively, the “**Debtors**” or the “**Companies**”), including all of the proceeds therefrom, for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and The Corporation of the Town of Whitby, as purchaser (the “**Purchaser**”) dated March 18, 2025 (the “**Sale Agreement**”), and appended to the First Report of the Receiver dated May 5, 2025 (the “**First Report**”), and vesting in the Purchaser the Respondents’ right, title and interest in

and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and the appendices thereto, the factum of the Receiver, and on hearing the submissions of counsel for the Receiver, and such other counsel as were present and appearing on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Sylvia Sauro dated May 9, 2025, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Respondents' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated August 30, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the City of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Respondents;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **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.

8. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-24-00723457-00CL
Estate File No.: 31-459983

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

COSMAN MORTGAGE HOLDING CORP.

Applicant

- and -

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
PARTNERSHIP, 11275127 CANADA INC. and 11250396 CANADA INC.**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the "**Court**") dated August 30, 2024, Pollard & Associates Inc. was appointed as the receiver and manager (the "**Receiver**"), without security, of (i) the real property municipally known as 132 Brock Street North Whitby, Ontario, and 146 – 152 Brock Street North, Whitby, Ontario (the "**Real Property**"); (ii) all rents, issues and profits, due now or in the future, by virtue of any lease or agreement in respect of the Real Property; and (iii) all chattels, erections and improvements, fixed or otherwise, now or hereafter put upon the Real Property and owned by 11250396 Canada Inc. in its capacity as general partner of Cacoeli Whitby LP and 11275127 Canada Inc. (collectively, the "**Debtors**" or the "**Companies**"), including all of the proceeds therefrom (collectively, the "**Property**").

B. Pursuant to an Order of the Court dated May 21, 2025, the Court approved the agreement of purchase and sale made as of March 18, 2025 between the Receiver, as vendor, and The Corporation of the Town of Whitby as purchaser (the "**Purchaser**") (the "**Sale**").

Agreement") for the Real Property and provided for the vesting in the Purchaser of the Respondents' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____[TIME] on _____[DATE].

POLLARD & ASSOCIATES INC., in its capacity as Receiver of the Property of the Respondents, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

Registered Owners	Municipal Address	PIN	Legal Description
11250396 Canada Inc. and Cacoeli Whitby LP	146 Brock Street North, Whitby, Ontario	26535-0187 LT	LT 4PL H50030 Whitby; LT 5 PL H50030 Whitby; PT LT 2 PL H50030 Whitby; PT LT 3 PL H50030 Whitby; PTS 2 & 3 40R12737, S/T D490776 (PT 3); T/W D544453 Subject to an easement as in CO231663; Town of Whitby
11250396 Canada Inc. and Cacoeli Whitby LP	132 Brock Street North, Whitby, Ontario	26535-0209 LT	PT LT 36 PL H50030 Whitby PT 6 40R12737, S/T D490776; Town of Whitby
11250396 Canada Inc, 11275127 Canada Inc and Cacoeli Whitby LP		26535-0186 LT	PT LT 2-3 PL H50030 Whitby as in D552683 T/W D552683; Town of Whitby

Schedule C – Claims to be deleted and expunged from title to Real Property

PIN: 26535-0187 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
DR1984468	2021/03/22	Charge	\$2,800,000	1125036 Canada Inc. Cacoeli Whitby LP 11275127 Canada Inc.	Cosman Mortgage Holding Corp.
DR1984469	2021/03/22	Notice Assgn Rent Gen		11250396 Canada Inc. Cacoeli Whitby LP	Cosman Mortgage Holding Corp.
DR2120831	2022/04/12	Restriction-Land		11250396 Canada Inc. 11275127 Canada Inc. Cacoeli Whitby LP	
DR2122589	2022/04/19	Notice Charge amend	\$3,200,000	11250396 Canada Inc. Cacoeli Whitby LP 11275127 Canada Inc.	Cosman Mortgage Holding Corp.
DR2240778	2023/06/23	Charge	\$250,000	11250396 Canada Inc. Cacoeli Whitby LP	Perez-Youssoufian Medicine Professional Corporation
DR2240780	2023/06/23	Notice Assgn Rent Gen		11250396 Canada Inc.; Cacoeli Whitby LP	Perez-Youssoufian Medicine Professional Corporation
DR2279361	2023/11/16	Construction Lien	\$135,215	Terra Bona Developments Ltd.	
DR2327707	2024/06.26	Certificate		Terra Bona Developments Ltd.	
DR2347603	2024/09/16	Apl Court Order		Ontario Superior Court Of Justice (Commercial List)	Pollard & Associates Inc.

PIN: 26535-209 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
DR1984468	2021/03/22	Charge	\$2,800,000	1125036 Canada Inc. Cacoeli Whitby LP 11275127 Canada Inc.	Cosman Mortgage Holding Corp.
DR1984469	2021/03/22	Notice Assgn Rent Gen		11250396 Canada Inc. Cacoeli Whitby LP	Cosman Mortgage Holding Corp.
DR2122589	2022/04/19	Notice Charge amend	\$3,200,000	11250396 Canada Inc. Cacoeli Whitby LP	Cosman Mortgage Holding Corp.

				11275127 Canada Inc.	
DR2240778	2023/06/23	Charge	\$250,000	11250396 Canada Inc. Cacoeli Whitby LP	Perez-Youssoufian Medicine Professional Corporation
DR2240780	2023/06/23	Notice Assgn Rent Gen		11250396 Canada Inc.; Cacoeli Whitby LP	Perez-Youssoufian Medicine Professional Corporation
DR2279361	2023/11/16	Construction Lien	\$135,215	Terra Bona Developments Ltd.	
DR2327707	2024/06.26	Certificate		Terra Bona Developments Ltd.	
DR2347603	2024/09/16	Apl Court Order		Ontario Superior Court Of Justice (Commercial List)	Pollard & Associates Inc.

PIN: 26535-0186 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
DR1984468	2021/03/22	Charge	\$2,800,000	1125036 Canada Inc. Cacoeli Whitby LP 11275127 Canada Inc.	Cosman Mortgage Holding Corp.
DR1984469	2021/03/22	Notice Assgn Rent Gen		11250396 Canada Inc. Cacoeli Whitby LP	Cosman Mortgage Holding Corp.
DR2120831	2022/04/12	Restriction-Land		11250396 Canada Inc. 11275127 Canada Inc. Cacoeli Whitby LP	
DR2122589	2022/04/19	Notice Charge amend	\$3,200,000	11250396 Canada Inc. Cacoeli Whitby LP	Cosman Mortgage Holding Corp.
		11275127 Canada Inc.			
DR2240778	2023/06/23	Charge	\$250,000	11250396 Canada Inc. Cacoeli Whitby LP	Perez-Youssoufian Medicine Professional Corporation
DR2240780	2023/06/23	Notice Assgn Rent Gen		11250396 Canada Inc.; Cacoeli Whitby LP	Perez-Youssoufian Medicine Professional Corporation
DR2279361	2023/11/16	Construction Lien	\$135,215	Terra Bona Developments Ltd.	
DR2327707	2024/06.26	Certificate		Terra Bona Developments Ltd.	
DR2347603	2024/09/16	Apl Court Order		Ontario Superior Court Of Justice (Commercial List)	Pollard & Associates Inc.

COSMAN MORTGAGE HOLDING
CORP.

and

CACOELI WHITBY LP aka CACOELI
WHITBY LIMITED PARTNERSHIP, 11275127
CANADA INC., and 11250396 CANADA INC.

Applicant

Respondent

Court File No. CV-24-00723457-00CL
Estate File No.: 31-459983

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at **Toronto**

APPROVAL AND VESTING ORDER

LAISHLEY REED LLP

Barristers & Solicitors
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Toronto, ON M5E 1M2

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Lawyers for the Receiver,
Pollard & Associates Inc.

TAB 4

Court File No. CV-24-00723457-00CL
Estate File No.: 31-459983

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

THE HONOURABLE

)

WEDNESDAY, THE 21st

)

MADAME JUSTICE STEELE

)

DAY OF MAY, 2025

)

B E T W E E N :

COSMAN MORTGAGE HOLDING CORP.

Applicant

- and -

**CACOELI WHITBY LP also known as CACOELI WHITBY LIMITED
PARTNERSHIP, 11275127 CANADA INC. and 11250396 CANADA INC.**

Respondents

ANCILLARY ORDER

THIS MOTION, made by Pollard & Associates Inc. in its capacity as receiver and manager (the “**Receiver**”), without security, of (i) the real property municipally known as 132 Brock Street North, Whitby, Ontario, and 146 – 152 Brock Street North, Whitby, Ontario (the “**Real Property**”); (ii) all rents, issues and profits, due now or in the future, by virtue of any lease or agreement in respect of the Real Property; and (iii) all chattels, erections and improvements, fixed or otherwise, now or hereafter put upon the Real Property and owned by 11250396 Canada Inc. in its capacity as general partner of Cacoeli Whitby LP and 11275127 Canada Inc. (collectively, the “**Debtors**” or the “**Companies**”), including all of the proceeds therefrom, for an order, *inter alia*, approving the First Report of the Receiver dated May 5, 2025 (the “**First Report**”), and sealing certain appendices in the First Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and the appendices thereto, the factum of the Receiver,

and on hearing the submissions of counsel for the Receiver, and such other counsel as were present and appearing on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Sylvia Sauro dated May 9, 2025, filed:

SERVICE

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

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the First Report and the actions and activities of the Receiver described in the First Report are hereby approved provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

SALE AND MARKETING PROCESS

3. **THIS COURT ORDERS** that the sales and marketing process undertaken by the Receiver as described in the First Report is hereby approved.

SEALING

4. **THIS COURT ORDERS** that the Confidential Appendices (as defined in the First Report) are hereby sealed until the earlier of either the closing of the Transaction (as defined in the First Report), or upon further Order of the Court.

5. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

COSMAN MORTGAGE HOLDING
CORP.

and

CACOELI WHITBY LP aka CACOELI
WHITBY LIMITED PARTNERSHIP, 11275127
CANADA INC., and 11250396 CANADA INC.

Applicant

Respondents

Court File No. CV-24-00723457-00CL
Estate File No.: 31-459983

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at **Toronto**

ANCILLARY ORDER

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Lawyers for the Receiver,
Pollard & Associates Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE MAY 21, 2025)**

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Lawyers for the Court Appointed
Receiver, Pollard & Associates Inc.