

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

|                       |   |                             |
|-----------------------|---|-----------------------------|
| THE HONOURABLE MR.    | ) | FRIDAY THE 29 <sup>TH</sup> |
|                       | ) |                             |
| JUSTICE WILTON-SIEGEL | ) | DAY OF APRIL, 2016          |

B E T W E E N :

**PACE SAVINGS & CREDIT UNION LIMITED**

Applicant

and

**SETTLERS' GHOST GOLF CLUB LIMITED PARTNERSHIP, FSP  
HOLDINGS INC. and LANA STODDART**

Respondents

**STALKING HORSE AND BID PROCEDURES ORDER**

**WHEREAS** Ira Smith Trustee & Receiver Inc. was appointed the Court-appointed Receiver and Manager (the "**Receiver**") of the undertaking, property and assets of Settlers' Ghost Golf Club Limited Partnership and FSP Holdings Inc. (collectively the "**Company**") pursuant to Orders of this Court made December 15, 2015 and December 18, 2015 (the "**Appointment Order**");

**NOW THEREFORE** the Receiver brings this motion for an Order authorizing the Receiver to enter into the stalking horse asset purchase agreement and to carry out the related bid procedures was read this day at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

**ON READING** the Motion Record of the Receiver, including the First Report and the appendices thereto, and the Supplementary Motion Record of the Receiver, including the Supplementary First Report and the appendices thereto, and on hearing the submissions of

counsel for the Receiver, counsel for the debtors, no one appearing for any other person on the service list, although properly served, and on noting that this order is not opposed,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this motion is hereby abridged and that further service is dispensed with.

## **STALKING HORSE PROCESS**

2. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and approved to enter into an agreement (the "**Purchase Agreement**") to sell all or substantially all of the assets, property and undertakings of the Company (the "**Purchased Assets**") to Pace Savings and Credit Union Limited (the "**Purchaser**") (the "**Transaction**"), substantially in the form of the agreement attached hereto as Schedule "B" (the "**Stalking Horse APA**" or the "**Stalking Horse Bid**"), and subject to the terms of this Order, such agreement is hereby approved and accepted for the purpose of conducting the Stalking Horse Process (as defined below).

3. **THIS COURT ORDERS** that the bidding procedures attached hereto as Schedule "A" (the "**Bid Procedures**") and the sales and auction process described therein (collectively, the "**Stalking Horse Process**") be and are hereby approved and the Receiver be and is hereby authorized and directed to conduct the Stalking Horse Process.

4. **THIS COURT ORDERS** that, in connection with the Stalking Horse Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver be and is hereby authorized and permitted to disclose personal information of identifiable individuals to prospective bidders for the Purchased Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any 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 assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Receiver or in the alternative destroy all such information and certify such destruction to the Receiver.

## GENERAL

5. **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.

William H. J.

## Schedule "A"



## **BID PROCEDURES**

Set forth below are the proposed bid procedures (the “**Bid Procedures**”) to be employed with respect to the sale of the assets, properties and undertaking of Settlers Ghost Golf Club Limited Partnership and FSP Holdings Inc. (“**Settlers**”) (the “**Purchased Assets**”). Such Purchased Assets are located at the Settlers’ premises, 3421 McNutt Road, RR#1, Barrie, Ontario, L4M 4Y8 and include the real estate at the same municipal address, in Oro-Medonte Township, which includes an 18 hole par 72 golf course and related ancillary structures.

The Purchased Assets being purchased and the terms and conditions upon which Ira Smith Trustee & Receiver Inc. (“**Smith**” and/or “**Receiver**”) contemplate consummating a sale as further described in the form of the Stalking Horse Agreement (the “**APA**”).

The Receiver will seek approval of the Ontario Superior Court of Justice Commercial List (the “**Court**”) of the APA with Pace Credit Union (the “**Stalking Horse Bidder**”) and the Bid Procedures set out herein (the “**Stalking Horse and Bid Procedures Orders**”).

### **Marketing Process and Identifying Potential Bidders**

1. Upon Court approval and issuance of the Stalking Horse and Bid Procedures Orders, the Receiver will immediately commence the following marketing process:
  - (a) advertisement(s) will be placed in the national edition of the Globe and Mail newspaper as soon as practical following Court approval of the Sale Process;
  - (b) the advertisement will be communicated to a list of potential buyers identified by the Receiver for the current opportunity to acquire the assets introduced;
  - (c) notice(s) will be placed on the website of the Receiver.

### **Due Diligence**

2. A confidential information memorandum (“**CIM**”) will be prepared and will be provided to all interested parties that sign a confidentiality agreement and who the Receiver determines is likely, based on financial information submitted by the bidder, the availability of financing and other considerations deemed relevant by the Receiver, to be able to consummate a sale if selected as the Successful Bidder, as defined below (a “**Potential Bidder**”);
3. A Potential Bidder will be provided access to a data room containing detailed information regarding the assets to enable them to perform their due diligence.
4. A Potential Bidder will be provided access to management, facilitated by the Receiver, to supplement their due diligence procedures, as necessary.

5. Potential Bidders are cautioned not to rely upon any documentation or information provided by or on behalf of the Receiver. Any such documentation or other material provided with respect to the Assets was prepared solely for the convenience of Potential Bidders and is not warranted to be complete or accurate, has not been independently verified, and is not part of these Bid Procedures or the APA. Each Potential Bidder shall be deemed to have relied entirely on its own inspection and investigation in submitting its offer. Potential Bidders are required to obtain such third party consents as they consider necessary. Potential Bidders are to make such independent enquiries, as they deem necessary, concerning all Assets prior to submitting their Offer.

#### **Bid Deadline**

6. A Potential Bidder that desires to make a bid (a "**Bidder**") shall deliver its bid to the Receiver not later than noon (Eastern Time) on June 8, 2016 (the "**Bid Deadline**").

#### **Bid Requirements**

7. All bids must include:
  - (a) An offer to pay a cash purchase price greater than the aggregate consideration offered by the Stalking Horse Bidder pursuant to the APA;
  - (b) An executed copy of a purchase agreement in the form of the APA, together with a blackline copy of the APA reflecting any changes made to the APA, shall be submitted to the Receiver and shall be binding and irrevocable until either (i) such time as the Receiver rejects a Bidder's Bid in accordance with paragraph 13 herein; (ii) at the conclusion of the Auction, if held, each respective Qualified Bidder does not become the Successful Bidder; or (iii) if the Court does not approve the Successful Bidder's Accepted Bid;
  - (c) A certified cheque, bank draft or wire transfer drawn on a Canadian Schedule "1" Chartered Bank (an "**Acceptable Institution**") or by bankers draft from an Acceptable Institution in the amount of \$300,000 payable to the Receiver in trust. This amount will either (i) be applied to satisfy the purchase price of a Successful Bidder, the balance of which purchase price shall be due on closing; (ii) be returned to the Bidder if its bid is not successful at the Auction (subject to the other provisions of these Bid Procedures) or approved by the Court, or (iii) be forfeited to the Receiver in the event that the Successful Bidder breaches its obligations pursuant to the APA or an Accepted Bid (as defined herein);



- (d) A representation of the Bidder and written evidence of available cash and/or a commitment for financing to evidence the Bidder's ability to consummate the proposed transaction as the Receiver may reasonably request;
- (e) A copy of a resolution or similar document demonstrating authority to make an irrevocable bid, and to execute the transaction contemplated by the offering bid for the Purchased Assets;
- (f) A disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating with such bid and the complete terms of any such participation;
- (g) A disclosure of the identity of each of the Officers and Directors or Partners, as the case may be, of each entity bidding for the Purchased Assets or otherwise participating with such bid;
- (h) An acknowledgement by such Bidder that if its bid becomes a Qualified Bid and the bidder becomes a Qualified Bidder (as such terms are hereinafter defined) that the such Qualified Bidder's continued participation in this Sales Process is on a non-exclusive basis;
- (i) A description of the Bidder's current operations, including an indication of similarities between its current operations and that of Settlers'; and
- (j) A representation as to the Bidder's plans to either engage current management or provide its own management team if the bid is accepted.

#### **Qualified Bids**

- 8. A bid received from a Bidder that meets the above requirements will be considered a "Qualified Bid" and each Bidder that submits a Qualified Bid will be considered a "Qualified Bidder".
- 9. The APA shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes and requirements pursuant to the Sale Procedures, notwithstanding the requirements that other potential Bidders must satisfy to be considered a Qualified Bidder.
- 10. Qualified Bids will be valued and assessed by the Receiver in its sole commercial discretion based upon any and all factors that the Receiver may deem pertinent.
- 11. The Receiver, in its business judgment, reserves the right to reject any bid if such bid:
  - a) is on terms that are more burdensome or conditional than the terms of the APA;

- b) requires any indemnification of such Bidder;
  - c) excludes assets or contracts or leases of Settlers’;
  - d) is not received by the Bid Deadline;
  - e) includes non-cash consideration;
  - f) is subject to any due diligence, financing condition or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent on such party’s obligation to acquire the Purchased Assets other than as may be specifically included in the APA; or
  - g) includes any other considerations that the Receiver may deem relevant to the bid.
12. Any bid rejected pursuant to Paragraph 11 above, shall not be deemed to be a Qualified Bid.
  13. The Receiver will advise all Bidders by email or by other written communication whether or not they are a Qualified Bidder within two (2) business days after the Bid Deadline or such further period of time as the Receiver may determine in its sole discretion and not less than 48 hours before the start of the Auction, if any (the “Notification Date”).
  14. The Auction will be held no later than seven (7) days after the Notification Date.

#### **The Auction and Auction Procedures**

15. If the Receiver determines that it has received more than one Qualified Bid (in addition to the APA), it will invite Qualified Bidders to participate in an Auction, as described in more detail below (the “Auction”). If the Receiver does not receive any Qualified Bids other than the APA, it will not hold an Auction, in which case the APA will be deemed the Successful Bid (as this term is defined below) and the Stalking Horse Bidder will be named the Successful Bidder (as this term is defined below).
16. At least two business days prior to the Auction, each Qualified Bidder must inform the Receiver in writing whether it intends to participate in the Auction.
17. The Receiver will promptly thereafter inform, in writing, each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have expressed their intention to participate in the Auction and will provide copies of all other Qualified Bids to such Qualified Bidders.



18. Only the authorized representatives, professionals or agents of the Stalking Horse Bidder and each other Qualified Bidder identified in advance to the Receiver, shall be eligible to participate at the Auction.
19. The Auction, if any, shall be conducted by the Receiver, commencing on June 15, 2016 at 10:00 a.m. (Eastern Time) at the offices of DLA Piper (Canada) LLP, Suite 6000, 100 King St W, Toronto, Ontario.
20. At the Auction, the bidding will start at the aggregate consideration for the Purchased Assets and terms proposed in the offer that the Receiver selects as the highest and best offer prior to the Auction and will continue in cash increments of at least \$250,000.
21. The Receiver, in its sole discretion, may adjourn the Auction at any time to permit the Qualified Bidders and the Stalking Horse Bidder, the opportunity to consider improved bids.
22. During the Auction, Qualified Bidders and the Stalking Horse Bidder may submit revised bids that otherwise comply with the rules of this bidding and Auction process (a "**Revised Bid**").
23. If no Qualified Bidder submits a Revised Bid after a period of 15 minutes following the Receiver's acceptance of a Revised Bid and the Receiver in its sole discretion chooses not to adjourn the Auction further, the Auction will be concluded whereupon the Receiver shall enter into a binding agreement of purchase and sale with the Qualified Bidder or the Stalking Horse Bidder (the "**Accepted Bid**") that submitted the leading bid as determined by the Receiver in its sole discretion (the "**Successful Bidder**"). The bid process shall end at the conclusion of the Auction.

#### **The Successful Bidder**

24. The Successful Bidder agrees to do all such things as may be required by the Receiver to obtain Court approval of the Accepted Bid.
25. If the Successful Bidder fails to consummate the transaction within 10 days after Court approval (or such date that may otherwise be mutually agreed upon), the Receiver shall be authorized but not required to deem that the Successful Bidder has breached its obligations pursuant to the Accepted Bid, has forfeited its deposit to the Receiver, and the Company and the Receiver are authorized to seek an alternative bidder for the Purchased Assets.
26. Potential Bidders, Bidders and/or Qualified Bidders shall not be allowed any breakup, termination or similar fee. For greater certainty, Potential Bidders, Bidders and/or Qualified Bidders/Successful Bidder shall be responsible for all of their own professional and other fees and costs relating to their investigation or closing of any transaction in this regard.

Assets which are insured, the Purchaser may elect by notice in writing, 15 days after receiving notice from the Receiver, of such damage or loss, either to close the Agreement and receive the remaining Purchased Assets and the proceeds of the insurance, or may rescind the Agreement, have all moneys theretofore paid returned without interest, costs, deduction or compensation, but shall have no further or other right to damages, costs, specific performance or any other remedy.

35. The Purchaser shall pay on closing, in addition to the purchase price, all applicable federal, provincial and municipal taxes in connection with the sale, including, without limitation, land transfer tax.
36. The Purchaser shall, at its own cost and expense, be responsible for compliance with all municipal, provincial and federal laws insofar as they apply to the Purchased Assets and the use thereof by the Purchaser from and after closing.
37. All stipulations as to time are strictly of the essence.
38. Any tender of documents or money hereunder may be made upon the Receiver or its solicitor. Money may only be tendered by certified cheque, bank draft or wire transfer drawn on an Acceptable Institution.
39. The obligations of the Receiver to complete the Agreement shall be relieved if, on or before the closing of such sale, any asset which is the subject of the sale has been removed from the control of the Receiver by any means or process, or any such asset is redeemed, or if the completion of the sale is restrained or prohibited by an injunction or other order issued by a court of competent jurisdiction, whereupon the only obligation of the Receiver shall be to return the applicable deposit, without interest, deduction, costs or compensation.

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## Schedule "B"



## OFFER TO PURCHASE

PIN 58527-0314 (LT)  
3421 Line 1 North, Oro-Medonte, Ontario

**TO:** **IRA SMITH TRUSTEE & RECEIVER INC.** (the "Vendor" or "Receiver") in its capacity as court-appointed Receiver and Manager of the assets, undertakings and properties of Settlers' Ghost Golf Club Limited Partnership (the "Debtor") pursuant to the Order of the Honourable Justice Conway of the Ontario Superior Court of Justice, dated December 15, 2015 and the Amended Order of the Honourable Justice Conway of the Ontario Superior Court of Justice, dated December 18, 2015 in Court File No. CV-15-11212-00CL at Toronto (collectively, the "Appointment Order"), and not in its personal capacity or corporate capacity.

### 1. Offer to Purchase

The undersigned, being **PACE SAVINGS AND CREDIT UNION LIMITED** (the "Purchaser" or "Pace") (and its assignees), hereby offers to purchase from and through the Vendor all of the right, title and interest in and to the Property (hereinafter defined) which the Vendor is entitled to sell pursuant to the Appointment Order at the purchase price set out herein and upon and subject to the terms hereof.

### 2. Definitions

In this Offer and the Agreement arising from the acceptance hereof, the following terms have the meanings respectively assigned to them:

"Agreement", "the Agreement" or "this Agreement" means the agreement of purchase and sale resulting from the acceptance of the Offer by the Vendor.

"Approval" in relation to the Court means the making of an appropriate Order of the Court in respect of the particular matter submitted for approval approving the action or proposed action of the Vendor on terms satisfactory to the Vendor.

"Buildings" means the building(s), if any, situate on the Lands (as hereinafter defined) together with all other structures situate thereon, including all improvements thereto and all fixtures forming a part thereof.

"Business Day" means a day other than Saturday, Sunday or a statutory holiday or any other day upon which the Vendor is not open for the transaction of business throughout normal business hours at its principal office.

**"Closing"** or **"Closing Date"** has the meaning ascribed in Section 18 thereto hereof.

**"Condition Period"** has the meaning ascribed thereto in Section 4 hereof.

**"Court"** means the Ontario Superior Court of Justice and includes a judge, master or registrar of that court and any appellate court judge having jurisdiction in any particular matter.

**"Deposit"** has the meaning ascribed thereto in Section 3 hereof.

**"Environmental Laws"** has the meaning ascribed thereto in Section 25 hereof.

**"Estimated Prior Ranking Claims"** has the meaning ascribed thereto in Section 8 hereof.

**"Final Prior Ranking Claims"** has the meaning ascribed thereto in Section 8 hereof.

**"Hazardous Substances"** means any contaminant, pollutant, dangerous substance, potentially dangerous substances, noxious substance, toxic substance, hazardous waste, flammable material, explosive material, radioactive material, urea-formaldehyde foam insulation, asbestos, PCBs radiation and any other substance, material, effect, or thing declared or defined to be hazardous, toxic, a contaminant, or pollutant, in or pursuant to any Environmental Laws.

**"HST"** has the meaning ascribed thereto in Section 17 hereof.

**"Indemnities"** has the meaning ascribed thereto in Section 25 hereof.

**"Lands"** means the lands legally described in Schedule "A" attached hereto.

**"Lease(s)"** means collectively, all leases, agreements to lease, tenancies, licenses, and any other rights of occupation of space in the Buildings or on the Lands, if any.

**"Material Documents"** includes copies of all architectural drawings, site plans relating to the Property, existing plan of survey, if any, the Lease(s), if any, and operating statements for the Building, if any, to the extent that such Material Documents are in the possession of the Vendor.

**"Offer", "the Offer" or "this Offer"** means the offer to purchase the Property made by the Purchaser and contained in and comprised of this document.

**"Pace Indebtedness"** means the indebtedness of the Debtor to Pace in connection with a Mortgage/Charge of Land registered on July 2, 2008 in the Land Registry



Office of the Land Titles Division of Simcoe (Barrie), as Instrument #SC660148 and supplemented by a General Assignment of Rents registered as Instrument No. SC660149 and a General Security Agreement. As well as a further amended Mortgage amended by a Mortgage Amending Agreement dated January 21, 2010 and a Notice of Agreement registered on March 3, 2010 in the Land Registry Office as Instrument #SC804470.

**"Pace Security"** means all existing security held by Pace in respect of the Pace Indebtedness.

**"Personal Property"** means all of the Receiver's right, title and interest in and to the personal property owned by the Debtor in association with the operation of the golf course, restaurant, banquet facilities and other ancillary and sundry assets.

**"Prior Ranking Claims"** means collectively, the fees and disbursements of the Vendor and its counsel in accordance with paragraph 17 of the Appointment Order, including their estimated fees and disbursements to complete the transactions contemplated herein and to complete the Vendor's administration of the Debtor's estate and to obtain its discharge as court-appointed Receiver and Manager, and all of each Debtor's obligations to creditors who have a lien, charge, security interest or deemed trust in any Debtor's property and assets which rank in priority to all of the Settler's Security in relation to the Property.

**"Property"** means collectively the Lands, Buildings and Personal Property.

**"Purchase Price"** has the meaning ascribed thereto in Section 3 hereof.

**"Purchaser Indebtedness"** means the indebtedness of the Debtor to the Purchaser as at the Closing Date under the Purchaser Security, inclusive of principal, interest and costs, including protective disbursements.

**"Purchaser Security"** means the mortgage registered against the Lands as Instrument No. #SC660148 on July 2, 2008 and Instrument No. #SC804470 on March 3, 2010 and all other security given by a Debtor to the Purchaser in respect of the Purchaser Indebtedness.

**"Purchaser's Conditions"** has the meaning ascribed thereto in Section 4 hereof.

**"Vesting Order"** has the meaning ascribed thereto in Section 6 hereof.

### 3. Purchase Price

The purchase price for the Property shall be the amount of the outstanding Pace Indebtedness as at the time of Closing, subject to any and all adjustments.



The deposit shall be any and all monies already paid by Pace to the Receiver as of the date of this Agreement (the "**Deposit**").

4. **Purchaser's Conditions**

Notwithstanding anything to the contrary herein contained, the Agreement is conditional to the Purchaser for a period of twenty one (21) days following the Vendor's acceptance hereof (the "**Condition Period**") and is subject to the Purchaser satisfying itself in its sole, absolute and unfettered discretion with all matters relating to the Property, including without limitation, title matters as set out in Paragraph 11, zoning matters, the Leases, if any, and the suitability and economic viability of the Property for the Purchaser's use, the physical condition of the Property, soil conditions, the environmental condition of the Property and the surrounding real property and the results of its other due diligence tests, inspections and investigations (collectively, the "**Purchaser's Conditions**").

The Purchaser's Conditions are for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time on or before the expiry of the Condition Period, any such waiver to be made in writing by the Purchaser or its solicitors. In the event that the Purchaser has not, on or before the expiry of the Condition Period waived the Purchaser's Conditions or provided the Vendor with written confirmation that the Purchaser's Conditions have been satisfied, this Agreement shall be null and void and the Vendor and the Purchaser shall have no further obligations to each other with respect hereto.

5. **Acceptance of Offer**

The Purchaser agrees that no agreement for the purchase and sale of the Property shall result from this Offer unless and until this Offer has been accepted by the Vendor and approved by the Court in accordance with the provisions of Section 7 hereof. The Purchaser agrees that this Offer shall be irrevocable by the Purchaser and open for acceptance by the Vendor until 5:00 o'clock p.m. (Toronto time) on Wednesday, April 13, 2016 after which time, if not accepted by the Vendor, this Offer shall be null and void. The Vendor will not be required to return the Deposit in the event no agreement for the purchase and sale of the Property results from this Offer. The Vendor shall indicate the date on which it has accepted this Offer in the space provided on the execution of this Offer.

6. **Court Approval**

The Purchaser hereby acknowledges and agrees that the sale of the Property is by Order of, and is subject to, the Approval of the Court. The Vendor shall, forthwith bring a motion to the Court for Approval of the Agreement and an order vesting title to the Property in the Purchaser (the "**Vesting Order**"). The Vendor shall diligently pursue such motion on notice to the Purchaser and shall promptly notify the Purchaser of the disposition thereof. The Purchaser, at its own expense, shall

promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain Approval of the Agreement. If the Court shall not have granted Approval of the Agreement within twenty (21) days of the Purchaser's waiver of the Purchaser's Conditions, the Agreement shall automatically be terminated. If the Agreement is terminated under any provision of this Section neither party shall have any further rights or liabilities hereunder and the Vendor will not be required to return the Deposit.

7. **Capacity of Receiver**

The Vendor, by acceptance of the Offer, is entering into the Agreement solely in its capacity as the court-appointed Receiver and Manager of the assets, undertakings and properties of the Debtor and not in its personal, corporate or any other capacity. Any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its said capacity as Receiver and shall not apply to its personal property and/or any assets held by it in any other capacity. The Vendor shall have no personal or corporate liability of any kind, whether in contract or in tort or otherwise. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Property.

8. **Adjustments**

There shall be no adjustment to the Purchase Price for the Property of any nature or kind whatsoever, including no adjustment in respect of (a) prepaid rents, or, (b) rent or other moneys payable to the Vendor under the Lease(s), if any, (c) realty taxes, flat/fixed water and sewer rates and charges, if any, and all other items usually adjusted with respect to properties similar to the Property that apply save and except for rent or any matters related to the Lease(s), if any, in respect of periods prior to the Closing which remain unpaid as at Closing.

The Vendor shall provide the Purchaser with the estimated amount of the Prior Ranking Claims payable as at the Closing Date (the "**Estimated Prior Ranking Claims**") by no later than five (5) Business Days prior to Closing. As soon as practicable following Closing, the Vendor shall provide the Purchaser with a statement setting out the final amount of the Prior Ranking Claims payable as at the Closing Date (the "**Final Prior Ranking Claims**"). The Purchaser agrees to assume and pay all Final Prior Ranking Claims and to indemnify the Vendor from any liability.

9. **Termination of Agreement**

Notwithstanding anything to the contrary contained in this Agreement, if at any time or times prior to the Closing Date, the Vendor is unable to complete this Agreement as a result of any action taken by an encumbrancer, any action taken by the present registered owner, the refusal by the present registered owner, to



take any action, the exercise of any right by the present registered owner or other party which is not terminated upon acceptance of this Agreement, a certificate of pending litigation is registered against the Property, a court judgment or order is made, or, if the Purchaser submits valid title requisition which the Vendor is unable or unwilling to satisfy prior to Closing; or if the sale of the Property is restrained at any time by a court of competent jurisdiction, or if the Property is occupied by the owner of the Property and the Vendor is unable to provide vacant possession on Closing Day, save and except for the business operations residing therein and the staff necessary to operate such business, the Vendor may, in its sole and unfettered discretion, elect by written notice to the Purchaser, to terminate this Agreement. Upon the Vendor's election by written notice to the Purchaser as described herein, neither party shall have any further rights or liabilities hereunder nor will the Vendor be required to return the Deposit.

The obligation of the Vendor to complete the Agreement is subject to the satisfaction of the following terms and conditions on or prior to the Closing Date, which conditions are for the sole benefit of the Vendor and which may be waived by the Vendor in its sole discretion:

- a) the representations and warranties of the Purchaser being true and accurate as of the Closing Date;
- b) no action or proceeding at law or in equity shall be pending or threatened by any person, firm, government, government authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Property;
- c) the Property shall not have been removed from the control of the Vendor by any means or process;
- d) no party shall take any action to redeem the Property;
- e) the Vendor shall have obtained legal opinions that the Pace Security and the Purchaser Security are valid and enforceable in accordance with their terms; and,
- f) the Court shall have granted the Approval and shall have granted the Vesting Order.

#### 10. **Purchaser's Acknowledgements**

The Purchaser hereby acknowledges and agrees with and to be subject to the following:

- a) it is responsible for conducting its own searches and investigations of the current and past uses of the Property;



- b) the Vendor makes no representation or warranty of any kind that the present use of future intended use by the Purchaser of the Property is or will be lawful or permitted;
- c) it is satisfied with the Property and all matters and things connected therewith or in any way related thereto;
- d) it is relying entirely upon its own investigations and inspections in entering into this Agreement;
- e) it is purchasing the Property on an "as is, where is" and "without recourse" basis including, without limitation, outstanding work orders, deficiency notices, compliance, requests, development fees, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any governmental authority having jurisdiction over the Property;
- f) it relies entirely on its own judgment, inspection and investigation of the Property and acknowledges that any documentation relating to the Property obtained from the Vendor has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Offer;
- g) the Vendor shall have no liability or obligation with respect to the value, state or condition of the Property, or the Leases, if any, whether or not the matter is within the knowledge or imputed knowledge of the Vendor, its officers, employees, directors, agents, representations and contractors;
- h) the Vendor has made no representations or warranties with respect to or in any way related to the Property, including without limitation, the following: (i) the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Property, either stated or implied; and (ii) the environmental state of the Property, the existence, nature, kind, state or identity of any Hazardous Substances on, under, or about the Property, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), or any other statute, regulation, rule or provision of law now in existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Substances whether on, under or about the Property or elsewhere;

- i) the Material Documents are being provided to the Purchaser merely as a courtesy and without any representations or warranties whatsoever; and,
- j) it will ensure that any environmental and/or structural reports on behalf of the Purchaser shall also be addressed to the Vendor and a copy of each such report shall be delivered to the Vendor promptly after the completion thereof, regardless of whether the transaction contemplated by this Offer closes. If for any reason such transaction is not consummated, the Purchaser agrees to deliver promptly to the Vendor any and all reports and other data pertaining to the Property and any inspections or examinations conducted hereunder.

#### 11. Title to the Property

Provided that the title to the Property is good and free from all restrictions, charges, liens, claims and encumbrances, except as otherwise specifically provided in this Agreement, and save and except for:

- a) any reservations, restrictions, rights of way, easements or covenants that run with the land;
- b) any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
- c) all laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
- d) any minor easements for the supply of utility services or other services to the Property or adjacent properties;
- e) encroachments disclosed by any error or omission in existing surveys of the Lands or neighbouring properties and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey of the Lands and survey matters generally;
- f) the exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto;
- g) any reservation(s) contained in the original grant from Crown;
- h) the Lease(s), if any, and the right of any tenant, occupant, lessee or license to remove fixed equipment or other fixtures;
- i) subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and



- 14;
- j) provincial succession duties and escheats or forfeiture to the Crown;
  - k) the rights of any person who would, but for the *Land Titles Act* (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;
  - l) any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies; and
  - m) those registrations set out in Schedule "C" attached hereto.

Notwithstanding the foregoing, the Vesting Order shall provide for the deletion of the instruments or registrations listed in Schedule "B" attached hereto, and for the deletion of any filings under the *Personal Property Security Act* (Ontario), as they affect the Property.

12. **Authorizations**

The Purchaser shall assume, at its cost, complete responsibility for compliance with all municipal, provincial and federal laws insofar as the same apply to the Property and the use thereof by the Purchaser. It shall be the Purchaser's sole responsibility to obtain, and pay the cost of obtaining any consents, permits, licenses or other authorizations necessary or desirable for the transfer to the Purchaser of the Vendor's right, title and interest, if any, in the Property.

13. **Leases**

The Purchaser acknowledges and agrees that:

- a) the Property may be subject to Lease(s);
- b) the Vendor makes no representation or warranty respecting the accuracy and completeness of any Lease(s), if any;
- c) the Purchaser will purchase the Property subject to the terms and conditions of the Lease(s), if any, without representation or warranty (whether expressed or implied) of any kind or type from the Vendor relating to the Leases, including without limitation, (i) the enforceability of same (ii) whether the Leases accurately reflect the correct arrangement with the tenant(s) (iii) whether the tenants are in possession thereunder and/or paying rents in accordance thereof (iv) whether there are any ongoing unresolved disputes relating to the provisions of the Lease(s) or



any parties' obligations thereunder and (v) whether any party or parties to the Lease(s) is or are in default of any obligations contained therein;

- d) the Vendor shall not be required to make any adjustments to the Purchase Price for current rentals or prepaid rents or security deposits which may have been received by the Vendor or any other party; and,
- e) the Vendor shall not be required to produce acknowledgements from the tenant(s) respecting the status of the Lease(s), if any.

The Vendor will execute and deliver or cause to be executed and delivered to the Purchaser on the Closing Date an assignment of any interest which the Vendor may have in the Lease(s).

14. **Risk of Loss**

All buildings on the Property and all other things being purchased shall be and remain until completion at the risk of the Vendor. The Property shall thereafter be at the risk of the Purchaser. Pending completion, the Vendor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interest may appear and in the event of substantial damage to the Property before the completion of the Agreement which damage gives rise to any insurance proceeds, the Purchaser may either terminate this Agreement or else take the proceeds of insurance and complete the transaction. Where any damage is not substantial, the Purchaser shall be obliged to complete the Agreement and be entitled to the proceeds of insurance referenced to such damage. The Purchaser agrees that all the insurance maintained by the Vendor shall be cancelled on the Closing Date and that the Purchaser shall be responsible for placing its own insurance thereafter.

15. **Planning Act**

This Agreement is subject to the express condition that if the provisions of Section 50 of the *Planning Act* (Ontario) apply to the sale and purchase of the Property, then this Agreement shall be effective to create an interest in the Property only if such provision is complied with.

16. **Transfer Taxes**

The Parties agree that the Purchase Price is exclusive of all goods and services, harmonized sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, however denominated ("Transfer Taxes") payable on the transaction. The Purchaser shall promptly pay to the Receiver or directly to the appropriate tax authority, as required by

law, or promptly reimburse the Receiver upon demand and delivery of proof of payment by the Receiver to the appropriate tax authority, all applicable Transfer Taxes that are properly payable by the Purchaser in respect of the transactions contemplated herein and the transactions contemplated therein. Alternatively, where applicable, the Purchaser shall have the option to furnish the Receiver with appropriate exemption certificates which must be in a form and content satisfactory to the Receiver, acting reasonably.

The Purchaser will indemnify and hold the Receiver harmless in respect of any Transfer Taxes and related penalties, interest and other amounts which may be assessed against the Receiver or any comparable law as a result of the sale of the Property or as a result of the failure by the Purchaser to pay all the aforementioned sums.

17. **Harmonized Sales Tax**

The Purchaser hereby represents and warrants to the Vendor that it is or will become registered for the purposes of Part IX of the *Excise Tax Act* (Canada) in accordance with the requirements of Subdivision (d) of Division V thereof and it will continue to be so registered as of the Closing Date. The Purchaser covenants to deliver to the Vendor drafts not less than five (5) days before the Closing Date and originals upon Closing of: (i) a notarial copy of the certificate evidencing its registration for purposes of the goods and services tax/harmonized sales tax ("HST"), including the registration number assigned to it; and (ii) a declaration and indemnity of the Purchaser confirming the accuracy, as at Closing, of the representations and warranties set out herein and agreeing to indemnify the Vendor for any amounts for which the Vendor may become liable of any failure by the Purchaser to pay the HST payable in respect of the sale of the Property under Part IX of the *Excise Tax Act* (Canada) and that the Purchaser is buying for its own account and not as trustee or agent for any other party. Provided that the Purchaser delivers a notarial copy of the certificate and the declaration and indemnity as set out above, the Purchaser shall not be required to pay to the Vendor, nor shall the Vendor be required to collect from the Purchaser, the HST in respect of the Property. In the event that the Purchaser shall fail to deliver the notarial copy of the certificate and the declaration and indemnity as set out above, then the Purchaser shall pay to the Vendor, in addition to the Purchase Price, in pursuance of the Purchaser's obligation to pay and the Vendor's obligation to collect HST under the provisions of the *Excise Tax Act* (Canada), an amount equal to thirteen (13%) percent of the Purchase Price, or such rate due and owing at the time of Closing.

18. **Closing**

Closing shall take place on the later of the date which is ten (10) days following Approval of the Agreement by the Court and issuance of the Vesting Order; the waiver of the Purchaser's Conditions; and the expiry of the Purchaser's Conditions, or such earlier or later date as the parties or their respective solicitors may actually agree upon in writing (the "Closing Date" or "Closing"). The



Vendor and the Purchaser acknowledge that the Teraview Electronic Registration System ("TERS") is operative and mandatory in the Land Title Division for the Land Registry Office of Simcoe County (No. 51). The Purchaser and Vendor shall each retain legal counsel who are authorized TERS users and who are in good standing with The Law Society of Upper Canada. The Vendor and Purchaser shall each authorize their respective legal counsel to enter into a document registration agreement in the form as adopted by the joint LSUC-CBAO Committee of documents and closing funds and the release thereof to the Vendor and Purchaser, as the case may be:

- a) shall not occur contemporaneously with the registration of the Transfer/Deed of Land or Application to Register the Vesting Order, and Receiver's certificate required by the Vesting Order (and other registerable documentation, if any) to be registered by the Purchaser's solicitor; and,
- b) shall be governed by the document registration agreement pursuant to which legal counsel receiving any documents or funds will be required to hold same in escrow and will not be entitled to release except in strict accordance with provisions of the document registration agreement and the Purchaser shall be required to deliver the balance due on closing on the Closing Date to the Vendor's solicitors, to be held in escrow by them, whereupon the Vendor's solicitors shall after payment forthwith attend to have the signed Receiver's Certificate filed with the Court, which signed and entered Receiver's Certificate and Vesting Order shall form part of the Application - Vesting Order, and which shall be delivered by the Vendor's solicitors to the Purchaser's solicitors for immediate registration by the Purchaser's solicitors. Upon registration of the Application - Vesting Order, the Vendor shall release possession of the Property to the Purchaser and the balance due on closing shall be released from escrow.

19. **Vendor's Closing Deliveries**

The Vendor shall execute and deliver or cause to be executed and delivered to the Purchaser on the Closing Date, against payment of the Purchase Price, the following:

- a) a statement of adjustments;
- b) a direction for the payment of the balance of the Purchase Price due on Closing, if any;
- c) an undertaking by the Vendor to readjust all items on the statement of adjustments within sixty (60) days from the date of Closing on written demand;
- d) a certificate of the Vendor to the effect that it is not at the Closing Date a



non-resident of Canada within the meaning of Section 116 of the *Income Tax Act*;

- e) a copy of the Vesting Order;
- f) an assignment of any interest which the Vendor may have in the Lease(s);
- g) a notice to the tenant(s) under the Lease(s), if any, to pay future rents to the Purchaser, or as the Purchaser may direct;
- h) keys that may be in the possession of the Vendor;
- i) all Material Documents, if not already in the possession of the Purchaser; and,
- j) any other documents relative to the completion of this Agreement as may reasonably be required by the Purchaser or its solicitors.

20. **Purchaser's Closing Deliveries**

The Purchaser shall execute and deliver to the Vendor on the Closing Date the following:

- a) certified cheques or bank drafts of a Canadian chartered bank or trust company for the balance of the Purchase Price and any other monies required to be paid by the Purchaser pursuant to the Agreement, or the adjustments, including all applicable federal and provincial taxes, duties and registration fees unless the applicable exemption certificates in a form acceptable to the Vendor are presented to the Vendor on or before the Closing Date to exempt the Purchaser therefrom;
- b) all certificates, indemnities, declarations and other evidences contemplated hereby in form and content satisfactory to the Vendor's solicitors, acting reasonably;
- c) an undertaking by the Purchaser to readjust all items on the statement of adjustments;
- d) a notarial copy of its HST registration and HST certificate and indemnity as required pursuant to this Agreement;
- e) an agreement to assume all existing Leases, if any, service and supply contracts in place as of Closing;
- f) an Undertaking to pay for Final Prior Ranking Claims and to indemnify the Vendor, *inter alia*, from any claims against it arising therefrom; and,

- g) any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors.

21. **Inspection**

Without limitation, all of the Property shall be as it exists on the Closing Date with no adjustments to be allowed to the Purchaser for changes in conditions or qualities from the date hereof to the Closing Date. The Purchaser acknowledges and agrees that the Vendor is not required to inspect the Property or any part thereof and the Purchaser shall be deemed, at its own expense to have relied entirely on its own inspection and investigation. The Purchase acknowledges that no warranties or conditions, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions apply hereto and all of the same are hereby waived by the Purchaser

22. **Encroachments**

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Property, or encroachments of the Property onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting the Property.

23. **Purchaser's Warranties**

The Purchaser represents and warrants that:

- a) if applicable, it is a corporation duly incorporated, organized and subsisting under the laws of Canada, Ontario or another province of Canada;
- b) if applicable, it has the corporate power and authority to enter into and perform its obligations under the Agreement and all necessary actions and approvals have been taken or obtained by the Purchaser to authorize the creation, execution, delivery and performance of the Offer and resulting Agreement and the Offer has been duly executed and delivered by the Purchaser, and the resulting Agreement is enforceable against the Purchaser in accordance with its terms; and,
- c) it is not a non-Canadian for the purpose of the *Investment Canada Act* (Canada) and it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).



24. **Confidentiality**

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and shall not without the Vendor's prior written consent be disclosed to any third party. If for any reason Closing does not occur, all such documents (including without limitation, the Material Documents) shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser further agrees that unless and until the terms of this Offer and the Agreement become public knowledge in connection with an application to the Court for Approval of the Agreement, the Purchaser shall keep such terms confidential and shall not disclose the same to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

25. **Indemnification**

The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees and agents (collectively, the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Property or any order, notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws after the Closing Date or as a result of the disposal, storage, release or threat of release or spill on or about the Property of any Hazardous Substance after the Closing Date. For the purposes of the foregoing, "Environmental Laws" shall mean all requirements under or prescribed by common law and all federal, provincial, regional, municipal and local laws, rules, statutes, ordinances, regulations, guidelines, directives, notices and orders from time to time with respect to the discharge, generation, removal, storage or handling of any Hazardous Substance. The obligation of the Purchaser hereunder shall survive the Closing Date.

The Purchaser shall indemnify the Vendor and save harmless the Indemnitees from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the failure of the Purchaser to pay any taxes, duties, fees and like charges exigible in connection with the Offer or Agreement. It shall be the Purchaser's sole responsibility to obtain, and pay the cost of obtaining, any consents, permits,



licenses or other authorizations necessary or desirable for the transfer to the Purchaser of the Property.

26. **Release**

The Purchaser agrees to release and discharge the Vendor together with its officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer sustain or incur in regard to any Hazardous Substance relating to the Property. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Substance, remediate any condition or matter in, on, under or in the vicinity of the Property or seek an abatement in the Purchase Price or damages in connection with any Hazardous Substance. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing of the transaction of purchase and sale, contemplated by this Offer and the Agreement, and shall survive the termination of this Offer and the Agreement for any reason or cause whatsoever and the closing of this transaction.

27. **Non-Registration**

The Purchaser hereby covenants and agrees not to register this Offer or the Agreement or notice of this Offer or the Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Offer or the Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Offer or the Agreement, caution, certificate of pending litigation or other document providing evidence of this Offer or the Agreement or any assignment of this Offer or the Agreement from the title to the Property. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Offer or the Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property.

28. **Assignment**

Save and except for the completion of this transaction by a company to be incorporated by the Purchaser, the Purchaser shall not have the right to assign its rights under this Agreement without the Vendor's prior written consent, which consent may be unreasonably withheld. Notice of the Purchaser's intention to assign, with the assignee's name and address for service and the assignee's HST number shall be provided to the Vendor not less than seven (7) days prior to the Closing Date.

Notwithstanding any such assignment solely for the completion of this

transaction, the Purchaser shall remain liable for all matters and things hereunder.

29. **Notices**

Any notice to be given or document to be delivered to the parties pursuant to this Agreement shall be sufficient if delivered personally or sent by email or sent by facsimile or mailed by prepaid registered mail at the following addresses:

To the Vendor:

**IRA SMITH TRUSTEE & RECEIVER INC.**  
167 Applewood Crescent #6,  
Vaughan, ON L4K 4E5

Attention: Brandon Smith  
Tel: (905) 738-4167 ext.111  
Fax: (905) 738-9848  
Email: brandon@irasmithinc.com

With a copy to the Vendor's solicitors:

**DLA Piper (Canada) LLP**  
Suite 6000, 1 First Canadian Place  
PO Box 367, 100 King St W  
Toronto, Ontario M5X 1E2

Attention: Bruce Darlington  
Tel: (416) 365-3529  
Fax: (416) 369-5210  
Email: bruce.darlington@dlapiper.com

To the Purchaser:

**PACE SAVING AND CREDIT UNION LIMITED**  
8111 Jane St. Unit 1  
Vaughan, ON, L4K 4L7

Attention: Suzanne Hyde  
Tel: (905) 738-8900 x3009  
Fax: (905) 738-0459  
Email: shyde@pacecu.com



with a copy to the Purchaser's solicitors:

**MACDONALD SAGER MANIS LLP**

Suite 800, 150 York Street  
Toronto, Ontario M5H 3S5

Attention: Howard F. Manis  
Tel: (416) 364-5289  
Fax: (416) 364-1453  
Email: hmanis@msmlaw.ca

Any written notice or delivery of documents given in this manner shall be deemed to have been given and received on the day of delivery if delivered personally or sent by email or sent by facsimile, or, if mailed, three (3) days after the deposit with the post office.

30. **Entire Agreement**

The Agreement shall constitute the entire agreement between the parties to it pertaining to the subject matter thereof and shall supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there shall be no agreements or understandings between the parties in connection with the subject matter thereof except as specifically set forth herein. No party hereto has relied on any express or implied representation, written or oral, of any individual or entity as an inducement to enter into the Agreement.

31. **Amendment**

No supplement, modification, waiver or termination of the Agreement shall be binding, unless executed in writing by the parties to be bound thereby, provided that the time provided for doing any matter or thing contemplated herein may be abridged or extended by written agreement, in letter form or otherwise, executed by the duly authorized solicitors for the parties.

32. **Time of Essence**

Time shall be of the essence in this Agreement in all respects and any waiver of any time provision shall not be effective unless in writing and signed by both parties.

33. **Binding Agreement**

This Offer, when accepted, shall constitute a binding agreement of purchase and sale subject to its terms. It is agreed that there is no representation, warranty, collateral agreement or condition affecting the Agreement or the Property



supported hereby other than as expressed herein in writing.

34. **Governing Law**

This Offer and the Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

35. **Gender, Interpretive Matters**

This Offer and the Agreement shall be read with all changes of gender or number required by the context. The titles to provisions do not form part of this Offer or the Agreement and are inserted for reference purposes only. Preparation and submission of the form of this Offer or any other material by the Vendor shall not constitute an offer to sell.

36. **Severability**

Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable to the extent of such avoidance, prohibition or unenforceability without invalidating or otherwise limiting or impairing the other provisions of this Agreement.

37. **Non-Merger**

The provisions of this Agreement (including, without limitation, the representations and warranties of the Purchaser), shall survive Closing and shall not merge in the Vesting Order or in any other documents delivered hereunder.

38. **Counterparts**

The parties hereto agree that this Agreement may be executed in counterparts and by facsimile transmission and each such counterparts executed by facsimile transmission shall be deemed to be an original and when taken together shall constitute as one and the same Agreement.

IN WITNESS WHEREOF the Purchaser has executed this Offer this 13 day of April, 2016

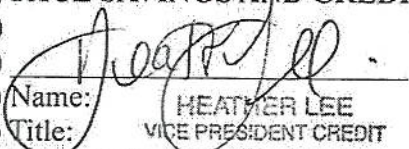
) PACE SAVINGS AND CREDIT UNION LIMITED

)

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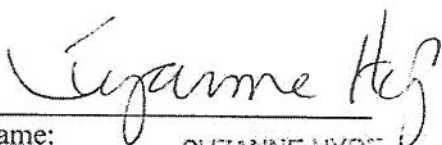
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)

Name:  HEATHER LEE

Title: VICE PRESIDENT CREDIT

) I have authority to bind the corporation.

}   
 ) Name: SUZANNE HYDE  
 ) Title: MANAGER, COMMERCIAL SPECIAL LOANS  
 ) I have authority to bind the corporation.

Subject to the Approval of the Court, the undersigned hereby accepts the foregoing Offer this \_\_\_\_ day of April, 2016.

IRA SMITH TRUSTEE & RECEIVER INC. in its capacity as court-appointed Receiver and Manager of the assets, undertakings and properties of Settlers' Ghost Golf Club Limited Partnership and not in its personal or corporate capacity

Telephone:

Fax:

E-mail:

Per:

\_\_\_\_\_  
Name:

Title:

I have authority to bind the corporation.

Schedule "A"

**PIN 58527-0314 (LT)**

Part Lot 41-42 Concession 2 Medonte Part 1 Plan 51R30187; Oro-Medonte

Being whole of PIN 58527-0314 (LT)

Land Titles Division for the Land Registry Office of Simcoe County (No. 51)



Schedule "B"

**REGISTRATIONS TO BE DELETED FROM PIN 58527-0314 (LT)**  
**EXECUTIONS TO BE DELETED AFFECTING PIN 58527-0314 (LT)**

1. Registration Number: RO1467834
2. Registration Number: SC660196
3. Registration Number: SC762211
4. Registration Number: SC804471
5. Execution Number: 15-0000256 – County of Simcoe

Schedule "C"

**REGISTRATIONS TO BE PERMITTED ON PIN 58527-0314 (LT)**