

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and
Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

**THIRD SUPPLEMENTARY MOTION RECORD
(returnable October 5, 2009)**

October 2, 2009

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Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

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MOTION RECORD INDEX

<u>DOCUMENT</u>	<u>TAB NO.</u>
Amended Notice of Motion returnable October 5, 2009	1.
Schedule A, Draft Sale Approval and Vesting Order	A.
Schedule B, Draft Order	B
Second Supplementary Third Report of the Receiver dated October 2, 2009	2.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

**AMENDED NOTICE OF MOTION
returnable October 5, 2009**

Ira Smith Trustee & Receiver Inc., in its capacity as Court-appointed Interim Receiver and Receiver and Manager (the "Receiver") of 1539304 Ontario Inc. (the "Debtor") will make a motion to the Court on October 5, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order abridging the time for and validating the service of this Notice of Motion and the materials filed in support of this motion and dispensing with further service thereof such that this motion is properly returnable October 5, 2009;

2. An Order approving the sale of the 80 King William Street Property (the “Property”) to J. Kara Capital Corporation (the “Purchaser”), pursuant to the Offer to Purchase dated October 2, 2009, accepted by the Receiver (the “Agreement”), in accordance with the terms of the draft Order attached hereto as Schedule “A”:
3. An Order in accordance with the terms of the draft Order attached hereto as Schedule “B”:
 - (a) approving the Third Report of the Receiver dated September 17, 2009 (the “Third Report”) and the actions of the Receiver as set out therein;
 - (b) approving the Supplementary Third Report of the Receiver dated September 24, 2009 (the “Supplementary Third Report”) and the actions of the Receiver as set out therein;
 - (c) approving the Second Supplementary Third Report of the Receiver dated October 2, 2009 (the “Supplementary Third Report”) and the actions of the Receiver as set out therein;
 - (d) temporarily sealing Volume 2 of the Third Report; and
 - (e) approving the fees and disbursements of the Receiver and those of its counsel;
4. Such further and other relief as counsel may request and this Honourable Court may permit

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the Appointment Order, Ira Smith Trustee & Receiver Inc. was appointed as Interim Receiver and Receiver and Manager of the assets, undertaking and property of the Debtor pursuant to ss. 47(1) of the *Bankruptcy and Insolvency Act, Act*, R.S.C. 1985 C. B-3 (the “BIA”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1190, c. C-43 (the “CJA”);

2. The Receiver has accepted an Offer of Purchase the Property from the Purchaser, subject to the approval of this Honourable Court;
3. The Receiver entered into the Agreement after an extensive marketing campaign and several rounds of bidding as set out in a sales process approved by the court on February 26, 2009 and amended by the court on September 25, 2009;
4. Sale of the Property pursuant to the agreement is commercially reasonable;
5. The identities of the parties that submitted bids on the Property and the appraisal of the Property, contained in Volume 2 of the Third Report, should be sealed pending the completion of the sale contemplated in the Agreement as the release of this sensitive information may prejudice any future sale negotiations should the proposed sale not be completed;
6. S. 47 of the BIA;
7. S. 101 of the CJA; and
8. 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 Third Report;
2. The Supplementary Third Report;
3. The Second Supplementary Third Report;
4. Factum of the Receiver; and
5. Such further and other materials as counsel may advise and this Honourable Court may permit.

Date: October 2, 2009

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**Lawyers for Ira Smith Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.**

TO: ATTACHED SERVICE LIST

SERVICE LIST

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Lawyers for J. Kara Capital Corp.

SCHEDULE "A"

Court File No.: CV-08-7714-00CL

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

THE HONOURABLE)
)
JUSTICE)
)
)
)

MONDAY, THE 5TH DAY
OF OCTOBER, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

APPROVAL AND VESTING ORDER

(80 KING WILLIAM STREET PROPERTY)

THIS MOTION, made by Ira Smith Trustee & Receiver Inc. in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of 1539304 Ontario Inc. (the "Debtor") for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and J. Kara Capital Corporation (the "Purchaser"), offered by the Purchaser on October 2, 2009 and accepted by the Receiver, and appended to the Second Supplementary Third Report of the Receiver dated October 2, 2009 (the "Second Supplementary Third Report"), and vesting the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Receiver dated September 17, 2009, the Supplementary Third Report of the Receiver dated September 24, 2009 and the Second Supplementary Third Report and the exhibits thereto, filed, and on hearing the submissions of counsel for the Receiver, ICICI Bank Canada, the City of Hamilton, Canlight Realty Corporation, Ernie Reimer and the Purchaser and Mr. Harry Ganatra on behalf of the debtor and Mr. Marvin Caplan on his own behalf, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Robin Antonelli, sworn October 2, 2009, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Pepall dated November 12, 2008 and the amendments thereto; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton-Wentworth of an Application for Vesting Order in the form prescribed by the *Land Titles 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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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 ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

SCHEDULE "A"

Schedule A – Form of Receiver’s Certificate

Court File No.: CV-08-7714-00CL

**ONTARIO
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ICICI BANK CANADA

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- and -

1539304 ONTARIO INC.

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated November 12, 2008, Ira Smith Trustee & Receiver Inc. was appointed as the interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of 1539304 Ontario Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated September 22, 2009, the Court approved the agreement of purchase and sale (the "Sale Agreement") between the Receiver and J. Kara Capital Corporation (the "Purchaser"), offered by the Purchase on October 2, 2009 and accepted by the Receiver, and appended to the Second Supplementary Third Report of the Receiver dated October 2, 2009 (the "Report"), and provided for the vesting in the Purchaser, of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the 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 _____ on _____.

**Ira Smith Trustee & Receiver Inc., in its
capacity as Receiver of the undertaking,
property and assets of 1539304 Ontario Inc.,
and not in its personal capacity**

Per: _____
Name:
Title:

SCHEDULE "A"

Schedule "B" - Purchased Assets – Real Property

Legal Description:

LOT 21 AND PART OF LOT 22 NATHANIEL HUGHSON SURVEY (UNREGISTERED), SOUTH SIDE KING WILLIAM STREET, BETWEEN JOHN STREET AND CATHARINE STREET, BEING PART 1 ON 62R16706; HAMILTON (PIN 17167-0115 (LT))

being Municipally known as 80 King William Street, Hamilton, Ontario.

Schedule "C" – Encumbrances To Be Deleted From Real Property

1. Instrument No. WE278590 registered on December 3, 2004, being a Charge in favour of the City of Hamilton;
2. Instrument No. WE278608 registered on December 3, 2004, being an Assignment of Rents in favour of City of Hamilton;
3. Instrument No. WE278611 registered on December 3, 2004, being a Notice of Security Interest in favour of the City of Hamilton;
4. Instrument No. WE436883 registered on December 4, 2006, being a Charge in favour of ICICI Bank Canada;
5. Instrument No. WE436887 registered on December 4, 2006, being an Assignment of Rents in favour of ICICI Bank Canada;
6. Instrument No. WE438117 registered on December 11, 2006, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
7. Instrument No. WE515627 registered on December 4, 2007, being a Notice from ICICI Bank Canada Amending Charge No. WE436883;
8. Instrument No. WE515634 registered on December 4, 2007, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
9. Instrument No. WE541939 registered on April 23, 2008, being a Construction Lien in favour of Randy Legacy;
10. Instrument No. WE549343 registered on May 27, 2008, being a Certificate of Action in favour of Randy Legacy;
11. Instrument No. WE550186 registered on May 30, 2008, being a Construction Lien in favour of 353903 Ontario Ltd.;
12. Instrument No. WE557888 registered on July 2, 2008, being a Construction Lien in favour of Basic Drywall Inc.;
13. Instrument No. WE559961 registered on July 11, 2008, being a Construction Lien in favour of 1504593 Ontario Limited;
14. Instrument No. WE561908 registered on July 18, 2008, being a Certificate of Action in favour of 353903 Ontario Ltd.;
15. Instrument No. WE564105 registered on July 29, 2008, being a Certificate of Action in favour of Basic Drywall Inc.;
16. Instrument No. WE570744 registered on August 25, 2008, being a Certificate of Action in favour of 1504593 Ontario Limited;
17. Instrument No. WE597243 registered on December 29, 2008, being a Construction Lien in favour of 1712164 Ontario Ltd.;

18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of 1712164 Ontario Ltd.;
19. Instrument No. WE598810 registered on January 1, 2009, being a Court Order by ICICI Bank Canada.
20. Execution No. 08-0001178 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc. as Defendant and Greg Ksiazek as Creditor where the sum of \$3,109.08 was awarded together with costs of \$110.00.
21. Execution No. 08-0001919 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc., 1712164 Ontario Ltd., The City of Hamilton and ICICI Bank Canada as Defendants and Randy Legacy Carrying on Business as Cyber Services Electrical & Fire Alarm Specialists as Creditor where the sum of \$55,150.02 was awarded together with costs of \$977.06.

SCHEDULE "A"

Schedule "D" – Permitted Encumbrances, Easements And Restrictive Covenants Related To The Real Property (unaffected by the Vesting Order)

General Permitted Encumbrances

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land.
2. Any registered agreements with a governmental authority or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or telecommunication service.
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Real Property.
4. Any minor easements or servitudes for the supply of utility service to the Real Property or adjacent properties.
5. Encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any applicable law, by-law or regulations which might be disclosed by a more up-to-date survey of the Real Property and survey matters generally.
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto.
7. Any reservation(s) contained in the original grant from the Crown.
8. The Lease(s) if any, and the right of any tenant, occupant, lessee or license to remove fixed equipment or other fixtures.
9. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
10. Provincial succession duties and escheats or forfeiture to the Crown.
11. The rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the Lands or any part of through length of adverse possession, prescription, misdescription or boundaries settled by convention.
12. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies.

Specific Permitted Encumbrances

1. Instrument No. HL16639 registered on March 29, 1957, being a Notice of Agreement between The Southam Company Limited and The Corporation of the City of Hamilton.
2. Instrument No. 62R16706 registered on February 10, 2004, being a Reference Plan.
3. Instrument No. VM259660 registered on February 10, 2004, being a Certificate of First Registration Land Titles.

4. Instrument No. WE404776 registered on July 12, 2006, being a Condominium Approval Agreement between 1539304 Ontario Inc. and the City of Hamilton.

Corporation, Ernie Reimer and J. Kara Capital Corporation and Mr. Harry Ganatra on behalf of the debtor and Mr. Marvin Caplan on his own behalf, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Robin Antonelli, sworn October 2, 2009, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Receiver's Motion Record herein is abridged, that this motion is properly returnable today, the service, including the manner of service, of the Motion Record is hereby approved and that further service is dispensed with.

THIRD REPORT

2. **THIS COURT ORDERS** that the Third Report, the Supplementary Third Report and the Second Supplementary Third Report and the actions of the Receiver as reported therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver's fees and disbursements from June 1, 2009 to August 31, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from May 1, 2009 to August 31, 2009, all as detailed in the Third Report, be and are hereby approved.

4. **THIS COURT ORDERS** that the Volume 2 of the Third Report shall be treated as confidential and shall be sealed, segregated from and not form a part of the public record pending further order of this Court and shall be filed with this Court in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order request.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

**SECOND SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED OCTOBER 2, 2009

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**SECOND SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED OCTOBER 2, 2009

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4.1 <i>Recommended Offer</i>	5
5.0 Other Matters	5
6.0 Conclusion	6

EXHIBITS

Endorsement of the Honourable Justice Cumming dated September 25, 2009	"A"
Terms of Modified Sales Process attached to the Endorsement of Cumming J.	"B"
Affidavit of Brandon Smith sworn September 30, 2009	"C"
Proof of extended insurance coverage to 12:01AM October 17, 2009	"D"
September 30 and October 1, 2009 schedule for tours of the Project	"E"
Receiver's letter dated September 30, 2009 enclosing the form of APA	"F"
Summary and analysis of the APA received through Modified Sales Process	"G"

**SECOND SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED OCTOBER 2, 2009

J. Kara Capital Corp. APA

“H”

Communication between Mr. Ganatra and Lang Michener LLP

“I”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**SECOND SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED OCTOBER 2, 2009

1.0 INTRODUCTION

This Second Supplementary Third Report to Court (the “**Second Supplementary Third Report**”) is filed by Ira Smith Trustee & Receiver Inc. (“**ISI**”) in its capacity as court- appointed interim receiver and receiver and manager (the “**Receiver**”), pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O 1990, c. C.43, as amended (the “**CJA**”), without security, of all of the assets, undertaking and property of 1539304 Ontario Inc. (the “**Company**” or the “**Debtor**”).

The Honourable Madam Justice Pepall made an order dated November 12, 2008 (the “**Receivership Order**”) appointing the Receiver.

The Receiver has filed the following Reports with the Court:

a) The First Report to Court dated February 20, 2009 (the “**First Report**”) and a Supplement to the First Report dated March 4, 2009 (the “**Supplementary First Report**”). The First Report was approved by order of the Honourable Madam Justice Pepall dated February 27, 2009, (the “**First Approval Order**”), and the Supplement to the First Report was approved by order of the Honourable Madam Justice Pepall dated March 10, 2009, (the “**First Supplement Approval Order**”).

b) The Second Report to Court dated June 8, 2009 (the “**Second Report**”). The Second Report was approved by order of the Honourable Madam Justice Pepall dated June 11, 2009, (the “**Second Approval Order**”).

c) The Third Report to Court dated September 17, 2009 (the “**Third Report**”) and a Supplement to the Third Report Dated September 24, 2009 (the “**Supplementary Third Report**”) which is currently before this Honourable Court in the Receiver’s Motion Record and Supplementary Motion Record.

Attached to the Supplementary Third Report as Exhibits “A”, “B”, “C” and “D” respectively are copies of the Receivership Order, the First Approval Order, the First Supplement Approval Order and the Second Approval Order, along with Her Honour’s Endorsement on each Order.

1.1 Purpose of this Report -

On September 22, 2009, the Receiver’s motion for, inter alia, approval of the sale of the Project (as hereinafter defined) to Canlight Realty Corporation (“**Canlight**”), or to a purchaser as it may direct, was heard before Mr. Justice Morawetz. One of the stakeholders, Mr. H. Ganatra, the

principal of the Debtor, requested an adjournment of the Receiver's motion in order for him to further review the Receiver's Motion Record and to submit material.

Mr. Justice Morawetz directed that the Receiver's motion be adjourned to September 25, 2009 in order to allow any party further time to review the Receiver's Motion Record and to file their own material. Exhibit "E" to the Supplementary Third Report is a copy of His Honour's endorsement dated September 22, 2009.

On September 25, 2009, the Receiver's motion for, inter alia, approval of the sale of the Project (as hereinafter defined) to Canlight, or to a purchaser as it may direct, was heard before Mr. Justice Cumming. Counsel for a party who did not participate in the Sales Process, as approved by the First Approval Order, and was deemed to not have specific knowledge of the Sales Process, by reason of its geographical location, presented an offer to this Honourable Court substantially in excess of the sale price in the Canlight Asset Purchase Agreement being recommended by the Receiver.

The parties in Court agreed amongst themselves on a modified "stalking horse" sales process (the "**Modified Sales Process**") as further described in the terms accompanying His Honour's Endorsement (the "**Terms**"). Attached hereto as **Exhibits "A"** and "**B"** respectively, is His Honour's Endorsement and the attached terms of the Modified Sales Process (the "**Terms**").

2.0 BACKGROUND AND OVERVIEW

In its capacity as Receiver, ISI has reported to this Honourable Court on the nature of the Debtors' business operation and sole known asset, a condominium project under construction, located at 80 King William Street, in the City of Hamilton known as Trinity Landing (the

“**Project**”). The Receiver refers the readers of this Second Supplementary Third Report to the First Report for a complete overview of the business and its sole asset.

3.0 EVENTS SINCE THE RECEIVER’S SUPPLEMENTARY THIRD REPORT TO COURT

Since September 25, 2009, the Receiver:

- Communicated with all parties who had previously participated in the Sales Process, and who were referenced in Exhibit “G” to the Third Report, to make them aware of the Modified Sales Process. Attached as **Exhibit “C”** is the affidavit of Brandon Smith attesting to such communication. Included as an exhibit to the affidavit is the Receiver’s letter of September 29, 2009.
- Extended insurance coverage on the Project to 12:01 AM on October 17, 2009 and as a requirement thereof has continued thrice nightly security patrols of the Project. Attached as **Exhibit “D”** is proof of continued insurance coverage.
- Communicated with numerous parties, their counsel and/or agents/brokers regarding the Modified Sales Process and, in accordance with paragraphs 8 and 9 of the Terms, has distributed its confidentiality agreement (“CA”) to all potential purchasers requesting access to the building and/or electronic data room. The Receiver has received 12 CAs executed by potential purchasers and/or their agents/brokers.
- Through its consultant, Pelican Woodcliff Inc. (“PWI”) has shown the Project to those potential purchasers who have requested to see it and have furnished the Receiver or PWI with an executed CA. Attached as **Exhibit “E”** is the schedule for tours conducted in accordance with paragraph 8 of the Terms.
- Provided data room access in accordance with paragraph 9 of the Terms.
- Granted a request to tour the Project from one potential purchaser who had participated in the Sales Process and accordingly was still bound by the CA it executed in conjunction therewith.
- Circulated its form of Asset Purchase Agreement (“APA”) in accordance with paragraph 5 of the Terms to those parties who have signed the CA, and if requested to do so, their respective counsel and/or their real estate agents/brokers bound by CAs. Attached as **Exhibit “F”** is a copy of the APA and covering letter.

- At 2:15 PM on October 2, 2009, opened the sealed bids received in accordance with paragraph 3 of the Terms at the offices of Lang Michener LLP. The results of these offers to purchase the Project are discussed in greater detail in section 4.0 below “Offers Received Through the Modified Sales Process”.

4.0 OFFERS RECEIVED THROUGH THE MODIFIED SALES PROCESS

Attached as **Exhibit “G”** is an analysis of the APAs received through the Modified Sales Process. In total one (1) offer was received in the amount of \$ 3,101,010.00.

4.1 Recommended Offer -

Attached as **Exhibit “H”** is the offer of J. Kara Capital Corp. (“**J. Kara**”) in the amount of \$3,101,010.00 (the “**J. Kara APA**”). The Receiver respectfully submits to this Honourable Court that it approve the sale of the Project to J. Kara as it is the sole offer received through the Modified Sales Process.

5.0 OTHER MATTERS

In accordance with paragraph 8 of the Terms the Receiver, through PWI, arranged for tours of the Project to be given to any potential purchaser who had executed the Receiver’s form of CA. This position was articulated by the Receiver both orally and in writing, prior to and following the Endorsement of the Honourable Justice Cumming. Mr. Ganatra, the Principal of the Debtor appeared to be under the impression that he would be allowed access to the Project for the purpose of confirming his belief that damage could have occurred to the property during the receivership administration. Attached as **Exhibit “I”** is the communication between Mr. Ganatra and Lang Michener LLP regarding such requests for access. To date, Mr. Ganatra has neither requested nor executed the Receiver’s CA.

6.0 CONCLUSION

The Receiver respectfully requests that this Honourable Court approve the recommendations set forth in Section 12.0 the Third Report with the exception of item number 6. For reasons set out in this Second Supplementary Third Report, the Receiver further respectfully requests that this Honourable Court approve:

1. the Receiver's request for an Order approving the sale transaction to J. Kara contemplated by the J. Kara APA between the Receiver and J. Kara made as of October, 2, 2009, and appended to this Second Supplementary Third Report as Exhibit H, and vesting in J. Kara the Debtor's right, title and interest in and to the assets described in the J. Kara APA;
2. the actions and activities of the Receiver as described in the Supplementary Third Report and in this Second Supplementary Third Report; and
3. such other advice and direction from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

**

**

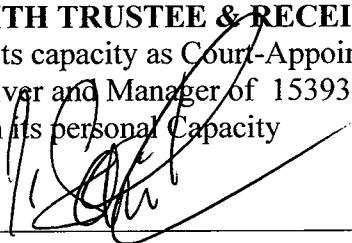
**

All of which is respectfully submitted at Toronto, Ontario this 2nd day of October, 2009.

IRA SMITH TRUSTEE & RECEIVER INC.

solely in its capacity as Court-Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity

Per:



President

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

Court File No. CV-08-7714-00CL

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

**SECOND SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS
COURT-APPOINTED INTERIM RECEIVER AND RECEIVER AND MANAGER
OF 1539304 ONTARIO INC.
DATED OCTOBER 2, 2009**

**IRA SMITH TRUSTEE & RECEIVER INC.
Suite 6-167 Applewood Crescent
Concord, Ontario L4K 4K7**

**Ira Smith, MBA CA•CIRP
Tel: 905.738.4167
Fax: 905.738.9848**

Agreement of Purchase and Sale

1. Canlight agreement of purchase and sale is to serve as a "stalking horse".
2. In return for agreeing to this, ^{if Canlight or its nominee's bid is not accepted,} Canlight will be paid a "break fee" of \$200,000 plus 15% of any excess in purchase price greater than \$2,500,000 less the real estate commission of 2.5% plus GST thereon.
3. ~~The J. Kara Capital Corp. ("Kara") bid for~~ less than \$2,500,000 ~~is to substitute a reserve bid for~~ in ~~the~~ a sealed bid auction to be conducted by the Receiver on Friday, October 2, 2009 at 2 P.M. at the Long Medhurst LLP Offices. There will be a 10% deposit requirement by bank draft.
4. Kara will forfeit its \$200,000 deposit paid to the Receiver today if it fails to participate in the auction by submitting a bid for at least \$2,500,000.
5. Any party interested in purchasing the property is permitted to bid in the auction using the form of agreement of purchase and sale that the Receiver will prepare and distribute to all interested parties.
6. The ^{Receiver will seek an} approval order ~~will~~ following the auction ~~no~~ no later than Monday, October 5, 2009.
7. The closing will follow the approval order as soon as

possible with the adjustment date to be as of September 30, 2009, but in no case later than October 16, 2009.

8. The property will be available for inspection ^{on} by any party intending to bid in the auction on ~~Wednesday and Thursday~~ September 30 and October 1, provided such party first executes and delivers the form of confidentiality agreement required by the Receiver.

9. Any intended ~~bidder~~ ^{bidder} shall also be entitled to have access to the Receiver's data room upon execution of ~~the~~ the Receiver's confidentiality agreement.

10. In the event that two or more equal, best offers are received, the Receiver will immediately contact ~~the~~ those parties to increase their offer, without further deposit, that same day, and the best offer will be accepted.

Court File No.: CV-08-7714-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and
Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

September 25, 2009

Submissions. In the course of submissions the attached agreement was reached by all parties. Given this, and the fact that it provides some benefit to each party, I have agreed to modify the sale process, to extend same to accord with the terms of the agreement of the parties. The motion therefore is adjourned to October 5, 2009.

Peter J. Cumming J.

1. Canlight agreement of purchase and sale is to serve as a “stalking horse”.
2. In return for agreeing to this, if Canlight or its nominee’s bid is not accepted, Canlight will be paid a “break fee” of \$200,000 plus 15% of any excess in purchase price greater than \$2,500,000 less the real estate commission of 2.5% plus GST thereon.
3. Every bidder participating in the auction shall bid an amount not less than \$2,500,000 in a sealed bid auction to be conducted by the Receiver on Friday, October 2, 2009 at 2 p.m. at the Lang Michener LLP offices. There will be a 10% deposit requirement by bank draft.
4. Kara will forfeit its \$200,000 deposit paid to the Receiver today if it fails to participate in the auction by submitting a bid for at least \$2,500,000.
5. Any party interested in purchasing the property is permitted to bid in the auction using the form of agreement of purchase and sale that the Receiver will prepare and distribute to all interested parties.
6. The Receiver will seek an approval order following the auction no later than Monday, October 5, 2009.
7. The closing will follow the approval order as soon as possible with the adjustment date to be as of September 30, 2009, but in no case later than October 16, 2009.
8. The property will be available for inspection once by any party intending to bid in the auction on September 30 and October 1, provided such party first executes and delivers the form of confidentiality agreement required by the Receiver.
9. Any intended bidder shall also be entitled to have access to the Receiver’s data room upon execution of the Receiver’s confidentiality agreement.
10. In the event that the two or more equal, best offers are received, the Receiver will immediately contact those parties to increase their offer, without further deposit, that same day, and the best offer will be accepted.

Court File No. CV-08-7714-00CL

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

ICICI BANK CANADA

Applicants

- and -

1539304 ONTARIO INC.

Respondents

**AFFIDAVIT OF BRANDON SMITH
(Sworn September 30, 2009)**

I, Brandon Smith, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Estate Manager of Ira Smith Trustee & Receiver Inc. ("ISI"), the court-appointed receiver and manager (the "Receiver") of 1539304 Ontario Inc. (the "Debtor"). As such, I have knowledge of the matters hereinafter deposed to.
2. On September 25, 2009, by endorsement of the Honourable Justice Cumming, the sales process as approved by the Honourable Madam Justice Pepall (the "Sales Process") was modified.
3. The Receiver undertook to notify all parties who had participated in the Sales Process regarding the modification.
4. Attached hereto as Exhibit "A" is a copy of our letter of September 29, 2009, advising of the modified process.

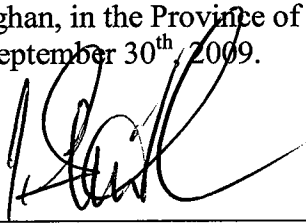
5. I did send by electronic mail a copy of this letter to all seven (7) parties who had submitted offers in the Sales Process, and whose names are listed in Exhibit "B" to Volume 2 of the Receiver's Third Report to Court.

6. I did send by electronic mail a copy of this letter to the following supplementary recipients:

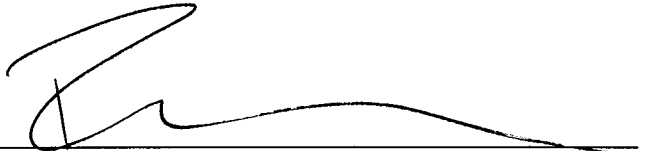
- a. Messrs. L. Wittlin & A. Rousseau, counsel for the Receiver.
- b. Messrs. N. Ary & M. Winnick of Pelican Woodcliff Inc, consultant to the Receiver.
- c. Messrs. J. Longo & R. Weston, counsel for the City of Hamilton.
- d. Mr. H. Whiteley, counsel for the Applicant.
- e. Mr. E. Reimer, potential purchaser and to his counsel Mr. J. Lefurgey.

Dated at Vaughan, Ontario this 30th day of September, 2009.

SWORN BEFORE ME at the City of Vaughan, in the Province of Ontario, on September 30th, 2009.



A Commissioner for taking affidavits



Brandon Smith

**Ira Smith, a Commissioner, etc.,
Province of Ontario, for Ira Smith Trustee
& Receiver Inc. Trustee in Bankruptcy.
Expires May 13, 2011.**

Brandon Smith

From: Brandon Smith
Sent: September 29, 2009 12:08 PM
To: Brandon Smith
Cc: Ira Smith; Leslie A. Wittlin (lwittlin@langmichener.ca); Aaron ROUSSEAU (arousseau@langmichener.ca); 'Natan Ary'; 'Michael Winnick'
Subject: Trinity Landing - 80 King William Street
Attachments: Letter to previous potential purch's 09 29 09.pdf
Importance: High

Gentlemen,

Please refer to the attached letter.

If you are interested in revisiting this opportunity to submit a bid on the subject property please contact me as soon as possible. Our form of APA will be circulated to only those parties who indicate that they are interested in submitting a bid in accordance with the terms described in the attached letter.

Please feel free to contact us if you have any questions.

Yours truly,

Brandon Smith
Estate Manager



Ira Smith
TRUSTEE & RECEIVER INC.

Brandon Smith BA

Suite 6 - 167 Applewood Crescent, Concord, Ontario L4K 4K7
P: 905.738.4167 ext. 113 **Toll free:** 1.866.483.NO DEBT (6633)
F: 905.738.9848 **E:** brandon@iasmithinc.com
www.iasmithinc.com

This Exhibit ^A..... referred to in the
 Affidavit of BRANDON SMITH
 Sworn before me this 29th day of Sept., 2009
 30th

A Commissioner, etc.

Ira Smith, a Commissioner, etc.,
Province of Ontario, for Ira Smith Trustee
& Receiver Inc. Trustee in Bankruptcy.
Expires May 13, 2011.

This e-mail is intended only for the person to whom it is addressed (the "addressee") and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use that a person other than the addressee makes of this communication is prohibited and any reliance or decisions made based on it, are the responsibility of such person. We accept no responsibility for any loss or damages suffered by any person other than the addressee as a result of decisions made or actions taken based on this communication or otherwise. If you received this in error, please contact the sender and destroy all copies of this e-mail

Ira Smith

TRUSTEE & RECEIVER INC.
167 Applewood Crescent, Suite 6, Concord, Ontario, Canada L4K 4K7

Brandon Smith
Tel. (905) 738-4167 x113
Fax (905) 738-9848
Email: brandon@irasmithinc.com
Website: www.irasmithinc.com

September 29, 2009

VIA EMAIL

**TO THE PARTIES WHO PREVIOUSLY PARTICIPATED
IN THE TRINITY LANDING, HAMILTON, ON
RECEIVERSHIP SALES PROCESS**

Dear Sirs

**In the Matter of the Receivership of 1539304 Ontario Inc. o/a Trinity Landing
Condominiums ("Trinity Landing")**

We are writing to advise you that on Friday, September 25, 2009, we attended in Court on the Receiver's motion to approve a specific transaction for the receivership sale on an "as is where is" basis, the real property located at 80 King William Street, Hamilton, ON.

By agreement amongst the parties in Court, including the Receiver, it was agreed that the sales process would be extended during this week to Friday, October 2, 2009. The Court further directed that:

1. The Receiver would communicate with you regarding the events of last Friday and that you are able to resubmit a bid.
2. The minimum offer price is \$2,500,000 and the deposit to be submitted with your bid remains at 10% of the price offered.
3. The offer is on an "as is where is" basis and the Receiver will provide you with its form of Agreement of Purchase and Sale.
4. All bids must be a sealed bid, and delivered to the offices of our legal counsel, Lang Michener LLP, P.O. Box 747, BCE Place 181 Bay St., Toronto, ON M5J 2T7, Attention: Mr. L.A. Wittlin, no later than 2:00PM Toronto time on Friday, October 2, 2009.
5. The Property may be inspected, by appointment, on either Wednesday, September 30 or Thursday, October 1, 2009, by appointment.
6. You may again have access to our online data room.
7. You must be available to be contacted on Friday afternoon in the event we need to speak with you regarding your offer.
8. The confidentiality agreement and all of its provisions that you previously executed remain in force.

9. The closing of the transaction will take place as soon as possible after obtaining the Approval Order with an adjustment date of September 30, 2009, but in any event, the closing will take place no later than October 16, 2009.

If you are interested in resubmitting an offer to purchase the Property, or require any additional information, please contact us.

Yours truly,

IRA SMITH TRUSTEE & RECEIVER INC.,
Court-appointed Interim Receiver and Receiver and Manager of
1539304 Ontario Inc. o/a Trinity Landing Condominiums

Per:



Brandon Smith
Estate Manager

ICICI BANK CANADA

1539304 ONTARIO INC.

And

Applicants

Respondents

Court File No.: CV-08-7714-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST -**

Proceeding commenced at Toronto

**AFFIDAVIT OF BRANDON SMITH
(Sworn September 30, 2009)**

Ira Smith Trustee & Receiver Inc.
Suite 6 – 167 Applewood Crescent
Concord, ON L4K 4K7

Tel: 905.738.4167
Fax: 905.738.9848

Court-appointed interim receiver and receiver and
manager of 1539304 Ontario Inc.



SINCLAIR-COCKBURN
FINANCIAL GROUP



Pending the issuance of the policy and in consideration of the stipulations herein contained, the Insurer is bound as follows:

INSURED: 1539304 Ontario Inc. o/b Ira Smith Trustee/Receiver & Manager

ADDRESS: 167 Applewood Crescent Ste 6
Concord, ON
L4K 4K7

INSURER(s): ABEX (Affiliated Brokers Exchange Ltd) effected through Lloyds

POLICY #: PPHP0469

TYPE OF POLICY: Commercial Property Policy

EFFECTIVE DATE: October 1, 2009 at 12:01a.m. Local Time

EXPIRY DATE: October 17, 2009 at 12:01 a.m. Local Time

PREMIUM: \$ 1,910.00 (Term Premium) + 8% Tax (Subject to 25% Minimum Retained)

LIMITS/COVERAGE: As per Schedule of Coverage attached

Insurance under this interim Binder is subject to all the terms and conditions of the standard form of the Policy in use by the Insurer in the Province in which the property is located. The obligations of the parties are according to the terms of the Policy in ordinary use by the Insurer. This binder will continue in force until replaced by a regular Policy but in no event for a period longer than 60 days from the effective date. It is expressly understood and agreed that where there is a variance between the effective hour of commencement in this binder and the Policy subsequently issued, that the time set forth herein shall govern and supersede any commencement provisions contained in such policy.

DATE: September 29, 2009

SINCLAIR-COCKBURN FINANCIAL GROUP

Authorized Representative

Toronto
910 – 3389 Steeles Avenue East
Toronto, ON M2H 3S8
(P)416-494-7700 (F)416-494-5343

Pickering
1029 Brock Rd. South
Pickering, ON L1W 3T7
(P)905-683-5559 (F)905-683-1117

Web: www.scfg.ca Email: insure@scfg.ca





SINCLAIR-COCKBURN
Financial Group

PROPERTY COVERAGES

Coverage Form: Named Perils basis, subject to applicable exclusions.

Deductible: \$ 10,000	Coinsurance Clause: 90 % Co-Insurance
Earthquake Ded.: \$ Not Included	Flood Ded.: \$ Not Included
Sewer back-up Deductible: \$ Not Included	
Basis of Valuation: Actual Cash Value	Misinterpretation of Date Exclusion
	Data Exclusion
	Terrorism Exclusion
	Fungi & Asbestos Exclusion

Location Coverages and Limits

Location: 80 King William Street, Hamilton, ON L8R 1A4

Building Limit: \$ 5,325,000

Subject To: Fire & Extended Coverage, including Riot, Vandalism & Malicious Acts.

Warranties:

Watchman Warranty (Attached)

Utility Warranty (Attached)

COMMERCIAL GENERAL LIABILITY POLICY ON AN OCCURRENCE BASIS
(Premises Coverage Only)

Item	Limit
Bodily Injury & Property Damage Inclusive	\$ 5,000,000
Aggregate	\$ 5,000,000
Property Damage Deductible (including expenses)	\$ 10,000
Bodily Injury Deductible (including expenses)	\$ 10,000
Personal Injury Limit	\$ 1,000,000
Medical Payments	\$ 10,000
Absolute Pollution Exclusion	
Products & Completed Operations Excluded	
Employees As Additional Insureds	

WATCHMAN WARRANTY (Amended)

It is warranted, and made a condition precedent to recovery under this policy, that the Insured shall provide a full time watchman/patrol service, at the location described in the policy.

For the purpose of this insurance, the definition of a Watchman shall mean an employee/ representative of the Insured or hired professional watchman. This person shall be contracted to patrol the premises no less than 3 times between the hours of 7pm and 9am.

FAILURE TO COMPLY WITH ABOVE WARRANTY SHALL RENDER ALL INSURANCE UNDER THIS POLICY NULL AND VOID.

Utility Warranty

It is hereby understood and agreed that all Utilities are turned off and maintained in the off position.

It is further agreed that the Sprinkler System and all water lines will be drained of all liquid.

This warranty does permit that hydro be maintained were required for the operation of alarm systems.

Failure to comply with this warranty will render the coverage null and void.

80 King William Street, Hamilton, ON		
Schedule of Showings		
Time/Date	September 30, 2009	October 1, 2009
10:30 AM	Ernie Reimer (and his group including Mr. H. Epp)	Marvin Caplan with: 1) Benemar Construction; and 2) Sheppard Group including Messrs. H. Stinson & T. Kwan
1:00 PM	Frank Taylor/J. Kara Capital Corp.	TT Developments
3:30 PM	Marvin Caplan with Mr. D. Ruparel	No Showing

Ira Smith

TRUSTEE & RECEIVER INC.
167 Applewood Crescent, Suite 6, Concord, Ontario, Canada L4K 4K7

Brandon Smith
Tel. (905) 738-4167 x113
Fax (905) 738-9848
Email: brandon@irasmithinc.com
Website: www.irasmithinc.com

September 30, 2009

VIA EMAIL

**TO THE PARTIES PARTICIPATING IN
THE MODIFIED SALES PROCESS AS
ENDORSED BY THE HONOURABLE JUSTICE CUMMING
SEPTEMBER 25, 2009**

**In the Matter of the Receivership of 1539304 Ontario Inc. o/a Trinity Landing
Condominiums ("Trinity Landing")**

Further to your execution of the Confidentiality Agreement and participation in the Trinity Landing modified sales process, we enclose the Receiver's form of Asset Purchase Agreement for you to use if you wish to submit a bid to purchase the Trinity Landing real estate located at 80 King William Street, Hamilton, ON.

We wish to bring your attention to the following sections of the Asset Purchase Agreement and the sales process:

1. **Section 3** - The minimum offer price is \$2,500,000 and the deposit to be submitted with your bid remains at 10% of the price offered.
2. **Section 4** – You must complete this section fully, to indicate either that you are not dealing through a real estate broker on this proposed transaction or if you are, providing complete details in the space provided. The Receiver will be relying on this Section 4 to determine whether or not a real estate commission is payable on the successful completion of the transaction.
3. **Section 30** – You must complete this Notice section in its entirety.
4. You must date and fully complete the signature space in the agreement.
5. You must read the Agreement in its entirety. It is up to you to obtain the advice of your professional advisors.
6. The sale is on an "as is where is" basis.
7. All bids must be a sealed bid, and delivered to the offices of our legal counsel, Lang Michener LLP, P.O. Box 747, BCE Place 181 Bay St., Toronto, ON M5J 2T7, Attention: Mr. L.A. Wittlin, no later than 2:00PM Toronto time on Friday, October 2, 2009.

8. You must be available to be contacted on Friday afternoon in the event we need to speak with you regarding your offer. Please provide with your offer details on how you may be contacted.
9. The Receiver will be attending in Court on Monday, October 5, 2009 to seek the approval of the recommended offer coming from this modified sales process.
10. The closing of the transaction will take place as soon as possible after obtaining the Approval Order with an adjustment date of September 30, 2009, but in any event, the closing will take place no later than October 16, 2009.

We wish to thank you for your interest in this opportunity. If you require any additional information, please contact us.

Yours truly,

IRA SMITH TRUSTEE & RECEIVER INC.,
Court-appointed Interim Receiver and Receiver and Manager of
1539304 Ontario Inc. o/a Trinity Landing Condominiums

Per:



Brandon Smith
Estate Manager

enc

OFFER TO PURCHASE

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 1539304 Ontario Inc. pursuant to an Order of the Honourable Justice Pepall of the Superior Court of Justice, dated November 12, 2008, in Court File No. CV-08-7714-00CL in Toronto (the “Order”), and not in its personal capacity.

1. Offer to Purchase

The undersigned, being (the “Purchaser”), 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 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 ascribed 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 buildings 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 19 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(a) hereof.

“**Environmental Laws**” has the meaning ascribed thereto in Section 26 hereof.

“**GST**” has the meaning ascribed thereto in Section 18 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.

“**Indemnitees**” has the meaning ascribed thereto in Section 26 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, 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 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.

“**Personal Property**” means the personal property identified in Schedule “B” attached hereto, save and except the personal property specifically identified therein as being leased.

“**Property**” means collectively, the Lands and Buildings, known municipally as 80 King William Street, Hamilton, Ontario and the Personal Property; if any.

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

“**Purchaser’s Conditions**” has the meaning ascribed thereto in Section 5 hereof.

“**Vesting Order**” has the meaning ascribed thereto in Section 7 hereof.

3. Purchase Price

The purchase price for the Property shall be _____ Dollars (\$_____) payable in lawful money of Canada (the “**Purchase Price**”), subject to the adjustments hereinafter referred to, and paid by the Purchaser as follows:

- (a) a deposit (the “**Deposit**”), which shall not be less than 10% of the Purchase Price, shall be delivered to the Vendor with submission of this Offer by bank draft or wire transfer of or from a Canadian Schedule “A” chartered bank.
- (b) the balance of the Purchase Price referred to for the Property shall be paid, subject to the adjustments hereinafter, to the Vendor on the Closing Date by certified

cheque or bank draft payable to the Vendor (or as the Vendor may further direct in writing) drawn on or issued by a Canadian chartered bank or trust company.

The Purchase Price shall be allocated as follows:

- (a) The Lands described in Schedule "A", and Buildings, if any:
\$ _____
- (b) Personal Property as Set out in Schedule "B", if any:
\$ _____
- (c) The total Purchase Price of \$ _____ (the total indicated in this Section 3 above, and also being the sum of (a) plus (b) above. Please note that **in accordance with the Direction of the Court dated September 25, 2009, this total cannot be less than \$2.5 million**).

4. **Real Estate Commission**

In accordance with the Direction of the Court dated September 25, 2009, the Receiver, from the proceeds of the sale will pay to the Purchaser's Real Estate Broker a commission of 2.5% of the Purchase Price plus 5% GST thereupon (the "Commission"). The Purchaser must indicate, by marking in the appropriate space provided below, if they are using a broker and the name and contact details of the Broker.

- (a) The Purchaser is not represented by a Real Estate Broker _____; or,
- (b) The Purchaser is represented by a Real Estate Broker _____; and
- (c) The name and contact details of the Purchaser's Real Estate Broker are :

Telecopier: _____

5. **Deposit**

The Deposit shall be held in trust by the Vendor and shall be:

- (a) returned to the Purchaser without interest or deduction if the Vendor does not accept this Offer; or,
- (b) credited to the Purchaser as an adjustment against the Purchase Price on the Closing Date if the purchase and sale of the Property is completed pursuant to the Agreement; or,
- (c) refunded to the Purchaser, with interest and without deduction if the purchase and sale of the Property is not completed pursuant to the Agreement, provided that the Purchaser is not in default under this Offer or under the Agreement; or,
- (d) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Offer, the Agreement and at law, including offering the Property for sale to another person, if the purchase and sale of the Property is not completed pursuant to this Offer and the Agreement, as a result of the Purchaser's breach hereunder.

6. **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 Friday, October 2, 2009, after which time, if not accepted by the Vendor, this Offer shall be null and void and the Deposit shall be returned to the Purchaser in accordance with Section 4(a) hereof. Acceptance of this Offer by the Vendor may be communicated by the Vendor to the Purchaser's solicitors by facsimile transmission, electronic mail, personal delivery or ordinary mail, an executed counterpart of the Offer. The Vendor shall indicate the date on which it has accepted this Offer in the space provided on the execution of this Offer.

7. **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 apply to the Court on October 5, 2009, or as soon thereafter as the Court may allow, for Approval of the Agreement and the issuance of a vesting or other appropriate Order by the Court vesting title to the Property in the Purchaser (the "**Vesting Order**"). The Vendor shall diligently pursue such application or applications 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 the Agreement shall automatically terminate and be

at an end. If the Agreement is terminated under this Section, the Deposit and any interest earned thereon shall be returned to the Purchaser and neither party shall have any further rights or liabilities, or obligations of any kind hereunder.

8. 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 1539304 Ontario Inc., and not in its personal or any other capacity. Any claim against the Receiver shall be limited to and only enforceable against the Property or any part thereof then held by or available to it in its said capacity, and shall not apply to its personal property and/or assets held by it in any other capacity. The Vendor shall have no personal or corporate liability of any kind, whether in contract, in tort, or otherwise. The term "Vendor" as used in this Agreement does not include or refer to the present registered owner of the Property.

9. Adjustments

The Purchase Price for the Property shall be adjusted as of September 30, 2009 in respect of realty taxes, flat/fixed water and sewer rates and charges, if any, and in favour of the Vendor for all expenses incurred by the Vendor for the period from and including October 1, 2009 until the Closing Date, inclusive, including, but not limited to, expenses related to security, property management and insurance, and all other items usually adjusted with respect to properties similar in nature to the Property that apply save and except for rent or any matters related to the Lease(s), if any. There shall be no adjustment in respect of (a) prepaid rents, or, (b) rent or other moneys payable to the Vendor under the Lease(s), if any, in respect of periods prior to the Closing which remain unpaid as at Closing.

10. 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 a 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 the Closing Day, the Vendor may, in its sole and unfettered discretion, elect by written notice to the Purchaser, to terminate this Agreement, whereupon the Deposit and any interest earned thereon shall be returned to the Purchaser, and neither party shall have any further rights or liabilities hereunder.

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 representation and warranties of the Purchaser herein are 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 have taken any action to redeem the Property; and,
- (e) the Court shall have granted the Approval and the Vesting Order.

11. 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 or 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 Property and 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) it will provide the Vendor with all requisite information and materials, including proof respecting source of funds, at any time or times within forty-eight (48) hours of request by the Vendor so that the Vendor may determine the credit worthiness of the Purchaser and any related parties thereto;
- (h) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Property, whether or not the matter is within the knowledge or imputed knowledge of the Vendor, its officers, employees, directors, agents, representatives and contractors;
- (i) 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 and the 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;
- (j) the Material Documents are being provided to the Purchaser merely as a courtesy and without any representations or warranties whatsoever; and,
- (k) 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.

12. 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 limitation, 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 Property or neighbouring properties and any title defects, encroachments or breaches 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 Property and survey of the Property 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 licensee 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 the subsection 70(2) of the *Registry Act* (Ontario) applies; and
- (m) the instruments or registrations set out on Schedule "C" and "D" attached hereto.

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

13. Authorizations

The Purchaser shall assume, at its own 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.

14. Requisition Period

The Purchaser shall be allowed seven (7) calendar days from the date of acceptance of the Offer by the Vendor to investigate the title to the Property and to satisfy itself that all present uses are the legal uses thereof or legal nonconforming uses which may be continued and that the Property may be insured against usual insurable risks, at the Purchaser's own expense. If within such time the Purchaser shall furnish the Vendor in writing with any valid objection to title to the Property, which the Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, then the Agreement shall be terminated, the Deposit and any interest earned thereon shall be returned to the Purchaser and neither party shall have any further rights, liabilities or obligations hereunder. Save as to any valid objection made as aforesaid, the Purchaser shall be conclusively deemed to have accepted the title to the Property to be vested in the Purchaser on Closing in accordance with the Agreement, and to have accepted the Property subject to all applicable laws, by-laws, regulations, easements and covenants affecting its use, and the Purchaser shall assume responsibility from and after the Closing Date for compliance therewith. The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Lands, except as are in the control or possession of the Vendor. The Vendor shall not be required to produce any other document or report to the Purchaser, unless it is expressly provided for by this Agreement. The description of the Property is believed by the Vendor to be correct but, if any statement, error or omission shall be found in the particulars thereof, the same shall not cancel the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof.

15. 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).

16. 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 and have the Deposit returned with interest or deduction, 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.

17. 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.

18. Goods and Services 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 upon Closing (i) a notarial copy of the certificate evidencing its registration for purposes of the goods and services tax ("GST"), 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 as a result of any failure by the Purchaser to pay the GST 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 GST 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 GST under the provisions of the *Excise Tax Act* (Canada), an amount equal to five (5%) percent of the Purchase Price, or such rate due and owing at the time of Closing.

19. Closing

Closing shall take place on or before Friday, October 16, 2009 following Approval of the Agreement by the Court and issuance of the Vesting Order, or such earlier 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 Titles Division for the Land Registry Office of Hamilton (No. 62). 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 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 deliver possession of the Property to the Purchaser and the balance due on closing shall be released from escrow.

20. 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;
- (c) an undertaking by the Vendor to readjust all items on the statement of adjustments within sixty (60) calendar 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), if any;
- (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.

21. Purchaser's Closing Deliveries

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

- (a) bank drafts or wire transfer of or from a Canadian Schedule "A" chartered bank 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 GST registration and G.S.T. 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; and
- (f) any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors;

22. 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 Purchaser acknowledges and agrees that it has been given the opportunity to inspect the Property once on September 30, 2009 or October 1, 2009. The Purchaser 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.

23. 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.

24. 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 of Purchase and Sale 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 of Purchase and Sale and the offer has been duly executed and delivered by the Purchaser, and the resulting Agreement of Purchase and Sale 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).

25. 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, without the Vendor's prior written consent shall not 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 them 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.

26. 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.

27. 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.

28. 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.

29. 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 GST number shall be provided to the Vendor not less than seven (7) days prior to the Closing Date.

30. Notices

Any notice to be given or document to be delivered to the parties pursuant to this Agreement, other than for this Agreement itself, shall be sufficient if delivered personally or sent by facsimile transmission or mailed by prepaid registered mail to the following addresses:

To Vendor:

Ira Smith Trustee & Receiver Inc.
Suite 6-167 Applewood Crescent
Concord, Ontario
L4K 4K7

Attention: Ira Smith
Telecopier: 905.738.9848

with a copy to:

Lang Michener LLP
Barristers & Solicitors
181 Bay Street
Suite 2500
Toronto, Ontario
M5J 2T7

Attention: Leslie A. Wittlin and Matthew German
Fax No.: (416) 365-1719

and in the case of a notice to the Purchaser, to:

Telecopier:

with a copy to the Purchaser's solicitors:

Telecopier:

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 facsimile or, if mailed, three days after the deposit with the post office.

31. Entire Agreement

The Agreement shall constitute the entire agreement between the parties to it pertaining to the subject matter thereof, 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.

32. 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 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. Counterparts

The parties hereto agree that this Agreement may be executed in counterparts and each such counterpart so executed by may be delivered either by electronic mail or facsimile transmission and 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 ____ day of October, 2009.

)
)
)
) _____
) [Purchaser]
) Per:
)
)
) _____
) Name: (If Purchaser is an individual)
) Title:
)
) I have the authority to bind the Corporation

IRA SMITH TRUSTEE & RECEIVER
in its capacity as Court Appointed Receiver
and Manager of 1539304 Ontario Inc. and not
in its personal or corporate capacity.

Telephone: 905-738-4167
Telecopier: 905-738-9848
E-mail: ira@irasmithinc.com

Per: _____
 Name:
 Title:
 I have the authority to bind the Corporation

SCHEDULE "A"
TO THE OFFER TO PURCHASE

DESCRIPTION OF LANDS

Lot 21 and Part of Lot 22 Nathaniel Hughson survey (unregistered), South side of King William Street, between John Street and Catharine Street, being Part 1 on Plan 62R16706, Hamilton.

SCHEDULE "C"
TO THE OFFER TO PURCHASE

REGISTRATIONS TO BE DELETED FROM PIN 17167-0115

1. Instrument No. WE278590 registered on December 3, 2004, being a Charge in favour of the City of Hamilton;
2. Instrument No. WE278608 registered on December 3, 2004, being an Assignment of Rents in favour of City of Hamilton;
3. Instrument No. WE278611 registered on December 3, 2004, being a Notice of Security Interest in favour of the City of Hamilton;
4. Instrument No. WE436883 registered on December 4, 2006, being a Charge in favour of ICICI Bank Canada;
5. Instrument No. WE436887 registered on December 4, 2006, being an Assignment of Rents in favour of ICICI Bank Canada;
6. Instrument No. WE438117 registered on December 11, 2006, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
7. Instrument No. WE515627 registered on December 4, 2007, being a Notice from ICICI Bank Canada Amending Charge No. WE436883;
8. Instrument No. WE515634 registered on December 4, 2007, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
9. Instrument No. WE541939 registered on April 23, 2008, being a Construction Lien in favour of Randy Legacy;
10. Instrument No. WE549343 registered on May 27, 2008, being a Certificate of Action in favour of Randy Legacy;
11. Instrument No. WE550186 registered on May 30, 2008, being a Construction Lien in favour of 353903 Ontario Ltd.;
12. Instrument No. WE557888 registered on July 2, 2008, being a Construction Lien in favour of Basic Drywall Inc.;
13. Instrument No. WE559961 registered on July 11, 2008, being a Construction Lien in favour of 1504593 Ontario Limited;
14. Instrument No. WE561908 registered on July 18, 2008, being a Certificate of Action in favour of 353903 Ontario Ltd.;

15. Instrument No. WE564105 registered on July 29, 2008, being a Certificate of Action in favour of Basic Drywall Inc.;
16. Instrument No. WE570744 registered on August 25, 2008, being a Certificate of Action in favour of 1504593 Ontario Limited;
17. Instrument No. WE597243 registered on December 29, 2008, being a Construction Lien in favour of 1712164 Ontario Ltd.;
18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of 1712164 Ontario Ltd.
19. Certificate No. 11654664-1371085B issued on June 24, 2008 in favour of Greg Ksiazek;
20. Execution No. 08-0001178 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc. as Defendant and Greg Ksiazek as Creditor where the sum of \$3,109.08 was awarded together with costs of \$110.00.
21. Execution No. 08-0001919 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc., 1712164 Ontario Ltd., The City of Hamilton and ICICI Bank Canada as Defendants and Randy Legacy Carrying on Business as Cyber Services Electrical & Fire Alarm Specialists as Creditor where the sum of \$55,150.02 was awarded together with costs of \$977.06.

SCHEDULE "D"
TO THE OFFER TO PURCHASE

REGISTRATIONS TO BE PERMITTED ON PIN 17167-0115

1. Instrument No. HL16639 registered on March 29, 1957, being a Notice of Agreement between The Southam Company Limited and The Corporation of the City of Hamilton.
2. Instrument No. 62R16706 registered on February 10, 2004, being a Reference Plan.
3. Instrument No. VM259660 registered on February 10, 2004, being a Certificate of First Registration Land Titles.
4. Instrument No. WE404776 registered on July 12, 2006, being a Condominium Approval Agreement between 1539304 Ontario Inc. and the City of Hamilton.

Offeree	Offer	Commission Payable	Break Fee Payable	To Estate	Conditions
1 J. Kara Capital Corp.	\$ 3,101,010.00	\$ -	\$ 290,151.50	\$ 2,810,858.50	none

OFFER TO PURCHASE

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 1539304 Ontario Inc. pursuant to an Order of the Honourable Justice Pepall of the Superior Court of Justice, dated November 12, 2008, in Court File No. CV-08-7714-00CL in Toronto (the "Order"), and not in its personal capacity.

1. Offer to Purchase

The undersigned, being (the "Purchaser"), 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 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 ascribed 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 buildings 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 19 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(a) hereof.

"**Environmental Laws**" has the meaning ascribed thereto in Section 26 hereof.

"**GST**" has the meaning ascribed thereto in Section 18 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.

"Indemnitees" has the meaning ascribed thereto in Section 26 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, 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 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.

"Personal Property" means the personal property identified in Schedule "B" attached hereto, save and except the personal property specifically identified therein as being leased.

"Property" means collectively, the Lands and Buildings, known municipally as 80 King William Street, Hamilton, Ontario and the Personal Property; if any.

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

"Purchaser's Conditions" has the meaning ascribed thereto in Section 5 hereof

"Vesting Order" has the meaning ascribed thereto in Section 7 hereof

3. Purchase Price

The purchase price for the Property shall be **Three Million, One Hundred One Thousand and Ten Dollars (\$3,101,010.00)** payable in lawful money of Canada (the "Purchase Price"), subject to the adjustments hereinafter referred to, and paid by the Purchaser as follows:

- (a) a deposit (the "Deposit"), which shall not be less than 10% of the Purchase Price, shall be delivered to the Vendor with submission of this Offer by bank draft or wire transfer of or from a Canadian Schedule "A" chartered bank.
- (b) the balance of the Purchase Price referred to for the Property shall be paid, subject to the adjustments hereinafter, to the Vendor on the Closing Date by certified

cheque or bank draft payable to the Vendor (or as the Vendor may further direct in writing) drawn on or issued by a Canadian chartered bank or trust company.

The Purchase Price shall be allocated as follows:

- (a) The Lands described in Schedule "A", and Buildings, if any:

\$3,101,010.00

- (b) Personal Property as Set out in Schedule "B", if any:

NIL

- (c) The total Purchase Price of \$3,101,010.00 (the total indicated in this Section 3 above, and also being the sum of (a) plus (b) above. Please note that in accordance with the Direction of the Court dated September 25, 2009, this total cannot be less than \$2.5 million).

4. Real Estate Commission

In accordance with the Direction of the Court dated September 25, 2009, the Receiver, from the proceeds of the sale will pay to the Purchaser's Real Estate Broker a commission of 2.5% of the Purchase Price plus 5% GST thereupon (the "Commission"). The Purchaser must indicate, by marking in the appropriate space provided below, if they are using a broker and the name and contact details of the Broker.

- (a) The Purchaser is not represented by a Real Estate Broker ;

- ~~(b) The Purchaser is represented by a Real Estate Broker _____; and~~

- ~~(c) The name and contact details of the Purchaser's Real Estate Broker are:~~

- ~~_____ Telecopier: _____~~

5. **Deposit**

The Deposit shall be held in trust by the Vendor and shall be:

- (a) returned to the Purchaser without interest or deduction if the Vendor does not accept this Offer; or,
- (b) credited to the Purchaser as an adjustment against the Purchase Price on the Closing Date if the purchase and sale of the Property is completed pursuant to the Agreement; or,
- (c) refunded to the Purchaser, with interest and without deduction if the purchase and sale of the Property is not completed pursuant to the Agreement, provided that the Purchaser is not in default under this Offer or under the Agreement; or,
- (d) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Offer, the Agreement and at law, including offering the Property for sale to another person, if the purchase and sale of the Property is not completed pursuant to this Offer and the Agreement, as a result of the Purchaser's breach hereunder.

6. **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 Friday, October 2, 2009, after which time, if not accepted by the Vendor, this Offer shall be null and void and the Deposit shall be returned to the Purchaser in accordance with Section 4(a) hereof. Acceptance of this Offer by the Vendor may be communicated by the Vendor to the Purchaser's solicitors by facsimile transmission, electronic mail, personal delivery or ordinary mail, an executed counterpart of the Offer. The Vendor shall indicate the date on which it has accepted this Offer in the space provided on the execution of this Offer.

7. **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 apply to the Court on October 5, 2009, or as soon thereafter as the Court may allow, for Approval of the Agreement and the issuance of a vesting or other appropriate Order by the Court vesting title to the Property in the Purchaser (the "Vesting Order"). The Vendor shall diligently pursue such application or applications 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 the Agreement shall automatically terminate and be

at an end. If the Agreement is terminated under this Section, the Deposit and any interest earned thereon shall be returned to the Purchaser and neither party shall have any further rights or liabilities, or obligations of any kind hereunder.

8. 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 1539304 Ontario Inc., and not in its personal or any other capacity. Any claim against the Receiver shall be limited to and only enforceable against the Property or any part thereof then held by or available to it in its said capacity, and shall not apply to its personal property and/or assets held by it in any other capacity. The Vendor shall have no personal or corporate liability of any kind, whether in contract, in tort, or otherwise. The term "Vendor" as used in this Agreement does not include or refer to the present registered owner of the Property.

9. Adjustments

The Purchase Price for the Property shall be adjusted as of September 30, 2009 in respect of realty taxes, flat/fixed water and sewer rates and charges, if any, and in favour of the Vendor for all expenses incurred by the Vendor for the period from and including October 1, 2009 until the Closing Date, inclusive, including, but not limited to, expenses related to security, property management and insurance, and all other items usually adjusted with respect to properties similar in nature to the Property that apply save and except for rent or any matters related to the Lease(s), if any. There shall be no adjustment in respect of (a) prepaid rents, or, (b) rent or other moneys payable to the Vendor under the Lease(s), if any, in respect of periods prior to the Closing which remain unpaid as at Closing.

10. 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 a 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 the Closing Day, the Vendor may, in its sole and unfettered discretion, elect by written notice to the Purchaser, to terminate this Agreement, whereupon the Deposit and any interest earned thereon shall be returned to the Purchaser, and neither party shall have any further rights or liabilities hereunder.

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 representation and warranties of the Purchaser herein are 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 have taken any action to redeem the Property; and,
- (e) the Court shall have granted the Approval and the Vesting Order.

11. 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 or 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 Property and 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) it will provide the Vendor with all requisite information and materials, including proof respecting source of funds, at any time or times within forty-eight (48) hours of request by the Vendor so that the Vendor may determine the credit worthiness of the Purchaser and any related parties thereto;
- (h) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Property, whether or not the matter is within the knowledge or imputed knowledge of the Vendor, its officers, employees, directors, agents, representatives and contractors;
- (i) 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 and the 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;
- (j) the Material Documents are being provided to the Purchaser merely as a courtesy and without any representations or warranties whatsoever; and,
- (k) 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.

12. 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 limitation, 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 Property or neighbouring properties and any title defects, encroachments or breaches 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 Property and survey of the Property 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 the subsection 70(2) of the *Registry Act* (Ontario) applies; and
- (m) the instruments or registrations set out on Schedule "C" and "D" attached hereto.

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

13. **Authorizations**

The Purchaser shall assume, at its own 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.

14. Requisition Period

The Purchaser shall be allowed seven (7) calendar days from the date of acceptance of the Offer by the Vendor to investigate the title to the Property and to satisfy itself that all present uses are the legal uses thereof or legal nonconforming uses which may be continued and that the Property may be insured against usual insurable risks, at the Purchaser's own expense. If within such time the Purchaser shall furnish the Vendor in writing with any valid objection to title to the Property, which the Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, then the Agreement shall be terminated, the Deposit and any interest earned thereon shall be returned to the Purchaser and neither party shall have any further rights, liabilities or obligations hereunder. Save as to any valid objection made as aforesaid, the Purchaser shall be conclusively deemed to have accepted the title to the Property to be vested in the Purchaser on Closing in accordance with the Agreement, and to have accepted the Property subject to all applicable laws, by-laws, regulations, easements and covenants affecting its use, and the Purchaser shall assume responsibility from and after the Closing Date for compliance therewith. The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Lands, except as are in the control or possession of the Vendor. The Vendor shall not be required to produce any other document or report to the Purchaser, unless it is expressly provided for by this Agreement. The description of the Property is believed by the Vendor to be correct but, if any statement, error or omission shall be found in the particulars thereof, the same shall not cancel the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof.

15. 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).

16. **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 and have the Deposit returned with interest or deduction, 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.

17. **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.

18. **Goods and Services 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 upon Closing (i) a notarial copy of the certificate evidencing its registration for purposes of the goods and services tax ("GST"), 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 as a result of any failure by the Purchaser to pay the GST 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 GST 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 GST under the provisions of the *Excise Tax Act* (Canada), an amount equal to five (5%) percent of the Purchase Price, or such rate due and owing at the time of Closing.

19. **Closing**

Closing shall take place on or before Friday, October 16, 2009 following Approval of the Agreement by the Court and issuance of the Vesting Order, or such earlier 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 Titles Division for the Land Registry Office of Hamilton (No. 62). 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 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 deliver possession of the Property to the Purchaser and the balance due on closing shall be released from escrow.

20. **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;
- (c) an undertaking by the Vendor to readjust all items on the statement of adjustments within sixty (60) calendar 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), if any;
- (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.

21. Purchaser's Closing Deliveries

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

- (a) bank drafts or wire transfer of or from a Canadian Schedule "A" chartered bank 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 GST registration and G.S.T. 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; and
- (f) any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors;

22. **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 Purchaser acknowledges and agrees that it has been given the opportunity to inspect the Property once on September 30, 2009 or October 1, 2009. The Purchaser 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.

23. **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.

24. **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 of Purchase and Sale 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 of Purchase and Sale and the offer has been duly executed and delivered by the Purchaser, and the resulting Agreement of Purchase and Sale 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).

25. **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, without the Vendor's prior written consent shall not 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 them 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.

26. 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.

27. 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.

28. 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.

29. 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 GST number shall be provided to the Vendor not less than seven (7) days prior to the Closing Date.

30. Notices

Any notice to be given or document to be delivered to the parties pursuant to this Agreement, other than for this Agreement itself, shall be sufficient if delivered personally or sent by facsimile transmission or mailed by prepaid registered mail to the following addresses:

To Vendor:

Ira Smith Trustee & Receiver Inc.
Suite 6-167 Applewood Crescent
Concord, Ontario
L4K 4K7

Attention: Ira Smith
Telecopier: 905.738.9848

with a copy to:

Lang Michener LLP
Barristers & Solicitors
181 Bay Street
Suite 2500
Toronto, Ontario
M5J2T7

Attention: Leslie A. Wittlin and Matthew German
Fax No.: (416) 365-1719

and in the case of a notice to the Purchaser, to:

JAMIL KARA
Fax: 604-648-9090
Email: jsk@jskcapital.com

with a copy to the Purchaser's solicitors:

**CASS & BISHOP PROFESSIONAL
CORPORATION**
31-3455 Harvester Road,
Burlington, ON L7N3P2
Attention: Peter H. Cass
Fax: 905-632-7850

AIRD & BERLIS
1800-181 Bay Street
Toronto, ON M5J 2T9
Attention: Sanjay Sood
Fax: 416-863-1515

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 facsimile or, if mailed, three days after the deposit with the post office.

31. Entire Agreement

The Agreement shall constitute the entire agreement between the parties to it pertaining to the subject matter thereof, 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.

32. **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 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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.


38. **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.

39. Counterparts

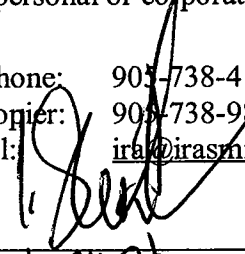
The parties hereto agree that this Agreement may be executed in counterparts and each such counterpart so executed by may be delivered either by electronic mail or facsimile transmission and shall be deemed to be an original and when taken together shall constitute as one and the same Agreement.

IN WITNESS WHEREOF the Purchaser has executed this Offer this 2nd day of October, 2009.

) J. KARA CAPITAL CORP.
) per 
) _____
) [Purchaser] A.S.O.
) Per: JAMIL KARA
) _____
) Name: (If Purchaser is an individual)
) Title:
) _____
) I have the authority to bind the Corporation

IRA SMITH TRUSTEE & RECEIVER
in its capacity as Court Appointed Receiver
and Manager of 1539304 Ontario Inc. and not
in its personal or corporate capacity.

Telephone: 905-738-4167
Telecopier: 905-738-9848
E-mail: ira@irasmithinc.com

Per: 

 Name: I. SMITH
 Title: PRESIDENT
 I have the authority to bind the Corporation

SCHEDULE "A"
TO THE OFFER TO PURCHASE

DESCRIPTION OF LANDS

Lot 21 and Part of Lot 22 Nathaniel Hughson survey (unregistered), South side of King William Street, between John Street and Catharine Street, being Part 1 on Plan 62R16706, Hamilton.

SCHEDULE "C"
TO THE OFFER TO PURCHASE

REGISTRATIONS TO BE DELETED FROM PIN 17167-0115

1. Instrument No. WE278590 registered on December 3, 2004, being a Charge in favour of the City of Hamilton;
2. Instrument No. WE278608 registered on December 3, 2004, being an Assignment of Rents in favour of City of Hamilton;
3. Instrument No. WE278611 registered on December 3, 2004, being a Notice of Security Interest in favour of the City of Hamilton;
4. Instrument No. WE436883 registered on December 4, 2006, being a Charge in favour of ICICI Bank Canada;
5. Instrument No. WE436887 registered on December 4, 2006, being an Assignment of Rents in favour of ICICI Bank Canada;
6. Instrument No. WE438117 registered on December 11, 2006, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
7. Instrument No. WE515627 registered on December 4, 2007, being a Notice from ICICI Bank Canada Amending Charge No. WE436883;
8. Instrument No. WE515634 registered on December 4, 2007, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
9. Instrument No. WE541939 registered on April 23, 2008, being a Construction Lien in favour of Randy Legacy;
10. Instrument No. WE549343 registered on May 27, 2008, being a Certificate of Action in favour of Randy Legacy;
11. Instrument No. WE550186 registered on May 30, 2008, being a Construction Lien in favour of 353903 Ontario Ltd.;
12. Instrument No. WE557888 registered on July 2, 2008, being a Construction Lien in favour of Basic Drywall Inc.;
13. Instrument No. WE559961 registered on July 11, 2008, being a Construction Lien in favour of 1504593 Ontario Limited;
14. Instrument No. WE561908 registered on July 18, 2008, being a Certificate of Action in favour of 353903 Ontario Ltd.;

15. Instrument No. WE564105 registered on July 29, 2008, being a Certificate of Action in favour of Basic Drywall Inc.;
16. Instrument No. WE570744 registered on August 25, 2008, being a Certificate of Action in favour of 1504593 Ontario Limited;
17. Instrument No. WE597243 registered on December 29, 2008, being a Construction Lien in favour of 1712164 Ontario Ltd.;
18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of 1712164 Ontario Ltd.
19. Certificate No. 11654664-1371085B issued on June 24, 2008 in favour of Greg Ksiazek;
20. Execution No. 08-0001178 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc. as Defendant and Greg Ksiazek as Creditor where the sum of \$3,109.08 was awarded together with costs of \$110.00.
21. Execution No. 08-0001919 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc., 1712164 Ontario Ltd., The City of Hamilton and ICICI Bank Canada as Defendants and Randy Legacy Carrying on Business as Cyber Services Electrical & Fire Alarm Specialists as Creditor where the sum of \$55,150.02 was awarded together with costs of \$977.06.

SCHEDULE "D"
TO THE OFFER TO PURCHASE

REGISTRATIONS TO BE PERMITTED ON PIN 17167-0115

1. Instrument No. HL16639 registered on March 29, 1957, being a Notice of Agreement between The Southam Company Limited and The Corporation of the City of Hamilton.
2. Instrument No. 62R16706 registered on February 10, 2004, being a Reference Plan.
3. Instrument No. VM259660 registered on February 10, 2004, being a Certificate of First Registration Land Titles.
4. Instrument No. WE404776 registered on July 12, 2006, being a Condominium Approval Agreement between 1539304 Ontario Inc. and the City of Hamilton.

09/30/09 WED 09:50 FAX 4167785442

K.K. CONVEYANCING

001

1539304 ONTARIO INC.

FAX NO.	(416) 365-1719
TO:	Lang Michener LLP Attn: <u>Aaron Rousseau</u>
FROM:	1539304 ONTARIO INC.
NO. OF PAGES (including cover)	2 PAGES
DATE	September 29, 2009
SUBJECT	Re: ICICI Bank Canada and 1539304 Ontario Inc. Court File #: CV-08-7714-00CL
NOTES	

IN THE EVENT OF TRANSMISSION PROBLEM CONTACT THE SENDER AT (416) 778-7062

This teletype contains confidential information intended only for the person (s) named above. Any other distribution, copying or disclosure is strictly prohibited.

821 Albion Road, Etobicoke, Ontario - M9V 1A3
Telephone: 416-778-7062 Fax: 416-778-5442

09/30/2009 WED 10:51 [JOB NO. 8119] 001

1539304 ONTARIO INC.
821 Albion Road, Etobicoke, Ontario - M9V 1A3
Telephone: 416-778-7062 Fax: 416-778-5442

September 29, 2009

Lang Michener LLP
BCE Place
181 Bay Street, Suite 2500
P.O. Box 747
Toronto, Ontario - M5J 2T7
Fax: (416) 365-1719

Attn.: Aaron Rousseau

Dear Sir,

Re: ICICI Bank Canada and 1539304 Ontario Inc.
Court File #: CV-08-7714-00CL

- 1) We acknowledge with thanks your letter of September 29, 2009.
- 2) Either you have misread or you have refused to read the message of our letter of September 28, 2009 which states clearly that we would like to view the property for assessing the damage. It was an opportunity to assess the damage which was offered by IRA Smith of the Receiver and it is the intention of our (Mr.) H. Ganatra to avail (himself) this opportunity.
- 3) We confirm it is not our intention to visit or view the property during scheduled tour by the prospective purchaser on Wednesday or Thursday. Therefore the time suggested by us is before or after the above said scheduled tours of the prospective purchaser.
- 4) Please advise your position on this immediately and many thanks in advance.

Yours truly,
1539304 Ontario Inc.


H. Ganatra

cc.: (1) Feltmate Delibato Heagle LLP
Fax: (905) 829-3277
Attn.: (1) Joseph A. Lange
(2) Ronald Weston

(2) Gowlings
Fax: (416) 862-7661
Attn.: Heath RL Whitley

Lang Michener LLP
Lawyers – Patent & Trade Mark Agents

Brookfield Place, 181 Bay Street, Suite 2500
P.O. Box 747
Toronto, ON M5J 2T7

Telephone: 416-360-8800
Facsimile: 416-365-1719

Fax Cover Sheet

Date: September 30, 2009

To:	Firm:	Fax No.	Telephone No.
Harry Ganatra	1539304 Ontario Inc.	416-778-5442	416-778-7062

Handwritten initials: HOGB

From: Name: Aaron Rousseau
Direct Dial: 416-307-4081

Message: Please see attached.

This fax may be solicitor-client privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone and return the original transmission to us by mail without making a copy.

Number of pages including cover sheet: 2

If you do not receive all pages, please call operator at 416-307-4157 A.S.A.P.

File Ref. # 74938-2

Lawyer Ref. # 2734

Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Brookfield Place, 181 Bay Street, Suite 2300
P.O. Box 747
Toronto ON M5J 2T7
Canada

Telephone: 416-360-8600
Facsimile: 416-365-1719

Reply to:
Aaron Rousseau
416-307-4081
arousseau@langmichener.ca

VIA FACSIMILE

September 15, 2009

1539304 Ontario Inc.
821 Albion Road
Etobicoke, ON
M9V 1A3
Attn: Harry Ganatra

Dear Mr. Ganatra:

Re ICICI Bank Canada and 1539304 Ontario Inc., Court File No.: CV-08-7714-00CL,

We acknowledge receipt of your letter of today's date.

The Receiver has not agreed to allow any party to inspect the property for the purpose of determining damage. The Receiver advised all parties that, upon receipt of an executed confidentiality agreement, any prospective purchaser could inspect the property on September 30 or October 1, by appointment, for the purpose of determining whether the purchaser wished to put in a bid for the property. This was set out in the agreement of the parties which was submitted to the court on September 25, 2009. This was endorsed by Justice Cumming in his endorsement of September 25, 2009.


The agreement annexed to the endorsement specifically provides:

8. The property will be available for inspection once by any party intending to bid in the auction on September 30 and October 1, provided such party first executes and delivers the form of confidentiality agreement required by the Receiver.

Should you have any other concerns, you may contact the undersigned at any time.

Yours truly,

Lang Michener LLP



Per: Aaron Rousseau

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*****
*** TX REPORT ***
*****

TRANSMISSION OK

TX/RX NO          3504
RECIPIENT ADDRESS #0684167785442
DESTINATION ID
ST. TIME          09/30 18:30
TIME USE          00'58
PAGES SENT        2
RESULT            OK

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Lang Michener LLP

Lawyers - Patent & Trade Mark Agents

Brookfield Place, 181 Bay Street, Suite 2500
P.O. Box 747
Toronto, ON M5J 2T7

Telephone: 416-360-8600
Facsimiles: 416-365-1719

Fax Cover Sheet

Date: September 30, 2009

To:	Firm:	Fax No.	Telephone No.
Harry Ganatra	1539304 Ontario Inc.	416-778-5442	416-778-7062

#0684

From: Name: Aaron Rousseau
Direct Dial: 416-307-4081

Message: Please see attached.

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1539304 ONTARIO INC.

FAX NO.	(416) 365-1719
TO:	Lang Michener LLP Attn.: <u>Aaron Roussell</u>
FROM:	1539304 ONTARIO INC.
NO. OF PAGES (Including cover)	9 PAGES
DATE	September 28, 2009
SUBJECT	Re: 1539304 Ontario Inc. o/a Trinity Landing
NOTES	

IN THE EVENT OF TRANSMISSION PROBLEM CONTACT THE SENDER AT (416) 778-7062

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821 Albion Road, Etobicoke, Ontario - M9V 1A3
Telephone: 416-778-7062 Fax: 416-778-5442

1539304 ONTARIO INC.
821 Albion Road, Etobicoke, Ontario - M9V 1A3
Telephone: 416-778-7062 Fax: 416-778-5442

September 28, 2009

Lang Michener LLP
BCE Place
181 Bay Street, Suite 2500
P.O. Box 747
Toronto, Ontario - M5J 2T7
Fax: (416) 365-1719

Attn.: Aaron Rousseau

Dear Sir,

Re: 1539304 Ontario Inc. o/a Trinity Landing

1) We acknowledge with thanks receipt of your letter dated September 28, 2009.

2) Please be advised that, at the hearing on Friday of September 25, 2009, IRA Smith of the Receiver, with a view to satisfy our concerns re: damage, had agreed & invited us to view the property at a convenient time to all of us. Please note that if you advise us of any time from 10:00 a.m. from Tuesday to Friday, which is suitable to the Receiver, (our) Mr. H. Ganatra will be available for that time for about 1.00 HR.

3) Thanking you for your cooperation.

Yours truly,
1539304 Ontario Inc.


H. Ganatra

Lang Michener LLP

Lawyers - Patent & Trade Mark Agents

Brookfield Place, 181 Bay Street, Suite 2500
P.O. Box 747
Toronto, ON M5J 2T7

Telephone: 416-360-8600
Facsimile: 416-365-1719

Fax Cover Sheet

Date: September 29, 2009

To:	Firm:	Fax No.	Telephone No.
Harry Ganatra	1539304 Ontario Inc.	416-778-5442	416-778-7062

HA EE

From: Name: Aaron Rousseau
Direct Dial: 416-307-4081

Message: Please see attached.

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Number of pages including cover sheet: 2

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File Ref. # 74938-2

Lawyer Ref. # 2734

Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Brookfield Place, 181 Bay Street, Suite 2500
P.O. Box 747
Toronto ON M5J 2T7
Canada

Telephone: 416-360-8600
Facsimile: 416-363-1719

Reply to:
Aaron Rousseau
416-307-4081
arousseau@langmichener.ca

VIA FACSIMILE

September 29, 2009

1539304 Ontario Inc.
821 Albion Road
Etobicoke, ON
M9V 1A3

Attn: Harry Ganatra

Dear Mr. Ganatra:

Re ICICI Bank Canada and 1539304 Ontario Inc., Court File No.: CV-08-7714-00 CL

We acknowledge receipt of your letter of September 28, 2009.

As you will recall, any parties wishing to inspect the property must sign the Receiver's confidentiality agreement.

Please advise us of the name of the prospective purchaser or purchasers who will accompany you, and we will provide copies of the confidentiality agreement for execution.

The confidentiality agreement should be returned directly to the Receiver. The Receiver's representative will then contact you to arrange an inspection time.

Should you have any other concerns, you may contact the undersigned at any time.

Yours truly,

Lang Michener LLP



Per: Aaron Rousseau

AR

 *** TX REPORT ***

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B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)
Proceeding commenced at Toronto

THIRD SUPPLEMENTARY MOTION
RECORD
(RETURNABLE OCTOBER 5, 2009)

LANG MICHENER LLP

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Toronto, ON M5J 2T7

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Aaron Rousseau

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Fax: (416) 365-1719

**Lawyers for Ira Smith Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.**