

**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*.

**MOTION RECORD  
(returnable September 17, 2009)**

September 17, 2009

**LANG MICHENER LLP**

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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.**

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

B E T W E E N:

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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*.

**NOTICE OF MOTION  
returnable September 22, 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 September 22, 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 September 22, 2009;

2. An Order approving the sale of the 80 King William Street Property (the "Property") to Canlight Realty Corporation ("Canlight"), or such other entity as Canlight may direct the Receiver in writing, pursuant to the Offer to Purchase dated July 27, 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) temporarily sealing Volume 2 of the Third Report; and
  - (c) 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 Canlight, subject to the approval of this Honourable Court;
3. The Receiver entered into the Agreement after an extensive marketing campaign and a sales process approved by the court on February 26, 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; and
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

Date: September 17, 2009

**LANG MICHENER LLP**

Lawyers  
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P.O. Box 747  
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**Lawyers for Ira Smith Trustee &  
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Interim Receiver and Receiver and  
Manager of 1539304 Ontario Inc.**

**TO: ATTACHED SERVICE LIST**

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Lawyers for Canlight Realty Corporation

**SCHEDULE "A"**

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

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

THE HONOURABLE  
JUSTICE

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TUESDAY, THE 22<sup>ND</sup> DAY  
OF SEPTEMBER, 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 Canlight Realty Corporation (the "Purchaser"), offered by the Purchaser on July 27, 2009 and accepted by the Receiver, and appended to the Third Report of the Receiver dated September 17, 2009 (the "Report"), and vesting in the Purchaser, or such other entity as the Purchaser may further direct the Receiver in writing, 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 Report and the exhibits thereto, filed and on hearing the submissions of counsel for the Receiver, ICICI Bank Canada and the City of Hamilton, and Mr. Harry Ganatra on behalf of the debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aaron Rousseau, sworn September 18, 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, or such other entity as the Purchaser may further direct the Receiver in writing.
2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser, or such other entity as the Purchaser may further direct the Receiver in writing, 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, or such other entity as the Purchaser may further direct the Receiver in writing, 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, or such other entity as the Purchaser may further direct the Receiver in writing, 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, or such other entity as the Purchaser may further direct the Receiver in writing, 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).

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**Schedule A – Form of Receiver's Certificate**

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

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

**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*.

**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 Canlight Realty Corporation (the "Purchaser") and provided for the vesting in the Purchaser, or such other entity as the Purchaser may further direct the Receiver in writing, 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, or such other entity as the Purchaser may further direct the Receiver in writing, of a certificate confirming (i) the payment

by the Purchaser, or such other entity as the Purchaser may further direct the Receiver in writing, 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, or such other entity as the Purchaser may further direct the Receiver in writing; 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, or such other entity as the Purchaser may further direct the Receiver in writing, 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, or such other entity as the Purchaser may further direct the Receiver in writing;; 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 “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 Basic Drywall Inc.;

18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of Basic Drywall Inc.;

**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.
5. Instrument No. WE598810 registered on January 1, 2009, being a Court Order by ICICI Bank Canada.

**SCHEDULE "B"**

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

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

THE HONOURABLE  
JUSTICE

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TUESDAY, THE 22<sup>ND</sup> DAY  
OF SEPTEMBER, 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*.

**ORDER**

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 Report and the actions and activities of the Receiver as detailed therein, dated September 17, 2009 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the exhibits thereto, filed and on hearing the submissions of counsel for the Receiver, ICICI Bank Canada and the City of Hamilton, and Mr. Harry Ganatra on behalf of the debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aaron Rousseau sworn September 18, 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 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.

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

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

**ICICI BANK CANADA**

**Applicant**

**- and -**

**1539304 ONTARIO INC.**

**Respondent**

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**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 SEPTEMBER 17, 2009**

---

**IRA SMITH TRUSTEE & RECEIVER INC.**  
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Concord, ON L4K 4K7

**Ira Smith MBA CA-CIRP**

**P: 905.738.4167  
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**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 SEPTEMBER 17, 2009**

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

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER  
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**DATED SEPTEMBER 17, 2009**

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**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 SEPTEMBER 17, 2009**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**VOLUME 1**

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

**DATED SEPTEMBER 17, 2009**

**1.0 INTRODUCTION**

This Third Report to Court (the “**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. A copy of the Receivership Order is attached hereto as **Exhibit “A”**.

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**”).

A copy of the First and First Supplement Approval Orders were contained as Exhibits “B” and “C” of the Second Report. A copy of the Second Approval Order is attached hereto as **Exhibit “B”**.

Copies of the First, First Supplementary and Second Reports (without exhibits) are attached hereto as **Exhibits “C”, “D” and “E”**, respectively.

***1.1 Purpose of this Report -***

The purpose of this Third Report is to report to this Honourable Court on:

- 1. the actions and activities of the Receiver since June 8, 2009;
- 2. the status and outcome of the Sales Process (as described and defined in the First Report and approved in the First Approval Order);

3. the independent appraisal commissioned by the Receiver from Pocrnic Realty Advisors Inc. ("**Pocrnic**"), Hamilton, ON (contained in the Confidential Volume 2 of this Third Report) dated July 28, 2009 (the "**Pocrnic Appraisal**");
4. the Receiver's recommendation for Court approval of the Offer to Purchase received through the Court-approved sales process (the "**Sales Process**") from Canlight Reality Corporation ("**Canlight**") in the amount of \$2.1 million (the "**Canlight APA**");
5. the existence of lien claims that may rank in priority to the claim of the first mortgagee;
6. the cash flow requirements of the Receiver;
7. the accounting for the receipts and disbursements of the Receiver from November 12, 2008 to September 11, 2009; and
8. the fees and costs incurred by the Receiver and its legal counsel, Lang Michener LLP, for the period subsequent to those fees approved in the Second Report.

## **1.2 Disclaimer -**

The Receiver has relied upon the financial records and financial statements of the Debtor, as well as other information supplied by management and employees of the Debtor, its accountants, appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.



Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this Second Report, or any of the attached Appendices or Exhibits forming part of this Second Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this Second Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

### ***1.3 Confidential Volume 2***

Confidential Volume 2 of this Third Report contains the Pocrnic Appraisal. The purpose of the Pocrnic Appraisal was to provide the Receiver with an independent opinion of value of the Project (as defined below) on an as is, where is basis, reflective of the current real estate market in Downtown Hamilton. The Confidential Volume 2 also contains all Asset Purchase Agreements received by the Receiver, other than the Canlight APA, which is an Exhibit to this Volume 1 of the Third Report.

The Receiver is seeking an Order sealing Volume 2 of this Third Report until the discharge of the Receiver, after which time Volume 2 shall become unsealed. The Receiver makes this request to avoid any prejudice that might be caused by publicly disclosing the appraisal and the identities of the potential purchasers in the event that the sale contemplated by the Canlight APA being recommended by the Receiver is either not approved by this Honourable Court or is not completed.

For reasons stated above, the Receiver believes that the appraisal and other documents in Volume 2 must be sealed at this time, so that no party will obtain any special insight into, or advantage with respect to, the Project or the Sales Process as disclosed in such documents.

## **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 (the "**Project**"). The Receiver refers the readers of this Third Report to the First Report for a complete overview of the business and its sole asset.

## **3.0 ACTIVITIES OF THE RECEIVER**

Since its Second Report, the Receiver has undertaken the following activities:

- maintained insurance coverage for the property including obtaining a policy extension to ensure coverage remains in place until 12:01 AM on October 1, 2009;
- continued its retention of Pelican Woodcliff Inc. ("**PWI**") to assist the Receiver with matters related to the sales process including dealing with potential purchasers, providing tours of the property to potential purchasers, liaising with the appraisal firm, and providing property management functions;
- maintained utilities at a level required for life safety and security as well as maintained security patrols as required by the insurance policy;
- corresponded with the five (5) potential purchasers who submitted non-binding letters of intent ("**NBLOI**") during their due diligence period and where appropriate, responded to their requests for additional information by posting additional documents in the secure online data room for the benefit of all parties;

- corresponded with other potential purchasers who had not participated in the sales process from the start and advised them of the process should they wish to participate;
- received two (2) final offers from the potential purchasers;
- discussed the final offers for the Project and the Receiver's analysis thereof with representatives of ICICI Bank Canada (the "Bank" or "ICICI") and the City of Hamilton (the "City") (collectively the "Stakeholders") and their respective legal counsel;
- with the concurrence of the Stakeholders, rejected both final offers as they were not in the Receiver's desired format for a final offer and contained too many conditions and variables to be further considered;
- circulated the Receiver's form of Asset Purchase Agreement ("APA") to the two parties who submitted formal offers as well as to two other parties, one of which had made an oral offer and one who submitted a NBLOI which in reality was an unconventional proposal rather than a final offer;
- commissioned the Pocrnic Appraisal;
- received two (2) offers submitted in the form of the APA, by the deadline requested by the Receiver;
- discussed the two offers with the Stakeholders and accepted the Canlight APA, subject to Court approval;
- received an unsolicited offer to purchase, from a party who had not participated in the Receiver's Sales Process, following the acceptance of an offer;
- discussions and email communication with a representative of Canlight and correspondence between respective legal counsel for each of Canlight and the Receiver regarding Canlight's request and the Receiver's refusal to grant an extension of time in which Canlight had under its APA to waive its final condition; and
- received waiver of the due diligence condition from Canlight.

### **3.1 Insurance –**

The Receiver extended coverage with the existing insurer for the Project. Attached hereto as **Exhibit "F"** is a copy of confirmation of insurance coverage through 12:01 AM on October 1, 2009.

### **3.2    *Property Management –***

The Receiver, through PWI, has continued basic property management of the Project including regular site visits and maintenance of utilities. Following the receipt of final APA submissions the Receiver has had utility use trimmed back to the absolute minimum required from a life safety and security perspective in order to further minimize costs.

### **4.0    RECEIVER'S SALES PROCESS**

Attached hereto as **Exhibit "G"** is a summary, with the names of the various offerors redacted, other than for Canlight, of the various NBLOI's received at the various stages of the Sales Process inclusive of price and conditions. The Receiver, after running the Sales Process as approved by this Honourable Court, has ultimately accepted the offer and entered into an APA with Canlight, which has now waived all conditions to its offer, and subject to the approval of this Honourable Court, is prepared to complete the transaction on September 30, 2009.

The identities of the other parties who made submissions are disclosed in Confidential Volume 2 of this Third Report.

### **4.1    *Online Data Room & Pre-Final LOI Due Diligence –***

As reported to this Honourable Court in the Second Report, the Receiver received five (5) Non Binding Letters of Intent ("NBLOI") and the Receiver allowed all five (5) potential purchasers to continue in the Sales Process. A unique password was provided to each potential purchaser in order to gain access to the secure online data room established by the Receiver to allow for their due-diligence review. PWI also provided private tours of the Project to each of the potential purchasers.

During this phase of the Sales Process both the Receiver and PWI received requests from the potential purchasers for additional documentation and information. To the extent that the Receiver was in possession of the requested information, and felt that it was appropriate for release and dissemination, it was made available to all five parties through the online data room.

Throughout the various stages of the Sales Process the Receiver received multiple requests for a report known as the PEER Review, prepared by PWI for ICICI Bank of Canada (the “**Bank**”), prior to the date of the Receivership Order. The contents of this report opined on, *inter alia*, the progress of the Project as well as the estimated cost to complete the Project, as envisioned by the Debtor.

Both the Receiver and PWI did not believe that it reflected an accurate estimate to complete, based on the information learned by both the Receiver and PWI during the receivership administration. The Receiver disclosed to all potential purchasers as relevant data as possible in the possession or control of the Receiver. The Receiver believes that release of such report would be misleading and could potentially taint the sales process should a party disseminate the information contained therein in any matter other than its intended purpose. Consequently the Receiver and PWI have, and continue to deny the requests of any party to release this report.

#### **4.2 Final LOI Submissions –**

Firm Offers (as defined and described in the First Report) were due for submission no later than **July 3, 2009, at 5:00 PM EST**. The Receiver received three (3) submissions from potential purchasers on or prior to the deadline. During the due diligence period one potential purchaser advised the Receiver that it did not wish to continue pursuing the opportunity, and a second

party, following the final submission deadline, advised that it was not interested in making a final submission.

Of the three (3) submissions received, one was a letter advising that the potential purchaser was not prepared to make a final submission at that time, due to an alleged dearth of information available to it, to submit a final Letter of Intent (“LOI”). The potential purchaser requested an extension in the deadline and also proposed an alternate sales format, outside of the Sales Process approved by this Honourable Court, between the Receiver and the potential purchaser. As the Receiver was in possession of two (2) final LOIs submitted in accordance with the Sales Process, it thanked the potential purchaser for its participation and submission and advised that absent a submission in accordance with the terms and conditions of the Sales Process the potential purchaser could not participate further in the Sales Process. The potential purchaser responded that it was not prepared to submit a final LOI.

The two (2) final LOIs received were offering the identical purchase prices. The offer from Canlight contained too many conditions such that the Receiver did not consider it to be a bona fide offer. The offer from Party 2 (as indicated in Exhibit G to this Third Report) stated that it was non-binding.

In a meeting held on July 9, 2009, the Receiver presented the results of the final LOI round of submissions to representatives of the Bank and its counsel. Counsel for the City of Hamilton (the “City”) attended by conference call. The results were provided on the basis that the information presented was covered by the Confidentiality Agreement executed by both the Bank and the City for the presentation of the First Report Volume 2 information (Page 4 of the Second Report,

Exhibit E to this Third Report), and similarly, shall be held in confidence. Both the Bank and the City agreed.

Immediately prior to the commencement of the meeting the Receiver received a telephone call from a party (party 6 in Exhibit G to this Third Report) who had not taken part in the Sales Process, and wished to submit an offer to purchase the property. The Receiver and its counsel canvassed the caller regarding its intentions, after advising them of the established Sales Process including the current status of the process. The party's purchase price was identical to the purchase price offered in the two final LOIs.

Following the presentation of what were now four (4) submissions to the Bank and the City, it was agreed that the Receiver did not have a single firm offer that it could recommend to this Honourable Court for approval. It was further agreed that the Receiver would write to each party, under separate cover, thanking them for their submission and advising them that if they wished to continue to pursue the opportunity to purchase the Project they needed to submit an offer on the Receiver's form of APA no later than **July 27, 2009 at 5:00 PM EST**. A copy of the APA was enclosed with space to insert the Purchaser details and purchase price left blank. Attached hereto as **Exhibits "H" and "I"** respectively, is a specimen of the cover letter and the Receiver's form of APA.

A specimen of the cover letter and the APA was provided to representatives of the Bank and to the City's counsel so that they could provide a copy of the APA to any party known to them had not participated in the Sales Process and wished to at this time, so as to continue to expose the sale to as wide a network of contacts as possible.

#### **4.3 APA Submissions –**

On or prior to the July 27, 2009 deadline, the Receiver received two (2) APA Submissions. One submission (by party #2 as referenced in Exhibit G to this Third Report) offered \$2 Million to purchase the property, and in addition to the due diligence conditions favouring the purchaser contained in the APA in numbered Clause 5 (pages 3 and 4 of Exhibit I to this Third Report) it contained an additional condition that the offer was conditional on financing and no waiver period was defined by the potential purchaser. The APA was accompanied by the requisite deposit of \$200,000 in certified funds.

The Canlight APA offered a purchase price of \$2.1 Million and had no conditions other than those contained in Clause 5 of the APA. The Canlight APA is attached hereto as **Exhibit "J"**. Prior to the submission of the APA the potential purchaser advised the Receiver that due to logistical constraints the requisite deposit of \$210,000 would not arrive until a few days past the APA submission deadline. The deposit was received shortly after the submission of the APA.

Both APAs had irrevocable deadlines of 5:00 PM on August 31, 2009.

On August 4, 2009, the Receiver presented the results of the APA submissions to representatives of the Bank and their counsel and counsel for the City, again on the same confidential basis. Neither the Bank nor the City objected to receiving the information on that basis.

The Receiver recommended that it accept the Canlight APA and then proceed to Court to attempt to obtain approval as: (a) it was a higher offer; and (b) it did not contain any additional conditions. At the request of both the Bank and the City, the Receiver revealed the identity of the parties. The Bank representatives advised that Canlight was known to the Bank, and they had



confidence in its ability to close. The other party was unknown to the Bank, City and the Receiver.

The Bank advised the Receiver that it required some time to deliberate over the results of the APA submission before the Receiver accepts any offer. On August 10, 2009 the Bank advised that they were in concurrence with the Receiver's recommendation and the Receiver, gave notice to Canlight, by overnight courier, that it had accepted its APA, and advised the party with the lower offer that their offer was not accepted and returned its un-cashed deposit cheque. In accordance with Clause 5 of the APA Canlight had until August 31, 2009 to waive the conditions of its offer.

#### ***4.4   Inquiries at later stages in the Sales Process –***

Following the various submission deadlines throughout the Sales Process potential purchasers contacted the Receiver advising that they had just learned about the sale of the Project or were enquiring if the Project was still for sale. Each enquiry was responded to by providing an explanation as to the stages of the Sales Process and at what stage the process was then at. The potential purchasers were advised that in the interest of fairness, and to not prejudice any party who had participated throughout the process, clearly communicated deadlines could not be altered but, they were welcome to enter the process by completing the steps that were missed and catching up to the next milestone. Any access to documents regarding the Project, beyond the publicly advertised material, required the execution of our confidentiality agreement ("CA").

Following the circulation of the APA one party had submitted an executed CA and received a copy of our Confidential Information Memorandum, however they did not choose to submit an APA.

Following the APA submission deadline, the Receiver was contacted by a party, who in Exhibit G to this Third Report has been referred to as "Party #7". They advised that: (a) they wished to acquire the Project; and (b) they work closely with the City but were unaware of the Receiver's Sales Process. The Receiver indicated that the deadline for APAs had passed and although it could not arrange for site visits, should the Potential Purchaser submit a LOI that was reasonable and an executed CA, the Receiver would grant access to the data room. The Receiver advised that APAs were received from parties who had participated throughout the Sales process.

#### **4.5    *Unsolicited Offer* –**

On August 7, 2009 Party #7 submitted an LOI that required the Receiver grant it exclusivity. On August 12 then Receiver responded that it could not accept the LOI. On the same day Party #7 submitted an executed CA and the Receiver granted it data room access. On August 13, 2009, three days after the Receiver had accepted the Canlight APA, Party #7 submitted by email an offer using the draft copy of the APA that was in the data room. The Receiver advises this Honourable Court that the draft was not materially different than Exhibit I to this Third Report, however there were minor typographical errors and omissions in the draft that were corrected prior to circulation. The APA offered a purchase price of \$2.3 Million and did not include any conditions other than those afforded by Clause 5.

On August 20, 2009, an original executed copy of Party #7's APA arrived at the Receiver's office, inclusive of the requisite deposit funds in the amount of \$230,000. The APA had an irrevocable deadline of August 21, 2009 at 5:00 PM. The Receiver advised Party #7 that it could not accept an APA with a one day irrevocable. Party #7 asked what irrevocable date the Receiver could consider. The Receiver advised that it could not consider any irrevocable date

prior to September 1, 2009. Party #7 amended their APA submission with an irrevocable deadline of September 1, 2009 at 5:00PM.

#### **4.6 Firm Offer –**

In the days leading up to the Canlight's deadline to waive conditions, Canlight requested that the Receiver extend the deadline to waive the due diligence condition. The Receiver advised that this was not feasible and could not be entertained. Canlight's solicitor wrote to the Receiver providing, in Canlight's view, reasons why an extension should be granted. Lang Michener LLP responded in writing advising Canlight's legal counsel that the Receiver disagreed with both their characterization and conclusions. On August 31, 2009, Canlight's solicitor advised the Receiver that Canlight was waiving its final due diligence condition and, subject to the approval of the Court, would be prepared to complete the transaction on September 30, 2009.

Consequently, as the Receiver was contractually bound to Canlight, on September 1, 2009, the Receiver advised Party #7 that it could not accept their APA, and returned their un-cashed deposit cheque.

The Receiver respectfully submits that the principles set forth by the Court of Appeal in *Royal Bank v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.) for the sale of assets in a receivership, have been met. Accordingly, the Receiver recommends to this Honourable Court that the Canlight APA to purchase the Project in the amount of \$2.1 million, subject to normal adjustments, be approved.

Yesterday, Canlight's legal counsel notified Lang Michener LLP that title to the property is to be taken in the name of "Printing Press Lofts Inc.". A title direction has been requested.

#### **4.7 Appraisal –**

Attached as Exhibit “A” to the Sealed Volume 2 of this Third Report is the Pocrnic appraisal. The Appraisal was performed by a qualified appraiser who is both familiar with the Project and is local to the City of Hamilton. As to not taint the Sales Process the Receiver is not discussing specifics of the Pocrnic Appraisal in this First Volume of the Third Report. The Receiver advises that the Pocrnic Appraisal supports the offers described herein, including the Canlight APA.

#### **5.0 LIEN CLAIMS**

Numbered Paragraphs 5 and 15 of the Affidavit of Lionel Meunier, Assistant Vice President, Corporate Banking of the Bank , dated September 4, 2008 (the “**Meunier Affidavit**”), attached hereto as **Exhibit “K”**, filed in support of the Receivership Order, reference five construction liens registered against the Project that the Debtor was to have obtained discharges for (the “**Liens**”), and failed to. The Meunier Affidavit also notes four additional construction liens (the “**Additional Liens**”) (collectively referred to as the “**Construction Liens**”). Paragraphs 6 through 8 of the Meunier Affidavit detail further steps taken by the Bank relating to the Construction Liens. Exhibits H and I to the Meunier Affidavit is be of assistance and are therefore reproduced and attached hereto as **Exhibit “L”** to this Third Report.

The Receiver is of the opinion that certain of the Construction Liens may rank in priority to the mortgage security of the Bank and plans to consult with the Construction Lien claimants and report further to this Honourable Court in its subsequent Fourth Report as part of its recommendations with respect to a claims bar process and prior to seeking a distribution order.

## **6.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

As the Project does not have any income producing elements to it, there has been no cash flow available for the Receiver to utilize. Accordingly, ICICI has agreed to provide the Receiver with the necessary funding. The Receiver has been borrowing from ICICI under its borrowing authority contained in the Appointment Order, and specifically, paragraph 20 of such Order and in accordance with the increase to a total of \$700,000.00 in its borrowing authority contained in Paragraph 5 of the Second Approval Order. The Receiver has issued nine (9) Receiver's Certificates (inclusive of the fourth certificate which was cancelled and returned by the Bank at the Receiver's request) to date and has borrowed under the Receivership Borrowings Charge (all as defined in the Appointment Order) the amount of \$580,000.00 to date.

Attached as **Exhibit "M"** is the Receiver's Statement of Receipts and Disbursements for the period November 12, 2008 to September 11, 2009.

As indicated as a note to the Receiver's Statement of Receipts and Disbursements, the Receiver currently holds Canlight's deposit funds of \$210,000 plus accrued interest in its general corporate trust account to prevent either comingling of these deposit funds with borrowed funds or accidental use of the deposit funds for cash-flow purposes.

## **7.0 CASHFLOW REQUIREMENTS OF THE RECEIVER**

The Receiver has borrowed nearly eighty-three (83) percent of the amount allowed under the Second Approval Order and currently has \$1,675.88 of borrowed funds on hand. There remains \$120,000.00 within the approved borrowing authority that has not been borrowed yet by the Receiver. The Receiver advises this Honourable Court that it does not foresee the need to obtain a greater borrowing authority.

The Receiver further advises this Honourable Court that it has complied with its undertaking to furnish the City's counsel with the calculation that its cash flow estimates were based upon in its Second Report.

## **8.0 FEES AND DISBURSEMENTS OF THE RECEIVER**

Attached hereto as **Exhibit "N"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from June 1 to August 31, 2009 in the amount of \$27,627.66 (exclusive of GST). To date, the amount of \$23,921.94 has been advanced on account of these fees and disbursements.

The Receiver further advises this Honourable Court that Exhibit M to its Second Report contained a typographical error in that it had made reference to its fees and activities as at March 31, 2009, when actually, and as reported in Section 8.0 of its Second Report, the reference should have been as at May 31, 2009.

## **9.0 FEES AND DISBURSEMENTS OF LANG MICHENER LLP**

Attached hereto as **Exhibit "O"** is the Affidavit of Mr. Leslie A. Wittlin, Partner of Lang Michener LLP, attesting to the fees and disbursements of Lang Michener LLP for the period

**Ira  
Smith**  
TRUSTEE & RECEIVER INC.

from May 1, 2009, to August 31, 2009 in the amount of \$34,556.85 (exclusive of GST). To date, the amount of \$21,841.11 has been advanced on account of these fees and disbursements.

#### **10.0 FEES AND DISBURSEMENTS OF PWI**

Attached hereto as **Exhibit "P"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of PWI for services provided at the request of the Receiver for the period from June 1, 2009 to August 31, 2009 in the amount of \$28,289.77 (exclusive of GST). To date, the amount of \$15,836.28 has been advanced on account of these fees and disbursements.

#### **11.0 OTHER MATTERS**

The Receiver invited all parties on the service list, other than Canlight, to attend a conference call after the service and filing of the Receiver's motion record, including, this Third Report, so that the parties could ask any questions of the Receiver, in advance of the hearing scheduled for September 22, 2009.

#### **12.0 CONCLUSION AND RECOMMENDATIONS**

For the reasons set out in this Second Report, the Receiver respectfully requests that this Honourable Court approve:

1. the actions and activities of the Receiver as described in this Third Report;
2. the professional fees and disbursements of the Receiver from June 1, 2009 to August 31, 2009 as contained in this Third Report;

3. the professional fees and disbursements of the Receiver's legal counsel, Lang Michener LLP, from May 1, 2009 to August 31, 2009 as contained in this Third Report;
4. the professional fees and disbursements of PWI as contained in this Third Report;
5. the Receiver's request for an Order sealing Volume 2 to this Third Report;
6. the Receiver's request for an Order approving the sale transaction to Canlight contemplated by the Canlight APA between the Receiver and Canlight made as of July, 27, 2009, and appended to this Third Report as Exhibit J, and vesting in Canlight the Debtor's right, title and interest in and to the assets described in the Canlight APA.; and
7. such other advice and direction from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

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All of which is respectfully submitted at Toronto, Ontario this 17th day of September, 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



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MADAM  
JUSTICE PEPALL

)  
)  
)

WEDNESDAY, THE 12<sup>th</sup> DAY  
OF NOVEMBER, 2008

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. 1990, c. C-43  
and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*

**O R D E R**

**THIS APPLICATION** made by ICICI Bank Canada (the "**Bank**") for an Order pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Ira Smith Trustee & Receiver Inc. ("**Smith**") as interim receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 1539304 Ontario Inc. (the "**Company**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Lionel Meunier, sworn September 4, 2008 and the Exhibits thereto, and on hearing the submissions of counsel for the Bank, no other parties appearing although duly served as appears from the affidavit of service of Fiorella Sasso sworn September 10, 2008, and on reading the consent of Smith to act as the Receiver, 1539304  
custans  
inc.  
870

### **SERVICE**

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

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 47.1 of the BIA and section 101 of the CJA, Smith is hereby appointed Receiver, without security, of all of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to settle, extend or compromise any indebtedness owing to the Company;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Company;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* and subsection 31(1) of the Ontario *Mortgages Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Company;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Company;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Company may have; and

(s) to take any steps reasonably incidental to the exercise of these powers; and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Company, and without interference from any other Person.

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

4. **THIS COURT ORDERS** that: (i) the Company, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to

the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

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

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

8. **THIS COURT ORDERS** that that no Proceeding against or in respect of the Company or the Property shall be commenced or continued except with the

written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Company or the Property are hereby stayed and suspended pending further Order of this Court.

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

9. **THIS COURT ORDERS** that all rights and remedies against the Company, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) exempt the Receiver or the Company from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien for the purpose of perfecting such lien.

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

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

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company are hereby restrained until further Order of this Court from discontinuing, altering, interfering

with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

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

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

#### **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Company shall be considered the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay,



or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

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

17. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Receiver's Charge**").
18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver

and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

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

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

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed ~~\$800,000~~ <sup>✓ \$200,000 ✓</sup> (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge. 8UP

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

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **GENERAL**

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.
26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
27. **THIS COURT ORDERS** that that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or

administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Company's estate with such priority and at such time as this Court may determine.
29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided that nothing in this section operates to extend any applicable appeal period.

Seppell, J.

TOR\_LAW 69318071

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ON / BOOK NO:  
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PERIPAN TV

## Schedule "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

1. THIS IS TO CERTIFY that Ira Smith Trustee & Receiver Inc., the interim receiver and the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of 1539304 Ontario Inc. (the "**Company**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the 12<sup>th</sup> day of November, 2008 (the "**Order**") made in an action having Court file number CV-08-7714-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ ●, being part of the total principal sum of \$ ● which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**IRA SMITH TRUSTEE & RECEIVER INC.**  
solely in its capacity as Receiver of the  
Property (as defined in the Order), and not  
in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**BETWEEN:**

**ICICI BANK CANADA**  
**Applicant**

**- AND -**

**1539304 ONTARIO INC.**

Respondent

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

(PROCEEDING COMMENCED AT TORONTO)

# ORDER

**GOWLING LAFLEUR HENDERSON LLP**

**Barristers & Solicitors**  
1600 – 1 First Canadian Place  
100 King Street West  
Toronto, Ontario  
M5X 1G5

**Heath P.L. Whiteley**  
(L.S.U.C. No. 38528P)

Tel: (416) 862-4400  
Fax: (416) 862-7661

### Solicitors for the Applicant



~~SCHEDULE A~~

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE *madam* )  
JUSTICE *Repall* )  
)  
)

THURSDAY, THE 11<sup>TH</sup> DAY  
OF JUNE, 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*.

## ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court — appointed interim receiver and receiver and manager (the "Receiver") of all the assets, undertaking and property of 1539304 Ontario Inc. (the "Debtor"), for an order, *inter alia*, approving the Second Report of the Receiver dated June 5, 2009, (the "Second Report") and the actions and activities of the Receiver as detailed therein, and an order that the former solicitor for the Debtor return certain deposits to the proposed condominium unit purchasers under failed agreements of purchase and sale was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver and the exhibits thereto, filed, and upon hearing the submissions of counsel for the Receiver, and no one appearing for the other

- 2 -

parties served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of Sabrina Simone sworn June 8, 2009:

✓ 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.~~ ✓ *STP*

SECOND REPORT

2. THIS COURT ORDERS that the Second 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 February 16, 2009 to May 31, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from February 2, 2009 to April 30, 2009, all as detailed in the Second Report, be and are hereby approved.

RETURN OF DEPOSITS

4. THIS COURT ORDERS that Burns Vasan Argiropoulos LLP ("Burns Vasan") return the deposits, together with the accrued interest, net of bank charges, reflected in the Burns Vasan trust ledger statement attached hereto as Appendix A, to the respective proposed condominium unit purchasers under failed agreements of purchase and sale;

FUNDING OF THE RECEIVERSHIP

5. THIS COURT ORDERS that the Receiver's authority to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon it as interim receiver and

- 3 -

receiver and manager of the Debtor and the Receiver's Borrowing Charge, both as set out in paragraph 20 of the Order Appointing the Receiver dated November 12, 2008, are hereby amended to increase the Receiver's authority to borrow monies and the Receiver's Borrowing Charge to \$700,000.

6. This court orders that this order is: (a) without prejudice to the respondent to assert that the environmental cleanup costs + any costs arising from the delay in implementing the sales process approved in my order of Feb 26, 09 be borne by the applicant bank + that such issue be addressed at the date of any request for a distribution of sale proceeds to the Bank; +  
(b) without prejudice to the City of Hamilton to take issue with the proposed expenses set forth on page 13 of the Receiver's 2nd Report if it is dissatisfied with the particulars provided + that such issue be addressed when the Receiver seeks approval of these payments.

*Attest, J.*

## APPENDIX "A"

TRINITY LANDING

<u>NAME</u>	<u>UNIT/SUITE</u>	<u>DEPOSIT</u>
Jeffrey Legris	Unit 2, Level 1, Suite 105	\$ 1,000.00
Deirdre Dixon	Unit 11, Level 4, Suite 402	\$11,000.00
Dennis Vachon	Unit 2, Level 2, Suite 205	\$ 1,000.00
Shirley Thai	Unit 4, Level 1, Suite 107	\$ 1,000.00
Praful/Hema Raythattha	Unit 7, Level 1, Suite 111	\$ 6,688.80
Bobby Turcotte	Unit 8, Level 4, Suite 411	\$11,000.00
Charlotte Hell	Unit 13, Level 2, Suite 203	\$ 1,000.00
		<hr/>
	(interest)	+ \$32,688.80
	(service charge)	+ \$ 168.79
		- \$ 6.01
<b>TOTAL</b>		<b>\$32,851.58</b>

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.**

**VOLUME 1**

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

**DATED FEBRUARY 20, 2009**

**1.0 INTRODUCTION**

This report (the "**First 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. A copy of the Receivership Order is attached hereto as **Exhibit "A"**.

**1.1 Purpose of this Report**

The purpose of this First Report is to report to this Honourable Court on:

**Ira  
Smith**  
TRUSTEE & RECEIVER INC.

1. the actions and activities of the Receiver since November 12, 2008;
2. the Receiver's retainer of Pelican Woodcliff Inc. ("**PWI**"), an independent real estate consulting firm assisting the Receiver (subject to the approval of this Honourable Court);
3. PWI's Report to the Receiver dated December 31, 2008 (the "**PWI Report**") on the receivership of the Company's known asset, a condominium project under development in the City of Hamilton known as Trinity Landing (the "**Project**"), and their report of project and property management activities to date (the "**PWI activities**");
4. the need for the Receiver to continue its retainer of PWI to assist the Receiver with the interim property and project management;
5. the cash flow requirements of the Project referred to in the PWI Report contained in the sealed volume 2 of this Report;
6. prior to the beginning of the receivership, units sold by the Company and deposit funds held in trust by the Company's solicitor;
7. the accounting for the receipts and disbursements of the Receiver from November 12, 2008 to February 19, 2009; and
8. the fees and costs to date incurred by the Receiver and its legal counsel, Lang Michener LLP.

## **1.2 Disclaimer**

The Receiver has relied upon the financial records and financial statements of the Debtor, as well as other information supplied by management and employees of the Debtor, its accountants, appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.

Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this First Report, or any of the attached Appendices or Exhibits forming part of this First Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this First Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

## **1.3 Confidential Volume 2**

This First Report contains a Confidential Volume 2, which contains the PWI Report, and certain other reports commissioned by PWI on behalf of and with the approval of the Receiver. The purpose of the PWI Report was to assess the state of the Project upon the appointment of the Receiver. The PWI Report also contains various findings and recommendations concerning improvements to the Project.

Also contained in Volume 1 of this First Report is the Receiver's recommendation for a process to market the Project for sale (the "Sales Process") (as further defined below). The Receiver

believes that it is in the best interests of the stakeholders that if this Honourable Court approves the recommended Sales Process, that full disclosure to all potential purchasers should be made only through the Sales Process and not by way of the Receiver's First Report to Court.

Therefore, the Receiver is seeking an Order sealing Volume 2 of this First Report until further Order of this Honourable Court. The Receiver makes this request to avoid any prejudice that might be caused by publicly disclosing the PWI Report and other reports contained therein other than to potential purchasers through a Court-approved Sales Process. The main findings and recommendations of PWI are disclosed below in this Volume 1 of the First Report, so that all stakeholders will have knowledge of such findings and recommendations, and to assist them in better understanding the context in which the Receiver makes certain of its recommendations herein.

For reasons stated above, the Receiver believes that the PWI Report and other reports in Volume 2 must be sealed at this time, so that no party will obtain any special insight into, or advantage with respect to, the Project as disclosed in such reports.

## **2.0 BACKGROUND AND OVERVIEW**

The Company's principal asset is a building located at 80 King William Street in the City of Hamilton. The Project comprises an existing 3 storey rehabilitated commercial structure which is currently under construction to be converted to a 5 storey, 50 unit loft style residential condominium building which has been marketed under the name Trinity Landing Condominiums. The legal description of the property is 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 62R-16706; Hamilton.



As indicated in the material of the Applicant in these proceedings, ICICI Bank Canada ("ICICI" or the "**Applicant**"), no work has occurred on the Project since July 16, 2008<sup>1</sup>.

### **3.0 ACTIVITIES OF THE RECEIVER**

#### **3.1 Initial site visit -**

Upon its appointment on November 12, 2008, Mr. I. Smith of the Receiver, contacted the Company's principal, Mr. H. Ganatra and advised him of the receivership appointment. Mr. Ganatra provided the Receiver with a brief description of the Project and advised the Receiver that there was neither heat nor hydro service to the property. Mr. Ganatra also advised that a general contractor used on the Project, Mr. H. Epp, was very knowledgeable and had been providing property management services.

A meeting was scheduled at the building with Mr. Ganatra for November 13, 2008, in order for Mr. Ganatra to provide the Receiver with the keys to and a tour of the Project. The Receiver also made arrangements with representatives of PWI, a real estate property development and project management consulting firm that could provide assistance to the Receiver in its administration, to meet at the Project the next day.

On November 13, 2008, Messrs. I. Smith and B. Smith of the Receiver, Messrs. R. Mandowsky and N. Ary of PWI and Mr. Ganatra met at the Project. Mr. Ganatra provided the keys to the premises to the Receiver and provided a detailed tour of the Project. At the conclusion of the tour, Mr. Ganatra undertook to provide the Receiver with all property, assets and undertaking of

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<sup>1</sup> Affidavit of Lionel Meunier sworn September 4, 2008, page 4, Tab 2 of the Application Record dated September 8, 2008.

the Company in his possession or control. To date, very little additional information, documentation or property has been provided by Mr. Ganatra.

From this site visit, the Receiver concluded that certain emergency work would have to be performed in order to obtain approval from the utilities to restore hydro and gas to the premises. The Receiver also concluded that the Project would require some additional emergency work in order to secure the site. The Receiver discussed these issues with Messrs. Mandowsky and Ary on site, and requested PWI to provide the Receiver with both its proposed engagement letter as well a listing of emergency items required to be implemented immediately for the safety and security of the Project.

### **3.2 *Immediate activities arising from initial site visit –***

During the first week of the receivership, the Receiver's activities included:

- took possession and control of the physical property;
- notified Hamilton Police of our appointment;
- retained a locksmith and changed the locks to the premises;
- arranged through PWI for three (3) nightly security patrols to be conducted;
- restored hydro and gas to those areas of the building where it was safe to do so in order for sufficient heating and lighting to be available to the Project;
- communicated with Mr. R. Weston, City of Hamilton legal counsel, regarding obtaining a copy of a recent appraisal commissioned by the City and opportunities available from the City's perspective for any party interested in completing the project;
- arranged for continuation of the existing insurance coverage adding the Receiver as an additional named insured until the policy expires on February 28, 2009; and
- instructed PWI to proceed with specific repairs to secure the physical premises.

**3.3 November 19, 2008 site visit –**

Once the most immediate safety and security issues were dealt with, the Receiver and PWI agreed that a site visit to the Project with the benefit of light and heat was appropriate, in order to further assess the condition of the Project. PWI also made arrangements for Mr. Epp to be in attendance. On November 19, 2008, Mr. B. Smith of the Receiver, Messrs. Mandowsky, Ari and M. Winnick of PWI and Mr. Epp toured the premises. During this tour, various items were noted and it was agreed that certain items that could be done immediately at moderate cost to further secure the site would be done immediately by Mr. Epp. As well, it was agreed that PWI would begin its work to prepare a comprehensive report for the Receiver on the Project, with recommendations on how best to proceed.

**3.4 Insurance –**

The Receiver contacted Sinclair-Cockburn Financial Group (“SCFG”), the insurance broker who placed the insurance coverage for the Company on the Project. As the Receiver was discussing the required coverage, the broker was surprised to learn that the Project was not completed and was not inhabited by individual residential condominium unit owners, as SCFG and the insurer had been led to believe. The broker initially advised the Receiver that the insurer would not extend coverage to the Receiver, but after learning of the steps taken by the Receiver to secure and monitor the Project, the insurer reconsidered and agreed to extend coverage.

The Receiver also consulted with Firstbrook, Cassie & Anderson Ltd., the broker that handles the insolvency insurance program for ISI and many other trustees and receivers. Based on consultation with Firstbrook, Cassie & Anderson Ltd., the Receiver paid the additional amount

of \$7,536.24 (inclusive of provincial tax) in order to be added to the Company's insurance coverage, as amended for the status of the Project.

Attached as **Exhibit "B"** is a copy of the email from SCFG dated December 5, 2008 confirming the coverage and a copy of the insurance endorsement subsequently received for the insurance coverage currently in place for the Project with the Receiver added as a named insured.

The current coverage expires on February 28, 2009 and the Receiver is in communication with SCFG for the renewal of coverage.

### **3.5    *Regular reporting to and meetings with ICICI –***

The Receiver prepares a monthly reporting memorandum outlining major activities during the immediate prior month and discussing issues relating to the Project that the Receiver has identified with the assistance of PWI. The Receiver has provided a copy of such memo to ICICI to assist ICICI in understanding the issues relating to the Project and the upcoming borrowing needs of the Receiver. As the Receiver is borrowing from ICICI (discussed further in this First Report) under its borrowing authority under the Appointment Order, the Receiver believed ICICI should be aware of issues through the monthly reporting memoranda and where necessary, at a meeting.

The Receiver has held four (4) meetings to date with representatives of ICICI (one of which was the February meeting with The City of Hamilton referred to below).

### **3.6    *Meetings with The City of Hamilton –***

As indicated in the Applicants' motion material, The City of Hamilton (the "City") holds a mortgage on the real property in the original principal amount of \$1.2 million. The City's

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mortgage is subordinate to the mortgage security of ICICI. The City of Hamilton also has an interest in seeing the Project proceed as part of an overall plan to rejuvenate the downtown core of Hamilton. Accordingly, the City is an important stakeholder that the Receiver has also kept apprised of the receivership administration on a regular basis, including meeting with City representatives on December 11, 2008 and February 17, 2009.

The main purpose of the December meeting with the City was for the Receiver and PWI to advise the City of the current status of the receivership administration and to allow for the Receiver and PWI to understand the concerns and desires of the City in connection with the Project. The main purpose of the February meeting was for representatives of the Receiver, PWI and ICICI, and its legal counsel, to meet with the City representatives, to advise the City of the Receiver's plans for a Sales Process for the Project (further described below) and to ensure that any concerns the City had could be addressed.

Both meetings involved dialogue between all parties and the Receiver is pleased with its communications and relationship with the City to date.

#### **4.0 RETAINER OF PWI**

The Appointment Order and specifically paragraph 3(d) thereof, provides the Receiver with the authority to retain consultants and advisors to assist it in this receivership administration. As indicated above, the Receiver had requested PWI to attend the initial site visit to the Project on November 13, 2008.

PWI was known to both ISI and ICICI prior to the appointment of the Receiver. With the approval of ICICI, the Receiver contacted PWI with a view of retaining it to assist the Receiver.

The Receiver consulted with ICICI, which concurred with the Receiver's choice of PWI. At a meeting held between representatives of the Receiver and ICICI and respective legal counsel on November 13, 2008, representatives of the ICICI advised that since it was funding the costs of this receivership administration and was aware of PWI's abilities, it did not wish the Receiver to incur the time to obtain other quotes for the consulting services required.

The Receiver held discussions with PWI concerning its mandate, and PWI provided its draft engagement letter to the Receiver for approval and signing. Discussions were held and certain amendments were made to the engagement letter. Attached as **Exhibit "C"** is a signed copy of the PWI engagement letter wherein the Receiver is retaining the consulting services of PWI as outlined therein. The Receiver advises the Court that the entering into of the PWI engagement letter is subject to the approval of this Honourable Court.

Attached as **Exhibit "D"** are the curriculum vitae of Messrs. Mandowsky and Ary who are the representatives of PWI responsible for assisting the Receiver in this administration.

The Receiver requested that, in accordance with the PWI engagement letter, PWI would assist the Receiver by providing property management services for the Project, in addition to supervising the emergency repairs required to secure the Project as described above. The Receiver also requested PWI to prepare a report for the Receiver with its recommendations concerning any issues it could identify with respect to the Project, as well as the timing of any offering of the Project for sale.

## **5.0 THE PWI REPORT**

PWI provided its Report dated December 30, 2008 in draft form for the Receiver to review setting out the current status of the Project and making specific recommendations for the Receiver to consider. These recommendations focused mainly on what steps the Receiver should take and also provided a Project budget up to and including May 31, 2009. The Receiver and PWI discussed the Report at length and on February 18, 2009 PWI released the Report in final form. As indicated above, the Receiver is seeking an Order to seal the PWI Report contained in Volume 2 of this First Report for the reasons outlined above. In order to assist the readers of this Volume 1 of the First Report, the Receiver advises that PWI's major findings and recommendations are:

1. The emergency work to make the Project site secure and safe, as identified by the Receiver and PWI early in the receivership administration, was completed.
2. Based on the findings of the Structural Engineer, the building structure is safe.
3. That a Mould Consultant be retained to prepare a report for the Receiver. A Mould Consultant was retained during the preparation of the PWI Report. The Mould Consultant's Interim Report dated December 23, 2008 was delivered and is contained in Volume 2 of this First Report.
4. A Building Science Study should be undertaken in relation to the building envelope. Such study was requisitioned and the report dated January 28, 2009 was delivered and is contained in Volume 2 of this First Report.

5. A construction budget, including the fees and costs of PWI for the period November 13, 2008 to May 31, 2009, which totals \$418,740. This estimate does not include Receiver and legal fees or GST on any expenditure.
6. That PWI meet with the Project's previous real estate listing agent to get a better understanding of the Agreements of Purchase and Sale previously entered into between the Company and individual purchasers of residential condominium units.
7. A disposition strategy be developed and implemented as soon as possible.

The Receiver advises that both ICICI and the City are in agreement that a disposition strategy be implemented immediately.

#### **6.0 PROPOSED SALES PROCESS**

The Receiver has not commissioned an appraisal of the real property or the Project at this time. Rather, the Receiver has reviewed a copy of the following appraisals which have been provided to it by ICICI and the City:

1. Pocrnic Realty Advisors Inc. appraisal dated June 27, 2007 prepared for ICICI.
2. Antec Appraisal Group Inc. appraisal dated July 7, 2008 prepared for the City.

The Receiver believes that the Sales Process outlined below, for which the Receiver is seeking the approval of this Honourable Court, will allow the marketplace to determine the value of the Project. Nevertheless, the Receiver advises that it intends to obtain an updated appraisal from one of the above-noted appraisers.



Accordingly, the Receiver will ask each of the above appraisers to advise the Receiver as to the cost of an updated appraisal and retain one of these appraisers to provide such an appraisal to the Receiver.

The Receiver, through discussion with both ICICI and the City, has determined that the stakeholders would be best served by a Court-supervised Sales Process conducted by the Receiver. Such a process will allow the Project to be exposed to the marketplace to generate the best possible return under the current circumstances. The Receiver believes that such a Sales Process must be carefully managed through the proposed time period and has therefore prepared for consideration and approval by this Honourable Court, a proposed Sales Process which the Receiver believes is appropriate.

The Receiver has considered, and rejected, the retainer of a qualified commercial real estate agent specializing in the sale of such properties. Both the Receiver, and its consultant, PWI, have the combined experience of sales in the real estate development industry, both in receivership and non-distressed situations.

The Receiver also believes that the Sales Process should allow potential bidders to conduct the necessary due diligence to submit an offer. The Receiver believes that this due diligence process will assist potential purchasers to gain a better understanding of the current state of the Project, the amount of work that needs to be completed, and will provide potential purchasers access to the information contained in Volume 2 of this First Report subject to the provision of appropriate confidentiality agreements. The Receiver's proposed Sales Process will provide potential purchasers with this information.

The Sales Process being recommended to this Honourable Court is attached hereto as **Exhibit "E"**.

Key elements of the Sales Process include:

1. The Receiver will require all interested parties to execute a confidentiality agreement, substantially in the form of the agreement attached hereto as **Exhibit "F"** (the "**Confidentiality Agreement**"), prior to such interested parties obtaining the Confidential Information Memorandum (the "**CIM**").
2. Each qualified potential purchaser will then be granted access to a password protected internet based due diligence website to view such further detailed information in the possession or control of the Receiver.
3. All potential purchasers will be requested to comply with the standard Terms and Conditions in the form attached hereto as **Exhibit "G"** (the "**Terms and Conditions**").

Given all of the factors outlined above, the Receiver recommends that all "Firm Offers" (as defined in the Terms and Conditions) relating to this opportunity be submitted to the Receiver no later than 12:00 noon (Toronto time) on May 11, 2009. The Receiver will then be in a position to: (i) evaluate all such Firm Offers; (ii) provide any final information to the relevant parties that they may need in connection with such Final Offer; (iii) obtain all necessary approvals from this Honourable Court; and (iv) complete the transaction contemplated under the Court-approved Agreement of Purchase and Sale with a target date during July, 2009.

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TRUSTEE & RECEIVER INC.

## **7.0 LIEN CLAIMS**

The Applicant's motion record describes two tranches of construction liens registered against the Project, and steps taken by ICICI in posting Letters of Credit and obtaining Orders vacating the registration of those liens<sup>2</sup>. At this point neither the Receiver nor its legal counsel has spent any meaningful time reviewing these lien issues. The Receiver believes that this issue should be addressed at the time the Receiver has received proceeds of sale from the sale of the assets of Debtor and is prepared to make application to this Honourable Court for a distribution of such funds.

## **8.0 CONDOMINIUM UNITS SOLD BY THE COMPANY AND FUNDS HELD IN TRUST PRIOR TO THE COMMENCEMENT OF THE RECEIVERSHIP**

The Receiver was contact by Mr. M. Caplan of Coldwell Banker, the real estate broker who had been marketing the Project prior to the appointment of the Receiver. Mr. Caplan advised that there were individuals who had signed agreements of purchase and sale for certain proposed units (collectively the "Purchasers", individually a "Purchaser"). These Purchasers had paid deposits and had purchased upgrades for their units and that certain of their deposits were still being held in trust by the Project's solicitor. The Receiver advised Mr. Caplan that he should provide the Receiver with the sales agreements, details of deposits and upgrade fees paid and contact details for the solicitor holding these funds.. Mr. Caplan did not provide any such information to the Receiver, notwithstanding his assertions that he is aware of complete details concerning the Project and that he was the broker of record.

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<sup>2</sup> Affidavit of Lionel Meunier sworn September 4, 2008, pp. 3-5.

The Receiver was ultimately contacted by a Purchaser who did provide proof of payment of deposit funds to "Burns Vasan, in trust". The Receiver contacted Mr. S. Vasan of Burns Vasan Argiropoulos LLP and requested an accounting of its trust ledger relating to the Project along with copies of the Purchasers' files corresponding to the funds held in trust. Attached as **Exhibit "H"** is the Trust Ledger Statement for the Project. Mr. Vasan acknowledged that he has been contacted by certain of the Purchasers, and correspondence in the files provided by Mr. Vasan indicates that they are seeking a return of their deposits. Mr. Vasan wished to release the trust funds to the Receiver, however, the Receiver advised Mr. Vasan to continue to hold the funds and await further instructions.

The Receiver will be completing its review of the documentation forwarded by Mr. Vasan, including the Agreements of Purchase and Sale, in respect of the proposed units, and will then bring forward its recommendation to this Honourable Court as to what it will then consider to be the appropriate disposition of the funds held by Mr. Vasan's law firm.

#### **9.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

As the Project does not have any income producing elements to it, there has been no cash flow available for the Receiver to utilize. Accordingly, ICICI has agreed to provide the Receiver with the necessary funding. The Receiver has been borrowing from ICICI under its borrowing authority contained in the Appointment Order, and specifically, paragraph 20 of such Order. The Receiver has issued two (2) Receiver's Certificates to date and has borrowed under the Receivership Borrowings Charge (all as defined in the Appointment Order) the amount of \$100,000.00 to date.

Attached as **Exhibit "I"** is the Receiver's Statement of Receipts and Disbursements for the period November 12, 2008 to February 18, 2009.

#### **10.0 INCREASING THE RECEIVER'S BORROWING AUTHORITY**

As previously stated, in section 9.0 above, the Receiver has borrowed half of the amount originally allowed under the Appointment Order and currently has \$15,194.93 of borrowed funds on hand. The Receiver currently estimates that it will require approximately \$16,000 monthly to cover utility, insurance and security costs in addition to the professional fees of the Receiver, Lang Michener, PWI and other necessary consultants and any costs related to remediation and upkeep of the Project.

Attached hereto as **Exhibit "J"** is a copy of the current 2009 Interim Property Tax Bill for the Project as well as a detailed statement of account indicating arrears of \$15,702.63 and a current quarterly instalment of \$4,010.00 due. Based on the three (3) year trend of levied taxes (as indicated on Page 1 of the statement, the second page of Exhibit "J" to this Report) the Receiver estimates taxes for 2009 in total to be \$20,000.00 . The Receiver recommends to this Honourable Court that it pay the property tax arrears and keep property taxes current as unpaid property taxes and the resultant additional charges attach to the lands as a prior lien.

The Receiver therefore requests that this Honourable Court grant the Receiver the ability to borrow an additional \$250,000.00, above the amount granted in the Appointment Order for a total of \$450,000.00.

#### **11.0 FEES AND DISBURSEMENTS OF THE RECEIVER**

Attached hereto as **Exhibit "K"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from November 13, 2008 to February 15, 2009. As indicated in the Receiver's Statement of Receipts and Disbursements, to date, the amount of \$8,606.24 has been advanced on account of these fees and disbursements.

#### **12.0 FEES AND DISBURSEMENTS OF LANG MICHENER LLP**

Attached hereto as **Exhibit "L"** is the Affidavit of Mr. Leslie A. Wittlin, Partner of Lang Michener LLP, attesting to the fees and disbursements of Lang Michener LLP for the period from November 13, 2008 to January 30, 2009 .

#### **13.0 FEES AND DISBURSEMENTS OF PWI**

Attached hereto as **Exhibit "M"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of PWI for services provided at the request of the Receiver for the period from November 13, 2008 to January 31, 2009.

#### **14.0 OTHER MATTERS**

In accordance with Subsections 245(1) and 246(1) of the BIA, on December 12, 2008, the Receiver's statutory Report (the "**BIA Report**") was sent by ordinary mail to the Debtor, the Office of the Superintendent of Bankruptcy and all known creditors of the Debtor. Attached as **Exhibit "N"** to this First Report is a copy of the Affidavit of Mailing and the BIA Report.

**Ira  
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TRUSTEE & RECEIVER INC.

## **15.0 CONCLUSION AND RECOMMENDATIONS**

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

1. the Receiver's retention of PWI, to assist in the management and sale of the Project as further described in the PWI engagement letter described above;
  2. the actions and activities of the Receiver as described in this First Report;
  3. the professional fees and disbursements of the Receiver from November 12, 2008 to February 15, 2009 as contained in this First Report;
  4. the professional fees and disbursements of the Receiver's legal counsel, Lang Michener LLP, from November 12, 2008 to January 30, 2009 as contained in this First Report;
  5. the professional fees and disbursements of PWI as contained in this First Report;
  6. the Receiver's request for an Order sealing Volume 2 of this First Report;
  7. the Sales Process as defined and described in this First Report;
  8. the Receiver's request for an Order granting an increase in its Borrowing Charge;
- and

9. such other advice and direction from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

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All of which is respectfully submitted at Toronto, Ontario this 20<sup>th</sup> day of February, 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

**Ira  
Smith**  
TRUSTEE & RECEIVER INC.



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**SUPPLEMENT TO THE FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER  
INC.**

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

**DATED MARCH 4, 2009**

**1.0 INTRODUCTION**

This Supplement to the First Report (the "**Supplementary 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. A copy of the Receivership Order is attached hereto as **Exhibit "A"**.

### 1.1 Purpose of the Supplementary Report

On February 26, 2009, the Receiver and its legal counsel, Messrs. L. Wittlin and A. Rousseau of Lang Michener LLP ("LM"), Mr. H. Whiteley of Gowling Lafleur Henderson LLP, legal counsel to the Applicant in these proceedings, Mr. R. Weston of Feltmate Delibato Heagle LLP, legal counsel to the City of Hamilton (the "City") and Mr. H. Ganatra, a Director of the Company, attended in Court on the Receiver's motion for relief on a variety of matters, including approval of the Receiver's engagement of Pelican Woodcliff Inc. ("PWI"), an independent real estate consulting firm assisting the Receiver. The Court reviewed the Receiver's First Report to Court (the "**First Report**") and heard the submissions of the parties in attendance.

At the conclusion of the hearing, Madam Justice Pepall reserved her decision, and on February 27, 2009, her Order (the "**First Report Approval Order**") and Endorsement were released. A copy of the First Report Approval Order is attached hereto as **Exhibit "B"** and a copy of Her Honour's Endorsement is attached hereto as **Exhibit "C"**. The First Report and the actions of the Receiver, other than the approval of the PWI retainer letter, were approved by this Honourable Court.

At the conclusion of the hearing on February 26, 2009, Her Honour directed the Receiver to prepare and file with the Court no later than March 5, 2009, the Supplementary Report for a further hearing on March 10, 2009. Her Honour wished the Receiver to provide additional evidence as to the basis for the Court to approve a specific engagement letter under which PWI will provide overall property management, construction and real estate advisory services to the Receiver without the Receiver tendering the engagement contract in a competitive bidding process.

## **1.2 Disclaimer**

The Receiver has relied upon the financial records and financial statements of the Debtor, as well as other information supplied by management and employees of the Debtor, its accountants, appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.

Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in the Supplementary Report, or any of the attached Appendices or Exhibits forming part of the Supplementary Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this Supplementary Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

## **2.0 BACKGROUND AND OVERVIEW**

Messrs. Whiteley, Weston and Ganatra were served with the Receiver's motion materials, including the First Report, prior to the hearing. None of these parties either filed material prior to the hearing date or contacted the Receiver or LM to express any concerns whatsoever about the relief being sought by the Receiver. Immediately prior to the commencement of the hearing of the motion in Court on February 26, 2009, Mr. Ganatra provided the Receiver (and then the Court) with a document outlining his concerns. As well, Mr. Weston approached the Receiver and LM to advise of several concerns of the City. All but one of the City's concerns, the retainer

of PWI, was dealt with during the hearing to the mutual satisfaction of the City and the Receiver. As a result of there not being any evidence proffered by the Receiver in the First Report to the then unknown concerns, Her Honour directed the Receiver to prepare and file the Supplementary Report.

Although it was a part of the First Report, to assist the Court, attached hereto as **Exhibit "D"** is a copy of the PWI engagement letter for which the Receiver seeks approval. The Receiver initially engaged PWI as allowed by Paragraph 3(d) of the Receivership Order, under the Receiver's power to engage consultants.

### **3.0 OBJECTIONS RAISED ON FEBRUARY 26, 2009 TO THE ENGAGEMENT OF PWI**

#### **3.1 Mr. Ganatra -**

In his material provided to the Receiver during the morning of February 26, 2009, Mr. Ganatra confirmed PWI's knowledge of the real estate project located at 80 King William Street in the City of Hamilton (the "**Project**"). The Project comprises an existing 3 storey rehabilitated commercial structure which is currently under construction to be converted to a 5 storey, 50 unit loft style residential condominium building which has been marketed under the name Trinity Landing Condominiums.

In his material, Mr. Ganatra raises various unsubstantiated allegations against both the Applicant in these proceedings and PWI, under the heading "**2. Receiver's retainer of Pelican Woodcliff Inc. ("PWI")**".<sup>1</sup> The only response the Receiver wishes to make to Mr. Ganatra's allegations is

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<sup>1</sup> Unnumbered page 2 of Mr. Ganatra's submission dated February 25, 2009.

in respect of his mistaken belief that "...the Receiver, PWI and the Applicant are acting in unison with a view to prejudice the equity of the Respondent."<sup>2</sup>

The Receiver is an independent officer of the Court, whose goal, *inter alia*, is to maximize the recovery for all stakeholders, in all of the circumstances. The Receiver does not take direction from the Applicant, and the Receiver has found the conduct and advice of PWI to date to be professional, unbiased and timely. PWI has sought the approval of the Receiver, and not the Applicant, for all activities, actions and decisions taken, as described in the First Report and as approved by this Honourable Court.

### 3.2 *The City –*

Mr. Weston did not submit any material in support of his submissions. The Receiver's understanding of his submissions on behalf of the City, in relation to the engagement of PWI, is as follows:

1. The Receiver did not enter into a competitive bidding or tender process for the selection of the real estate construction and project management consultant engaged by the Receiver. Mr. Weston advised that he did not object to the Receiver engaging such consultant but felt a competitive process should have been undertaken; and
2. Based on Mr. Weston's review of certain documents, it is not clear to him that the Applicant's secured claim ranks in priority to the secured claim of the City, either in whole or in part.

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<sup>2</sup> Paragraph 2.6 of Mr. Ganatra's submission dated February 25, 2009.

The significance of the second submission is that in the First Report, the Receiver advised:

“The Receiver consulted with ICICI, which concurred with the Receiver’s choice of PWL. At a meeting held between representatives of the Receiver and ICICI and respective legal counsel on November 13, 2008, representatives of the ICICI advised that since it was funding the costs of this receivership administration and was aware of PWL’s abilities, it did not wish the Receiver to incur the time to obtain other quotes for the consulting services required.”<sup>3</sup>

#### **4.0 SECURITY OF THE APPLICANT**

The issue raised by Mr. Weston is a significant one. The Receiver at the time of writing the First Report was unaware of any controversy over the ranking of the security of the Applicant, ICICI Bank Canada and the City. The Applicant’s motion material indicated that the Applicant’s view was that the only priority issue yet to be determined was the priority of any valid construction liens over both the security of the Applicant and the security of the City. Upon learning in November, 2008 that the City did not either object to or file responding materials in reply to the Applicant’s characterization of its security at the hearing that resulted in the appointment of the Receiver, the Receiver assumed that the priority of the Applicant’s security over the security held by the City was not in dispute as between them. Accordingly, upon its appointment, the Receiver proceeded on the basis that subject to obtaining a legal opinion on the validity and enforceability of the Applicant’s security, the Applicant was the first secured creditor, subject to any priority of valid construction liens (and/or deemed trust claims against the personal property of the Debtor).

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<sup>3</sup> Section 4.0 of the First Report to Court, **RETAINER OF PWL**.

Accordingly, the Receiver concluded that the Applicant, as the primary lender stakeholder, should have been first consulted on its views of the engagement of PWI as consultant to the Receiver, and that the Receiver should consider the Applicant's practical request that the Receiver not spend the time, and therefore incur the costs, of obtaining competitive quotes, as the Applicant would be funding the costs, both through cash advances to the Receiver under the Receiver's Borrowing Authority as well as through a diminution of its ultimate entitlement to distribution from the Receiver of the net sales proceeds (subject to a review of construction lien claims and the Receiver obtaining the approval of this Honourable Court to any distribution of sale proceeds realized from the sale process).

As is usual in Court-appointed receivership administrations, the Receiver did not obtain an opinion from LM on the validity, enforceability and ranking of the security held by the Applicant and the City for the First Report. Rather, the Receiver was deferring those costs to the point in the future where there are net sales proceeds to distribute. Given Mr. Weston now raising for the first time during the receivership proceedings that there may be a wider priority of security issue, the Receiver instructed LM to provide its opinion on the validity and enforceability of the security of the Applicant, and to provide whatever views it could on the priority ranking of the security held by the Applicant and by the City.

On the morning of February 27, 2009, the Receiver sent an email to both Messrs. Whiteley and Weston requesting that they forthwith provide a copy of any documents not contained in the Applicant's application record that they believed would assist LM in opining on the security of the Applicant, and the relative priority of the Applicant's and the City's security for loan advances to the Debtor. Mr. Whiteley replied on a timely basis to Mr. Wittlin, but Mr. Weston did not. Accordingly, at the end of the day, Mr. Wittlin sent an email to Mr. Weston urging him

to provide a copy of the documents he was relying upon in making the submissions he put forward to the Court on February 26, 2009.

Attached hereto as **Exhibits "E" and "F"** are the emails sent by the Receiver and Mr. Wittlin, respectively.

Attached hereto as **Exhibit "G"** is the opinion of LM dated March 3, 2009 (the "**LM Opinion**") indicating in summary that:

1. The mortgage security and general security agreement held by the Bank are valid and enforceable in accordance with their terms subject to the usual qualifications, including the priority of any loan advances secured thereby and the priority of all other encumbrances, including valid construction lien claims.
2. The existing registered priority agreements made between the City and the Bank provide that the Bank security is to enjoy priority for its loan advances over those of the City under its security to the full extent thereof.
3. The only references LM could find to the possibility that the Debtor could use some of the proposed individual condominium unit sales proceeds to repay the indebtedness secured by the mortgage held by the City make it clear that the Debtor would have to establish a condominium and achieve a significant sales volume of units for this to occur. Clearly, no condominium has been established, and the necessary threshold of aggregate sales volume was not and will not now be achieved in the receivership.

The Receiver also notes that LM has advised subsequently that it did receive further information and documents from Mr. Weston, but such material does not alter LM's opinion.



Accordingly, based on the information currently available to the Receiver, as described above, the Receiver continues to believe that it was prudent to have consulted with the Applicant, as the primary secured lender, on its views as to the engagement of PWI as consultant to the Receiver, and to consider the Applicant's practical request that the Receiver not expend the time and costs of obtaining competitive quotes. The Applicant would be funding the costs, both through cash advances to the Receiver under the Receiver's Borrowing Authority as well as through a diminution of its ultimate entitlement to distribution from the Receiver of the net sales proceeds (subject to a review of construction lien claims and the Receiver obtaining the approval of this Honourable Court to any distribution of sale proceeds realized from the sale process).

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## 5.0 FACTORS FOR THE ENGAGEMENT OF PWI

As indicated in the First Report and above, the Appointment Order gives the Receiver the authority to retain consultants and advisors to assist it in this receivership administration. Also, as indicated in the First Report, the Receiver requested PWI to attend the initial site visit to the Project on November 13, 2008.

As indicated in the PWI Report dated December 30, 2008 (contained in sealed Volume 2 of the First Report) (the "**PWI Report**"), PWI identified many challenges with the site on the November 13, 2008 site visit and inspection. PWI representatives were surprised to find that the state of the Project did not appear to have improved since its engagement by the Applicant and the Company prior to the receivership (disclosed in the First Report). Many of these challenges required immediate action. PWI was in the best position to act immediately on the more urgent issues, and as the PWI Report discloses, PWI did so, upon instructions from the Receiver.

The factors that the Receiver believes are important for this Honourable Court to consider in connection with the Receiver's recommendation that the PWI engagement letter be approved are:

1. As indicated above and in the First Report, City representatives met with representatives of both the Receiver *and PWI* on two prior occasions, on December 11, 2008 and on February 17, 2009. At no time before February 26, 2009 did the City advise of any concerns whatsoever with the engagement of PWI by the Receiver. The only reasons of which the Receiver is aware are based on Mr. Weston's observations about the lack of a public tender bidding process, such as the City might have done, and the possibility that the City may rank either in priority to or *pari passu* with the Applicant in respect of repayment of its

indebtedness, in whole or in part. The LM opinion does not support the priority or pari passu sharing argument raised by Mr. Weston.

2. PWI was best-positioned on November 12, 2008 to immediately assess and address the urgent needs of the Receiver to preserve and protect the property. As a result of PWI's initial involvement, it gained further knowledge of the Project which made it highly unlikely that any other real estate consultant could react as quickly and knowledgeably as PWI.
3. The Receiver does not believe that it is appropriate to attempt to replace PWI at this stage, now that they have been working with the Receiver since November 12, 2008. The Receiver is not aware of any other consultant as knowledgeable in respect of the Project and its details and needs as PWI, and no party has brought forward any other consultant for the Receiver to consider. The cost for a new consultant to duplicate PWI's knowledge of the Project at this time would be substantial. Assuming the costs of learning what PWI already knows about the Property would be built into any quotation from any other real estate consultant, the Receiver believes it is safe to assume that the likelihood of both another firm providing the Receiver with a competitive quotation for the necessary consultant services, and of that consultant being able to provide such services on as timely a basis as PWI, is remote.

Moreover, the Receiver could not embark sensibly on the Sales Process without knowing who the permanent property manager and Project consultant is. The Sales Process could not begin until the tendering process was complete and the successful firm,

if it were not PWI, had sufficiently informed itself regarding the Project. Accordingly, the Receiver believes that it must await the decision of the Court regarding the PWI engagement letter prior to embarking on the Sales Process. As a result, the target dates described in the First Report must be pushed back by two weeks. The Receiver believes that it would not be justifiable on any basis to foist the additional costs, and the resultant time delay on the stakeholders, that tendering the consulting contract at this time would create.

4. There is no requirement in the Receivership Order that the Receiver tender the position for any consultant the Receiver wishes to engage.
5. The City has different constituents, stakeholders and requirements than a Court-appointed Receiver. The fact that the City must prove, through a tendering process, that it selected the most low-priced tender for a service to be provided by a local provider, is irrelevant to the Receiver, whose duty is to maximize the recovery of the value of the assets of the Debtor for all stakeholders.
6. PWI is a respected provider of the full range of services required by the Receiver in the proper conduct of this receivership administration. In the brief time the Receiver had to prepare and file the Supplementary Report, the Receiver obtained one independent reference on PWI from Laurentian Bank of Canada ("Laurentian"). Attached hereto as **Exhibit "H"** is the reference letter signed by Mr. N. Greer, Assistant Vice President of Laurentian. Mr. Greer states that PWI:  
(i) have been providing various services to Laurentian over the past twelve years;  
(ii) Laurentian has recommended PWI to many of their developer clients; (iii)

Laurentian's experience is that PWI operates in a proficient and professional manner with a high degree of integrity, while maintaining the cost of their services at a very competitive industry level; and (iv) Laurentian has no reservations in recommending PWI.

7. No evidence whatsoever has been submitted by either Mr. Ganatra or Mr. Weston to indicate that the engagement by the Receiver of PWI is either not at prevailing market rates for this type of work or is not a commercially reasonable decision. In the opinion of the Receiver, the engagement of PWI is at prevailing market rates.
8. Mr. Weston is in possession of an appraisal of the Project obtained for the City dated July 7, 2008 which Mr. Weston arranged to provide to the Receiver. Without divulging the contents of that appraisal, the Receiver finds it instructive that Mr. Weston has chosen not to submit a copy of that appraisal to support his submission that it may be the City who will end up funding this receivership administration and not the Applicant. The Receiver, having reviewed both that appraisal, and the LM opinion, submits that is because the appraisal does not support such a position, but rather, supports the Receiver's position.

The Receiver is mindful of the Court's reluctance to provide an Order sealing documents in a Court-appointed receivership administration, unless the Court can be persuaded that such sealing is absolutely necessary and in the best interests of all the stakeholders. As the sealing of documents was a contentious issue in the Receiver's application on February 26, the Receiver has chosen not to submit a copy of that appraisal at this time in a second volume of the Supplementary

Report along with a request that it be sealed. Rather, the Receiver will provide all appraisal information to this Honourable Court as part of any application the Receiver may make for the approval of the sale of the Project.

## 6.0 RECOMMENDATION

For the reasons set out in the Supplementary Report, the Receiver respectfully requests that this Honourable Court approve both this Supplementary Report and the Receiver's engagement of PWI, to assist in the management and sale of the Project, and specifically, the PWI engagement letter contained as Exhibit "D" to the Supplementary Report.

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All of which is respectfully submitted at Toronto, Ontario this 4<sup>th</sup> day of March, 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

**Ira  
Smith**  
TRUSTEE & RECEIVER INC.

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

SECOND REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.  
IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER  
AND MANAGER OF 1539304 ONTARIO INC.

DATED JUNE 8, 2009

1.0 INTRODUCTION

This report (the "**Second 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. A copy of the Receivership Order is attached hereto as **Exhibit "A"**.

The Receiver filed its first report (the "**First Report**") on February 20, 2009 and a Supplement to the First Report on March 4, 2009. 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

**Ira  
Smith**  
TRUSTEE & RECEIVER INC.

dated March 10, 2009, (the "**First Supplement Approval Order**"). Copies of those two Orders are attached hereto as **Exhibits "B"** and **"C"**, respectively.

**1.1 Purpose of this Report -**

The purpose of this Second Report is to report to this Honourable Court on:

1. the actions and activities of the Receiver since February 20, 2009;
2. the status of the Sales Process (as described in the First Report and approved in the First Approval Order);
3. the cash flow requirements of the Receiver;
4. certain deposit funds held in trust by the Company's solicitor, Burns Vasan Argiropoulos LLP ("**Burns Vasan**"), as of the date of the Receivership Order, arising from units sold by the Company prior to that date;
5. the accounting for the receipts and disbursements of the Receiver from November 12, 2008 to June 2, 2009; and
6. the fees and costs incurred by the Receiver and its legal counsel, Lang Michener LLP, for the period subsequent to those fees approved in the First Report.

**1.2 Disclaimer -**

The Receiver has relied upon the financial records and financial statements of the Debtor, as well as other information supplied by management and employees of the Debtor, its accountants,



appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.

Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this Second Report, or any of the attached Appendices or Exhibits forming part of this Second Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this Second Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

## **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 asset, a condominium project under construction, located at 80 King William Street, in the City of Hamilton (the "**Project**"). The Receiver refers the readers of this Second Report to the First Report for a complete overview of the business and its sole asset.

## **3.0 ACTIVITIES OF THE RECEIVER**

Since its First Report, the Receiver has undertaken the following activities:

- presented the information contained in the sealed Volume 2 to the First Report to representatives from ICICI Bank Canada (the "**Bank**" or the "**Applicant**") and the City of Hamilton (the "**City**") and their respective Counsel on a confidential basis;
- provided the Bank with the budgets, statements and forecasts of borrowing needs to allow them to perform their required credit procedures and approval process to allow

for the Receiver to borrow from the Bank the increased amount allowed for by the increase in borrowing authority granted by the First Approval Order;

- entered into a contract for the removal of mould found at the Project site, and had the work completed;
- arranged for continuing insurance coverage expiring August 28, 2009;
- in conjunction with the Receiver's construction and real estate consultant and advisor Pelican Woodcliff Inc. ("PWI"), prepared all documentation in connection with and began the Sales Process (as defined in the First Report and approved in the First Approval Order);
- communicated with numerous interested parties regarding the Project and circulated a confidentiality agreement ("CA") to all parties wishing to obtain further information;
- circulated a Confidential Information Memorandum ("CIM") to the twenty five (25) parties who returned a fully executed CA;
- received and reviewed five (5) non-binding letters of intent ("NBLOI") from potential purchasers;
- prepared a secure online data room and populated it with Project documents;
- corresponded with the five (5) potential purchasers and extended offers to them to access the data room, to arrange for a tour of the Project site to continue their due diligence and to continue in the Sales Process;
- completed the review of the documentation provided by Burns Vasan regarding deposits it holds in trust; and
- prepared and circulated the report prepared in accordance with s. 246(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA").

### ***3.1 Presentation of Sealed Volume 2 of the First Report –***

Attached hereto as **Exhibit "D"** is a copy of the endorsement of the Honourable Madam Justice Pepall dated February 27, 2009. In accordance with the endorsement, the Receiver and PWI prepared a summary of the contents of the Sealed Volume Two of the First Report ("**Volume 2**") and delivered the presentation on March 30, 2009 to representatives of both the Bank and the

City and their respective Counsel. The presentation was made at the offices of Lang Michener LLP, after the Bank and City representatives executed the confidentiality agreement prepared by Lang Michener LLP and reviewed and approved by respective Bank and City legal counsel. At the conclusion of the presentation, which included the opportunity for the attendees to ask any questions they wished of both the Receiver and PWI, the Receiver was satisfied that all attendees had a full and complete understanding of the Project and the Receiver's reasoning for seeking the sealing of Volume 2 of the First Report.

As reported in the Supplement to the First Report, the Receiver did not wish to commence the Sales Process prior to the Court approving its retention of PWI as their involvement was and continues to be crucial to the execution of the Sales Process. The Sales Process time line was delayed to accommodate both the approval of the Supplement to the First Report and the Presentation of Volume 2 (as further described below).

### **3.2 Insurance –**

The Receiver worked with Sinclair-Cockburn Financial Group ("SCFG"), the insurance broker who placed the original insurance coverage for the Company on the Project, to renew or replace the expiring coverage. SCFG advised that the existing insurer would not renew coverage and that insurance was difficult to place on this Project due to the fact that the property was vacant.

After canvassing the marketplace of potential insurers, SCFG advised the Receiver that only two insurers were willing to extend coverage. The Receiver bound coverage with the insurer who had the more competitive quote. A condition of the policy coverage requires the existing thrice nightly security patrols to continue. Attached hereto as **Exhibit "E"** is a copy of confirmation of insurance coverage through August 28, 2009.

### **3.3     *Reporting to the Bank and City and obtaining Receivership Funding –***

The Receiver maintains regular informal reporting to the Bank via email on an “as requested” basis in its role as lender. The Receiver communicates with both the Bank and the City on any matters of importance concerning the Project. The First Approval Order increased the borrowing authority of the Receiver from \$200,000 to \$450,000. Although the Bank consented to the Receiver’s request, it had a lengthy credit approval process that required fulfillment prior to the Bank being able to advance the additional funds required by the Receiver. The Receiver and PWI were requested to provide additional forecasts and budget information to the Bank. The forecasts were prepared and submitted, and on April 8, 2009 the Bank advised the Receiver that the additional funding was approved.

The Receiver needed Court approval of the additional funding, among other reasons, to be able to enter into a contract with Biggs and Narciso Construction Services Inc. (“**Biggs**”) for mould removal work which, in the Receiver’s and PWI’s view, was required to be completed prior to launching the Sales Process. The Receiver was not prepared to retain Biggs and have it perform under the proposed contract prior to knowing that the Receiver had the funds available to it for payment to Biggs of the amount contracted for.

As a result of the delay associated with the Bank’s approval process the mould removal and subsequently the Sales Process timeline was further delayed.

### **3.4     *Mould Removal –***

The findings of Pinchin Environmental (“**Pinchin**”) were detailed in the First Report Volume 2, and the Receiver believed it would be prudent to act upon Pinchin’s recommendation that the

mould be abated as: (a) it presents an unsafe and unhealthy environment; and (b) the Receiver was concerned that the existence of mould would cause potential purchasers to either discount the value of the property below the actual cost of remediation or lose total interest in the Project. The Receiver, through PWI and Pinchin tendered the mould removal contract based on specifications prepared by Pinchin and at PWI and Pinchin's recommendation, the Receiver awarded the contract to Biggs, who was the lowest bidder. On April 16, 2009 Biggs began work and completed the mould removal on April 27, 2009. The removal was supervised by Pinchin and they have advised the Receiver that all work has been completed to their specifications and the areas where work took place are "suitable for normal occupancy"<sup>1</sup>.

#### 4.0 RECEIVER'S SALES PROCESS

Attached hereto as **Exhibit "F"** is the revised Sales Process timeline reflective of the various unforeseen delays since the First Report described herein. It is now anticipated that the Sales Process will be completed in late August, 2009.

##### 4.1 *Advertising the sale opportunity –*

The Receiver, with the assistance of PWI, prepared an enticement advertising document (the "**Teaser**") describing this opportunity. A copy of the Teaser is attached hereto as **Exhibit "G"**. The Teaser was circulated by Email to approximately five hundred (500) parties known to either the Receiver or PWI, who could either have, or have clients that could have, an interest in the Project. The recipients also received a copy of the Receiver's Terms and Conditions as approved in the First Approval Order, amended to reflect changes to timeline dates. The Terms and

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<sup>1</sup> Pinchin End of Job Summary Letter dated June 1, 2009 (revised June 2, 2009).

Conditions as approved by this Honourable Court allow for any required amendment or waiver of specific conditions as may be required in the sole discretion of the Receiver.

Enclosed with the Teaser was a copy of a memorandum provided to the Receiver by the City regarding the Project qualifying for City incentives as part of their Enterprise Zone initiative. Prior to the Receiver seeking the approval of this Honourable Court to the Sales Process, the Receiver confirmed with the appropriate City representatives that these incentives could still be available for a purchaser to take advantage of, subject to terms acceptable to the City. The City, upon reviewing the Teaser, advised the Receiver that such incentives were no longer available. As the Teaser and other documentation was already prepared and distributed based on the earlier assurances received from the City, the Receiver has advised all potential purchasers that it makes no representations concerning the availability of such incentives, and each potential purchaser must independently verify all information presented, including the availability of these incentives, to their own satisfaction.

The Receiver advertised the availability of the Project for sale in the Report on Business of the national edition of the Globe and Mail on April 28 and 30, 2009 as well as in the Hamilton Spectator on May 2, 2009. Attached hereto as **Exhibit "H"** is a copy of the advertisement.

#### ***4.2 Response to the Teaser and newspaper ads –***

The Receiver received numerous responses to the Teaser and ads. In accordance with the Sales Process all parties were advised to execute and return a CA that the Receiver provided to them. Those parties who did so received a copy of the CIM. The Receiver distributed twenty five (25) CIMs.

#### **4.3 Submission of NBLOIs—**

The Receiver received five (5) NBLOIs containing, inter alia, the conditions each respective potential purchaser viewed as required by each of them and the initial price they were prepared to pay at that stage of the Sales Process. Although the Receiver viewed the purchase price provided by at least one of the potential purchasers as unacceptable, the Receiver has allowed all five (5) potential purchasers to continue in the Sales Process. A unique password has been provided to each potential purchaser in order to gain access to the secure online data room established by the Receiver to allow for their due-diligence review. PWI has also made contact with each party and has scheduled private tours of the Project.

In order not to taint the Sales Process, the Receiver is not disclosing in this Second Report the range of prices offered by the five (5) potential purchasers. The Receiver advises this Honourable Court that through its legal counsel, the Receiver has provided to both the Bank's and the City's legal counsel a schedule summarizing the NBLOI's received, without disclosing the names of any of the potential purchasers. The information was provided on the basis that the information contained in the summary is covered by the Confidentiality Agreement executed by both the Bank and the City for the presentation of the First Report Volume 2 information, and similarly, shall be held in confidence. The Receiver's legal counsel also requested to be advised immediately if any party could not receive and retain the information on that basis. Neither the Bank nor the City has advised Lang Michener LLP that it cannot hold such potential information in confidence.

The Receiver will provide this Honourable Court with such full disclosure when the Receiver provides the results of the Sales Process in what the Receiver currently anticipates will be the

Third Report to Court. The Receiver believes that it is appropriate for the Bank and the City to be apprised of this information in a manner which will not taint the Sales Process.

The Sales Process is continuing in accordance with the Terms and Conditions of Sale. Firm Offers (as defined and described in the First Report) are due for submission no later than **July 3, 2009, at 5:00 PM EST**. The Receiver will report to this Honourable Court the results of the Sales Process and the Receiver's recommendations after receipt of the Firm Offers.

At the date of this Second Report, the Receiver has not received any queries or reply from either the Bank or the City in connection with the potential purchasers or the Sales Process, as a result of having provided the NBLOI summary.

#### **5.0 CONDOMINIUM UNITS SOLD BY THE COMPANY AND FUNDS HELD IN TRUST PRIOR TO THE COMMENCEMENT OF THE RECEIVERSHIP**

Section 8.0 on page 15 of the First Report provided background information on amounts held in trust by Burns Vasan. Attached hereto as **Exhibit "I"** is the copy of the Trust Ledger Statement for the Project provided to the Receiver by Burns Vasan. The Receiver had advised Burns Vasan to continue to hold the funds and await further instructions pending direction from this Honourable Court.

Inclusive of accrued interest and net of bank charges, a total of \$32,851.58 representing seven (7) parties' deposit money is held in trust by Burns Vasan.



Burns Vasan has summarized its involvement in a letter to the Receiver, which is attached hereto as **Exhibit "J"**. A copy of the Agreements of Purchase and Sale between the Debtor and the seven (7) parties is attached as **Exhibit "K"**. The deposits appear to be trust monies in which the Debtor has no interest. The Receiver recommends to this Honourable Court that it direct Burns Vasan to return the deposits to the respective depositors, as reflected in the Burns Vasan Trust Ledger Statement, as the Company has long defaulted on its obligations under the purchase and sale agreements.

#### **6.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

As the Project does not have any income producing elements to it, there has been no cash flow available for the Receiver to utilize. Accordingly, ICICI has agreed to provide the Receiver with the necessary funding. The Receiver has been borrowing from ICICI under its borrowing authority contained in the Appointment Order, and specifically, paragraph 20 of such Order and in accordance with the increase to a total of \$450,000.00 in its borrowing authority contained in Paragraph 7 of the First Approval Order. The Receiver has issued seven (7) Receiver's Certificates (inclusive of the fourth certificate which was cancelled and returned by the Bank at the Receiver's request) to date and has borrowed under the Receivership Borrowings Charge (all as defined in the Appointment Order) the amount of \$380,000.00 to date.

Attached as **Exhibit "L"** is the Receiver's Statement of Receipts and Disbursements for the period November 12, 2008 to June 2, 2009.

## **7.0 INCREASING THE RECEIVER'S BORROWING AUTHORITY**

The Receiver has borrowed nearly eighty-five (85) percent of the amount allowed under the First Approval Order and currently has \$8,152.07 of borrowed funds on hand. There remains \$70,000.00 within the approved borrowing authority that has not been borrowed yet by the Receiver.

The Receiver has received but has not yet paid billings for professional fees, inclusive of disbursements and GST, of PWI (\$49,890) and Lang Michener (\$36,882) for work done in March and April. In addition, although the Receiver has yet to be billed for approved work performed by Pinchin Environmental, the Receiver anticipates that very soon it will be invoiced the approximate amount of \$15,200.00 for Pinchin Environmental work approved by the Receiver and now duly performed.

While considering the first request by the Receiver for an increase in the borrowing authority, the Court quite properly determined that the increase requested at that time, in all likelihood, would not be sufficient to allow the Receiver to properly administer this receivership. The Receiver concurred with that assessment and advised this Honourable Court that due to various variables that existed at that time, including the results of the Sales Process as at the time the NBLOI's were received and whether there would be any parties interested in pursuing the Project opportunity, the Receiver's preference was to seek a more modest increase in borrowing authority. The Receiver stated that depending on the facts known to it at the time of submitting the Second Report, the Receiver would then provide its recommendations to this Honourable Court in connection with any further request in borrowing authority. The Receiver also believed

that the stakeholders would be in a better position to understand the wisdom of a further borrowing authority request based on the results of the Sales Process at that time.

The Receiver estimates that for the three (3) month period of June through August 2009 inclusive, costs to be incurred will be as follows:

- (i) security and utilities - \$11,750;
- (ii) receiver's fee and disbursements - \$61,245, being the amount of \$16,245 referred to in Section 8.0 of this Second Report below and the June through August inclusive estimate of \$45,000<sup>2</sup>;
- (iii) legal fee and disbursements - \$55,000<sup>3</sup>;
- (iv) PWI fee and disbursements - \$66,329<sup>4</sup>;
- (v) third property tax instalment - \$6,000.

The Receiver therefore requests that this Honourable Court approve an additional borrowing authority of \$250,000.00, resulting in a total borrowing authority of \$700,000.00.

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<sup>2</sup> This estimate does not contain any estimate of time relating to approval of a specific sale and the completion of a sales transaction.

<sup>3</sup> This estimate does not contain any estimate of time relating to approval of a specific sale and the completion of a sales transaction.

<sup>4</sup> This estimate does not contain any estimate of time relating to approval of a specific sale and the completion of a sales transaction.

#### **8.0 FEES AND DISBURSEMENTS OF THE RECEIVER**

Attached hereto as **Exhibit "M"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from February 16 to May 31, 2009 in the amount of \$55,291.90 (exclusive of GST). To date, the amount of \$41,812.07 has been advanced on account of these fees and disbursements.

#### **9.0 FEES AND DISBURSEMENTS OF LANG MICHENER LLP**

Attached hereto as **Exhibit "N"** is the Affidavit of Mr. Leslie A. Wittlin, Partner of Lang Michener LLP, attesting to the fees and disbursements of Lang Michener LLP for the period from February 2, to April 30, 2009 in the amount of \$75,143.11 (exclusive of GST). To date, the amount of \$40,017.95 has been advanced on account of these fees and disbursements.

#### **10.0 FEES AND DISBURSEMENTS OF PWI**

Attached hereto as **Exhibit "O"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of PWI for services provided at the request of the Receiver for the period from February 1 to May 29, 2009 in the amount of \$64,775.65 (exclusive of GST). To date, the amount of \$17,136.10 has been advanced on account of these fees and disbursements.

## 11.0 OTHER MATTERS

In accordance with Subsection 246(2) of the BIA, on May 11, 2009, the Receiver's statutory First Interim Report (the "**BIA Report**") was sent by ordinary mail to the Debtor, the Office of the Superintendent of Bankruptcy and all parties who had made a prior request for a copy. As a courtesy, a copy was also sent to both the Bank and the City. Attached as **Exhibit "P"** to this Second Report is a copy of the BIA Report.

## 12.0 CONCLUSION AND RECOMMENDATIONS

For the reasons set out in this Second Report, the Receiver respectfully requests that this Honourable Court approve:

1. the actions and activities of the Receiver as described in this Second Report;
2. the professional fees and disbursements of the Receiver from February 16 to May 31, 2009 as contained in this Second Report;
3. the professional fees and disbursements of the Receiver's legal counsel, Lang Michener LLP, from February 2, 2009 to April 30, 2009 as contained in this Second Report;
4. the professional fees and disbursements of PWI as contained in this Second Report;
5. the Receiver's request for an Order directing Burns Vasan to return the deposits held by them in trust as described in both the First Report and this Second Report;

6. the Receiver's request for an Order granting an increase in its Borrowing Charge;  
and
7. such other advice and direction from this Honourable Court that the Receiver or  
its legal counsel deems appropriate in the circumstances.

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All of which is respectfully submitted at Toronto, Ontario this 8<sup>th</sup> day of June, 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

**Ira  
Smith**  
TRUSTEE & RECEIVER INC.



**SINCLAIR-COCKBURN**  
FINANCIAL GROUP

## CONFIRMATION OF INSURANCE

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  
(15393-1)

**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:** August 28, 2009 at 12:01a.m. Local Time

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

**PREMIUM:** \$ 3,940.00 (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:** August 13, 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](http://www.scfg.ca) Email: [insure@scfg.ca](mailto:insure@scfg.ca)





**SINCLAIR-COCKBURN**  
Financial Group

**SCHEDULE OF COVERAGES**

**PROPERTY COVERAGES**

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

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

**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)**

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



Potential	Purchaser	NBLOI \$ Offer Conditions/Remarks	Final LOI \$ Offer Conditions/Remarks	APA \$ Offer Conditions/Remarks	Unsolicited Offer Offer Conditions/Remarks	Accepted Offer Offer Conditions/Remarks
1	Canlight Realty Corporation	4.5 M Data Room Access Financing, Due Diligence & Satisfactory Property inspection	2.0M Zoning; Suitability; economic Viability; physical, soil & environmental conditions; 30 day due diligence period; additional due diligence related conditions	2.1 M Due Diligence	2.1 M Firm	
2		2.0 M Inter Alia, Financing, Due Diligence & Satisfactory Property Inspection	2.0M Non Binding; Site Inspection; Financing; 30 day due diligence Requested a deadline extension and proposed a joint venture outside of the court approved sales process	2.0M Due Diligence & Financing		
3		2.5 M	NIL			
4		3.1 M				
5		6.8M				
6			2.0M	Oral offer only	2.3 M	Due Diligence
7						

# 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](mailto:brandon@irasmithinc.com)

Website: [www.irasmithinc.com](http://www.irasmithinc.com)

July 13, 2009

**VIA EMAIL & OVERNIGHT COURIER**

Dear Sirs:

**In the Matter of the Receivership of 1539304 Ontario Inc.  
Receivership Sale of Trinity Landing Condominium Building  
80 King William Street, Hamilton, Ontario**

We wish to thank you for your submission of a final letter of intent in response to the Receiver's terms and conditions and call for offers (the "Final Letter").

Unfortunately, none of the Final Letters received were at an amount that the Receiver could support in justifying to Court that the sales transaction be completed. Furthermore, the various terms and conditions that each potential purchaser supplied with their respective Final Offer gave concern to the Receiver regarding closing risks with any party.

We are writing to advise that we would be please to receive your final offer at the highest amount that you are prepared to purchase this real-estate opportunity at. In order for the Receiver to compare all final submissions on the same basis we enclose the Receiver's Standard Agreement of Purchase and Sale (the "Agreement").

Please insert the amount of your offer and sign the Agreement in the spaces provided and return a fully executed Agreement to us **no later than 5:00 PM (EST) on Monday July 27, 2009.**

Yours truly,

**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:

Brandon Smith  
Estate Manager

Encl.

## 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.

"**Condition Date**" has the meaning ascribed thereto in Section 5 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 with submission of this Offer by a bank draft or a certified cheque drawn on an account at a Canadian chartered bank or trust company payable to the Vendor.
- (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:

\$ \_\_\_\_\_

4. **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.

5. **Purchaser's Conditions**

Notwithstanding anything to the contrary herein contained, the Agreement is conditional to the Purchaser for twenty (20) calendar days from the date of acceptance by the Vendor (the "Condition Date") and is subject to the following conditions:

- (a) The Purchaser satisfying itself in its sole, absolute and unfettered discretion with all matters relating to the Property, including, without limitation, zoning matters, and the suitability and economic viability of the Property for the Purchaser's use, the physical condition of the Property, soil conditions, the environmental condition of the Property and the surrounding real property and the results of its other due diligence tests, inspections and investigations; and,

- (b) Satisfying itself, in its sole, absolute and unfettered discretion with the contents of the Leases at the Property, if any,

(collectively, the "**Purchaser's Conditions**").

The Purchaser's Conditions are for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time on or before the Condition Date, any such waiver to be made in writing by the Purchaser or its solicitors on its behalf. In the event that the Purchaser has not, on or before the Condition Date, waived the Purchaser's Conditions or provided the Vendor with written confirmation that the Purchaser's Conditions have been satisfied, this Agreement shall be null and void and the Deposit shall be returned to the Purchaser with interest and without deduction and the Vendor and the Purchaser shall have no further obligations to each other with respect hereto.

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 \_\_\_\_\_ 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 telecopier or by delivering personally or sending by mail and 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, forthwith after the waiver of the Purchaser's Conditions apply to the Court 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 within twenty (21) days of the Purchaser's waiver of the Purchaser's Conditions, 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 the Closing Date in respect of realty taxes, flat/fixed water and sewer rates and charges, if any, 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. Such adjustments shall be pro-rated where appropriate for the relevant period on the basis of the actual number of days elapsed during such period to the Closing Date, which itself is to be apportioned to the Purchaser. 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 fifteen (15) 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 the date which is ten (10) calendar days 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**"). Provided that the Vendor by written notice to the Purchaser or its solicitors may postpone the Closing Date from time to time, but in no event shall the date of Closing be postponed to a date more than sixty (60) days after the original Closing Date. 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) certified cheques or bank drafts of a Canadian chartered bank or trust company for the balance of the Purchase Price and any other monies required to be paid by the Purchaser pursuant to the Agreement, or the adjustments, including all applicable federal and provincial taxes, duties and registration fees unless the applicable exemption certificates in a form acceptable to the Vendor are presented to the Vendor on or before the Closing Date to exempt the Purchaser therefrom;
- (b) all certificates, indemnities, declarations and other evidences contemplated hereby in form and content satisfactory to the Vendor's solicitors, acting reasonably;
- (c) an undertaking by the Purchaser to readjust all items on the statement of adjustments;
- (d) a notarial copy of its 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 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 shall be sufficient if delivered personally or sent by telecopier or mailed by prepaid registered mail at the following addresses:

To Vendor:

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

Attention: Brandon Smith  
Telecopier: (905)738-4167

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  
Telecopier: (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 by facsimile transmission and each such counterpart so executed by facsimile transmission shall be deemed to be an original and when taken together shall constitute as one and the same Agreement.

IN WITNESS WHEREOF the Purchaser has executed this Offer this \_\_\_\_ day of July, 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](mailto: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.

## This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is a solid black header bar at the top edge. The left side of the page has a slight shadow, suggesting it's part of a bound notebook. The overall appearance is that of a clean, unused piece of stationery.

**The Purchaser must provide evidence in writing, satisfactory to the Vendor, not less than seven (7) calendar days prior to the Closing Date, that part or all of the leased Personal Property set out above has been successfully released or sold to the Purchaser, failing which the Vendor shall remove that Personal Property from the Property which has not been released or purchased by the Purchaser.**

**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 Basic Drywall Inc.;
18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of Basic Drywall Inc.;



**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.
5. Instrument No. WE598810 registered on January 1, 2009, being a Court Order by ICICI Bank Canada.

RECEIVED

JUL 27 2009

IRA SMITH TRUSTEE &  
RECEIVER INC.**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.

"Condition Date" has the meaning ascribed thereto in Section 5 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 Two million one hundred <sup>thousand</sup> Dollars (\$ 2,100,000.00 ) 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 with submission of this Offer by a bank draft or a certified cheque drawn on an account at a Canadian chartered bank or trust company payable to the Vendor.
- (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:

\$ 2,100,000.00

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

\$ Nil.

4. **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.

5. **Purchaser's Conditions**

Notwithstanding anything to the contrary herein contained, the Agreement is conditional to the Purchaser for twenty (20) calendar days from the date of acceptance by the Vendor (the "Condition Date") and is subject to the following conditions:

- (a) The Purchaser satisfying itself in its sole, absolute and unfettered discretion with all matters relating to the Property, including, without limitation, zoning matters, and the suitability and economic viability of the Property for the Purchaser's use, the physical condition of the Property, soil conditions, the environmental condition of the Property and the surrounding real property and the results of its other due diligence tests, inspections and investigations; and,

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- (b) Satisfying itself, in its sole, absolute and unfettered discretion with the contents of the Leases at the Property, if any,

(collectively, the "Purchaser's Conditions").

The Purchaser's Conditions are for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time on or before the Condition Date, any such waiver to be made in writing by the Purchaser or its solicitors on its behalf. In the event that the Purchaser has not, on or before the Condition Date, waived the Purchaser's Conditions or provided the Vendor with written confirmation that the Purchaser's Conditions have been satisfied, this Agreement shall be null and void and the Deposit shall be returned to the Purchaser with interest and without deduction and the Vendor and the Purchaser shall have no further obligations to each other with respect hereto.

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 August 31 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 telecopier or by delivering personally or sending by mail and 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, forthwith after the waiver of the Purchaser's Conditions apply to the Court 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 within twenty (21) days of the Purchaser's waiver of the Purchaser's Conditions, 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 the Closing Date in respect of realty taxes, flat/fixed water and sewer rates and charges, if any, 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. Such adjustments shall be pro-rated where appropriate for the relevant period on the basis of the actual number of days elapsed during such period to the Closing Date, which itself is to be apportioned to the Purchaser. 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:

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- (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 fifteen (15) 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

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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.

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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

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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 the date which is ten (10) calendar days 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"). Provided that the Vendor by written notice to the Purchaser or its solicitors may postpone the Closing Date from time to time, but in no event shall the date of Closing be postponed to a date more than sixty (60) days after the original Closing Date. 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;

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- (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) certified cheques or bank drafts of a Canadian chartered bank or trust company for the balance of the Purchase Price and any other monies required to be paid by the Purchaser pursuant to the Agreement, or the adjustments, including all applicable federal and provincial taxes, duties and registration fees unless the applicable exemption certificates in a form acceptable to the Vendor are presented to the Vendor on or before the Closing Date to exempt the Purchaser therefrom;
- (b) all certificates, indemnities, declarations and other evidences contemplated hereby in form and content satisfactory to the Vendor's solicitors, acting reasonably;
- (c) an undertaking by the Purchaser to readjust all items on the statement of adjustments;
- (d) a notarial copy of its 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;

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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 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.

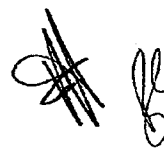
24. **Purchaser's Warranties**

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

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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

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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 shall be sufficient if delivered personally or sent by telecopier or mailed by prepaid registered mail at the following addresses:

To Vendor:

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

Attention: Brandon Smith  
Telecopier: (905)738-4167

with a copy to:

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

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Toronto, Ontario  
M5J 2T7

Attention: Leslie A. Wittlin and Matthew German  
Telecopier: (416) 365-1719

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

VERNON SHAW. C.A.  
PRESIDENT, CANLIGHT REALTY CORPORATION  
5160 EXPLORER DRIVE, SUITE 17.  
MISSISSAUGA, ONTARIO, L4W 4T7  
Telecopier: 416. 905. 625. 8037

with a copy to the Purchaser's solicitors:

MR LORNE SHAPIRO  
BASHAN SMITH LLP  
1 DUNDAS ST. W. #2400  
Telecopier: 416. 860. 1912

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.

Handwritten signature and initials, possibly "AS" and "BS", in the bottom right corner of the page.

39. Counterparts

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

IN WITNESS WHEREOF the Purchaser has executed this Offer this 27<sup>th</sup> day of July, 2009.

)  
)  
) Caulight Realty Corporation  
) [Purchaser]  
) Per: V. Shaw PRESIDENT.  
) (VERNON SHAW)  
)  
) 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: [Signature]  
Name: BRANDON SMITH  
Title: Authorized Signing officer

I have the authority to bind the Corporation

- 19 -

**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.

Handwritten signature and initials in the bottom right corner of the page.

## PERSONAL PROPERTY

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

**The Purchaser must provide evidence in writing, satisfactory to the Vendor, not less than seven (7) calendar days prior to the Closing Date, that part or all of the leased Personal Property set out above has been successfully released or sold to the Purchaser, failing which the Vendor shall remove that Personal Property from the Property which has not been released or purchased by the Purchaser.**

**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 Basic Drywall Inc.;
18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of Basic Drywall Inc.;

Handwritten signature and initials, possibly "B.1" or "B.11", located in the bottom right corner of the page.

**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.
5. Instrument No. WE598810 registered on January 1, 2009, being a Court Order by ICICI Bank Canada.



Court File No.

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. 1990, c. C-43  
and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*

AFFIDAVIT OF LIONEL MEUNIER  
sworn September 4, 2008

I, Lionel Meunier, of the City of Mississauga, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the Assistant Vice President, Corporate Banking of ICICI Bank Canada ("ICICI"). As such I have knowledge of the matters set forth below. Where I have obtained information from third parties I state the source of that information and do believe same to be true.
2. This affidavit is filed in support of an application by ICICI for the appointment of an interim receiver and receiver and manager of the assets of 1539304 Ontario Inc. o/a Trinity Landing ("Trinity Landing").

### COMMITMENT LETTER

3. By letter dated October 19, 2006 (the "**Commitment Letter**"), ICICI agreed to provide financing to Trinity Landing in connection with the redevelopment of the existing structure (the "**Project**") located at 80 King William Street, Hamilton (the "**Property**") into a 50 unit residential condominium (the "**Condominium**"), on certain terms and conditions, including receiving:
  - a. a mortgage (the "**Mortgage**") over the Property;
  - b. a general security agreement (the "**GSA**") representing a first charge over all of the assets of Trinity Landing;
  - c. a postponement and subordination ("**The City Postponement**") from the City of Hamilton ("**The City**"); and
  - d. personal guarantees (jointly, the "**Guarantees**") from Khan Khokhar ("**Khokhar**") and Hasumukh Ganatra ("**Ganatra**"), the principals of Trinity Landing.

Attached and marked as **Exhibit "A"** hereto is a true copy of the Commitment Letter. Attached and marked as **Exhibit "B"** hereto is a true copy of the Mortgage. Attached and marked as **Exhibit "C"** hereto is a true copy of the GSA. Attached and marked as **Exhibit "D"** hereto is a true copy of the City Postponement. Attached and marked as **Exhibit "E"** hereto is a true copy of the Guarantees.

4. I am informed by Susan Rosen, a partner with Gowling Lafleur Henderson LLP ("**Gowlings**"), and I verily believe as follows. ICICI caused notice of its security interest created and granted pursuant to the GSA to be registered with the Registrar of Personal Property Security, pursuant to the *Personal Property Security Act*, (Ontario) ("**PPSA**") and thereby perfected a security interest with respect to the property and assets referred to in the GSA. Attached hereto and marked as **Exhibit "F"** to this my affidavit is a true copy of the Enquiry Response

Printout under the PPSA with respect to Trinity Landing having a File Currency Date of September 2, 2008.

5. Trinity Landing defaulted in its obligations to ICICI under the terms of the Commitment Letter by, among other things, failing to obtain discharges of the construction liens registered by:
  - (a) Building Technology Specialists ("BTS") on March 2, 2007 as Instrument No. WE453301;
  - (b) Sibbald Roofing on March 12, 2007 as Instrument No. WE454704;
  - (c) Basic Drywall on March 13, 2007 as Instrument No. WE454807;
  - (d) Crotech Electrical Contractors on March 13, 2007 as Instrument No. WE454828; and
  - (e) Castle Plumbing and Heating on March 19, 2007 as Instrument No. WE455805;(collectively, the "**Construction Liens**").

#### **STANDSTILL AGREEMENT**

6. ICICI agreed to forebear against taking steps to recover repayment of the then indebtedness owed by Trinity Landing to ICICI by standstill agreement dated August 10, 2007 (the "**Standstill Agreement**"). Attached and marked as **Exhibit "G"** hereto is a true copy of the Standstill Agreement.
7. As provided for in the Standstill Agreement, ICICI posted Letters of Credit in connection with the Construction Liens (and one lien that had been registered in the interim) and obtained Orders vacating the registration of such liens. Attached and marked as **Exhibit "H"** hereto is a true copy of these Letters of Credit and Orders.
8. Trinity Landing subsequently obtained an Order dismissing the action of BTS and obtaining the release of that Letter of Credit posted by ICICI. Attached and marked as **Exhibit "I"** hereto is a true copy of this Order.

9. The Standstill Agreement provided, among other things, that ICICI was to take no further steps prior to January 31, 2008.

#### **STANDSTILL AMENDING AGREEMENT**

10. ICICI agreed to further forbear against taking steps to recover repayment of the then indebtedness owed by Trinity Landing to ICICI by standstill amending agreement dated January 30, 2008 (the "**Standstill Amending Agreement**"). Attached and marked as **Exhibit "J"** hereto is a true copy of the Standstill Amending Agreement.
11. The Standstill Amending Agreement provided, among other things, that ICICI was to take no further steps prior to May 31, 2008.
12. ICICI did not agree to further forbear against taking steps to recover repayment of the then indebtedness owed by Trinity Landing to ICICI. By letter dated June 2, 2008, ICICI notified Trinity Landing of the expiration of the Standstill Amending Agreement and the reservation of ICICI's right to enforce its security immediately. Attached and marked as **Exhibit "K"** hereto is a true copy of this letter.

#### **DEMAND**

13. By letter dated July 16, 2008, ICICI demanded payment of \$4,936,073.69 from Trinity Landing and enclosed a Notice of Intention to Enforce Security (the "**Demand**"). Attached and marked as **Exhibit "L"** hereto is a true copy of this Demand.
14. Since the Demand, no further work has occurred on the Project.

#### **ADDITIONAL CONSTRUCTION LIENS**

15. Additional construction liens have been registered as follows:
  - a. Randy Legacy on April 23, 2008 as Instrument No. WE541939;
  - b. 353903 Ontario Ltd. on May 30, 2008 as Instrument No. WE549343;

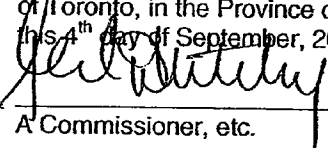
- c. Basic Drywall on July 2, 2008 as Instrument No. WE557888; and
- d. 1504593 Ontario Limited on July 10, 2008 as Instrument No. WE559961.

(collectively, the "Additional Construction Liens"). Attached and marked as Exhibit "M" hereto is a true copy of the parcel register for the Property as of September 3, 2008.

#### APPOINTMENT OF INTERIM RECEIVER

- 16. I believe that the appointment of an interim receiver pursuant to the *Bankruptcy and Insolvency Act* is not only necessary for the protection of Trinity Landing's estate, for the benefit of all other creditors of Trinity Landing (including the lien claimants under the Construction Liens and the Additional Construction Liens), but is also necessary for the interests of ICICI. I further believe it is just and convenient that Ira Smith Trustee & Receiver Inc. be appointed receiver and manager pursuant to the *Courts of Justice Act*.
- 17. Ira Smith Trustee & Receiver Inc. has consented to its appointment as interim receiver pursuant to the *Bankruptcy and Insolvency Act* and receiver and manager pursuant to the *Courts of Justice Act*. Attached hereto and marked as Exhibit "N" hereto is a true copy of this consent.
- 18. I swear this affidavit in support of an application by ICICI for the appointment of an interim receiver of the assets of Trinity Landing and for no other or improper purpose.

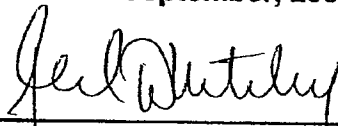
SWORN BEFORE ME at the City  
of Toronto, in the Province of Ontario,  
this 4<sup>th</sup> day of September, 2008

  
A Commissioner, etc.

TOR\_LAW 6933209/1

  
LIONEL MEUNIER

This is ...Exhibit "H"... referred to in the  
Affidavit of ... Lionel Meunier ...  
sworn before me, this 4<sup>th</sup> day  
of September, 2008

A handwritten signature in cursive script, appearing to read "Joel Wutley", is written over a horizontal line.

A Commissioner of Oaths



**Letter of Credit Reference**  
**No. SBLCTOR070245**

**Beneficiary:**  
Accountant  
Superior Court of Justice  
808 - 595 Bay Street  
Toronto, Ontario M5G 2N3

**Applicant:**  
ICICI BANK CANADA

**Date of Issue:** 6 September 2007

**Amount:** CAD\$362,860.00

**Date of**  
**Expiry:** 5 September 2008

CANADIAN DOLLARS THREE  
HUNDRED SIXTY TWO THOUSAND  
EIGHT HUNDRED SIXTY DOLLARS  
ONLY.

Pursuant to the request of ICICI BANK CANADA (hereinafter called the "Customer"), we, ICICI BANK CANADA, Trade Finance Centre, 130 KING STREET WEST, STE 2130, TORONTO, ONTARIO. M5X1B1 hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of CAD\$362,860.00 (CANADIAN DOLLARS THREE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED SIXTY DOLLARS ONLY) which may be drawn on by you at any time and upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

Your drawing by sight draft drawn on ICICI Bank Canada, Toronto must bear reference to this Letter of Credit No.SBLCTOR070245 Dated 6 September 2007, and must be accompanied by a certified copy of an order, or judgment, or report of the Superior Court of Justice directing that an amount up to CAD\$362,860.00 (CANADIAN DOLLARS THREE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED SIXTY DOLLARS ONLY) be paid. All claims are to be presented to our office located at Exchange Tower, 130 King Street, Toronto, ON M5X 1B1.

This Letter of Credit has been established for delivery to the Superior Court of Justice as security in lieu of and in place of the property described in Instrument No. WE436883.

The land is described in Instrument No. WE436883, registered in the Registry Office for the Land Titles Division of the Regional Municipality of Peel at Brampton and for the purpose of vacating the Claim for Lien of :

**ICICI Bank Canada**  
154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca



**ICICI Bank**

- BASIC DRYWALL in the amount of CAD\$362,860.00 registered against the said property as Instrument No. WE454807 on MARCH 13, 2007.

Partial drawings are permitted under this Letter of Credit.

This Letter of Credit expires on the above-mentioned expiry date i.e. 5 September 2008 subject to the following condition:

This Letter of Credit shall be deemed to be automatically extended without amendment for successive one year periods from the present or any future expiration date, unless cancelled by any one of the following events:

- 1 - Upon our receipt of your written authorization to us to cancel this Letter of Credit; or
- 2 - Upon our written notification to you of the immediate cancellation of this Letter of Credit and at the same time forwarding to you together with such notification a bank draft, in the above amount less any amount previously drawn under this Letter of Credit, payable to the Accountant, Superior Court of Justice, Toronto, Ontario.

Yours truly,

For ICICI Bank Canada

Piyush Bhatia

VP, Comm., Corp & Investment Bkg.

Murugesh Umapathy

AVP, Trade Finance

**ICICI Bank Canada**

154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca





**Letter of Credit Reference  
No. SBLCTOR070244**

**Beneficiary:**  
Accountant  
Superior Court of Justice  
808 - 595 Bay Street  
Toronto, Ontario M5G 2N3

**Applicant:**  
ICICI BANK CANADA

**Date of Issue: 6 September 2007**

**Amount: CAD\$29,006.25**

**Date of**  
**Expiry: 5 September 2008**

CANADIAN DOLLARS TWENTY NINE  
THOUSAND SIX DOLLARS AND  
TWENTY FIVE CENTS

Pursuant to the request of ICICI BANK CANADA (hereinafter called the "Customer"), we, ICICI BANK CANADA, Trade Finance Centre, 130 KING STREET WEST, STE 2130, TORONTO, ONTARIO. M5X1B1 hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of CAD\$29,006.25 (CANADIAN DOLLARS TWENTY NINE THOUSAND SIX DOLLARS AND TWENTY FIVE CENTS) which may be drawn on by you at any time and upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

Your drawing by sight draft drawn on ICICI Bank Canada, Toronto must bear reference to this Letter of Credit No.SBLCTOR070244 Dated 6 September 2007, and must be accompanied by a certified copy of an order, or judgment, or report of the Superior Court of Justice directing that an amount up to CAD\$29,006.25 (CANADIAN DOLLARS TWENTY NINE THOUSAND SIX DOLLARS AND TWENTY FIVE CENTS) be paid. All claims are to be presented to our office located at Exchange Tower, 130 King Street, Toronto, ON M5X 1B1.

This Letter of Credit has been established for delivery to the Superior Court of Justice as security in lieu of and in place of the property described in Instrument No. WE436883.

The land is described in Instrument No. WE436883, registered in the Registry Office for the Land Titles Division of the Regional Municipality of Peel at Brampton and for the purpose of vacating the Claim for Lien of:

- SIBBALD ROOFING in the amount of CAD\$29,006.25 registered against the said property as Instrument No. WE454704 on MARCH 12, 2007.

**ICICI Bank Canada**  
154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca



Partial drawings are permitted under this Letter of Credit.

This Letter of Credit expires on the above-mentioned expiry date i.e. 5 September 2008 subject to the following condition:

This Letter of Credit shall be deemed to be automatically extended without amendment for successive one year periods from the present or any future expiration date, unless cancelled by any one of the following events:

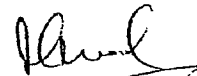
- 1 - Upon our receipt of your written authorization to us to cancel this Letter of Credit; or
- 2 - Upon our written notification to you of the immediate cancellation of this Letter of Credit and at the same time forwarding to you together with such notification a bank draft, in the above amount less any amount previously drawn under this Letter of Credit, payable to the Accountant, Superior Court of Justice, Toronto, Ontario.

Yours truly,

For ICICI Bank Canada

  
Piyush Bhatia

VP, Comm., Corp & Investment Bkg.

  
Murugesh Umapathy

AVP, Trade Finance



**Letter of Credit Reference**  
**No. SBLCTOR070243**

**Beneficiary:**  
Accountant  
Superior Court of Justice  
808 - 595 Bay Street  
Toronto, Ontario M5G 2N3

**Applicant:**  
ICICI BANK CANADA

**Date of Issue:** 6 September 2007

**Amount:** CAD \$302,947.84

**Date of**  
**Expiry:** 5 September 2008

CANADIAN DOLLARS THREE HUNDRED  
AND TWO THOUSAND NINE HUNDRED  
FORTY SEVEN DOLLARS AND EIGHTY  
FOUR CENTS

Pursuant to the request of ICICI BANK CANADA (hereinafter called the "Customer"), we, ICICI BANK CANADA, Trade Finance Centre, 130 KING STREET WEST, STE 2130, TORONTO, ONTARIO. M5X1B1 hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of CAD\$302,947.84 (CANADIAN DOLLARS THREE HUNDRED AND TWO THOUSAND NINE HUNDRED FORTY SEVEN DOLLARS AND EIGHTY FOUR CENTS) which may be drawn on by you at any time and upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

Your drawing by sight draft drawn on ICICI Bank Canada, Toronto must bear reference to this Letter of Credit No.SBLCTOR070243 Dated 6 September 2007, and must be accompanied by a certified copy of an order, or judgment, or report of the Superior Court of Justice directing that an amount up to CAD\$302,947.84 (CANADIAN DOLLARS THREE HUNDRED AND TWO THOUSAND NINE HUNDRED FORTY SEVEN DOLLARS AND EIGHTY FOUR CENTS) be paid. All claims are to be presented to our office located at Exchange Tower, 130 King Street, Toronto, ON M5X 1B1.

This Letter of Credit has been established for delivery to the Superior Court of Justice as security in lieu of and in place of the property described in Instrument No. WE436883.

**ICICI Bank Canada**  
154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca



The land is described in Instrument No. WE436883, registered in the Registry Office for the Land Titles Division of the Regional Municipality of Peel at Brampton and for the purpose of vacating the Claim for Lien of :

- BUILDING TECHNOLOGY SPECIALISTS in the amount of CAD\$302,947.84 registered against the said property as Instrument No. WE453301 on MARCH 2, 2007.

Partial drawings are permitted under this Letter of Credit.

This Letter of Credit expires on the above-mentioned expiry date i.e. 5 September 2008 subject to the following condition:

This Letter of Credit shall be deemed to be automatically extended without amendment for successive one year periods from the present or any future expiration date, unless cancelled by any one of the following events:

- 1 - Upon our receipt of your written authorization to us to cancel this Letter of Credit; or
- 2 - Upon our written notification to you of the immediate cancellation of this Letter of Credit and at the same time forwarding to you together with such notification a bank draft, in the above amount less any amount previously drawn under this Letter of Credit, payable to the Accountant, Superior Court of Justice, Toronto, Ontario.

Yours truly,

For ICICI Bank Canada

  
Piyush Bhatia

VP, Comm., Corp & Investment Bkg.

  
Murugesh Umapathy

AVP, Trade Finance

**ICICI Bank Canada**  
154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca



Letter of Credit Reference  
No. SBLCTOR070247

**Beneficiary:**  
Accountant  
Superior Court of Justice  
808 - 595 Bay Street  
Toronto, Ontario M5G 2N3

**Applicant:**  
ICICI BANK CANADA

**Date of Issue:** 6 September 2007

**Amount:** CAD\$77,395.00

**Date of**  
**Expiry:** 5 September 2008

CANADIAN DOLLARS SEVENTY SEVEN  
THOUSAND THREE HUNDRED NINETY FIVE  
ONLY

Pursuant to the request of ICICI BANK CANADA (hereinafter called the "Customer"), we, ICICI BANK CANADA, Trade Finance Centre, 130 KING STREET WEST, STE 2130, TORONTO, ONTARIO. M5X1B1 hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of CAD\$77,395.00 (CANADIAN DOLLARS SEVENTY SEVEN THOUSAND THREE HUNDRED NINETY FIVE ONLY) which may be drawn on by you at any time and upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

Your drawing by sight draft drawn on ICICI Bank Canada, Toronto must bear reference to this Letter of Credit No.SBLCTOR070247 Dated 6 September 2007, and must be accompanied by a certified copy of an order, or judgment, or report of the Superior Court of Justice directing that an amount up to CAD\$77,395.00 (CANADIAN DOLLARS SEVENTY SEVEN THOUSAND THREE HUNDRED NINETY FIVE ONLY) be paid. All claims are to be presented to our office located at Exchange Tower, 130 King Street, Toronto, ON M5X 1B1.

This Letter of Credit has been established for delivery to the Superior Court of Justice as security in lieu of and in place of the property described in Instrument No. WE436883.

The land is described in Instrument No. WE436883, registered in the Registry Office for the Land Titles Division of the Regional Municipality of Peel at Brampton and for the purpose of vacating the Claim for Lien of :

- CASTLE PLUMBING AND HEATING in the amount of CAD\$77,395.00 registered against the said property as Instrument No. WE455805 on MARCH 19, 2007.

Partial drawings are permitted under this Letter of Credit.

This Letter of Credit expires on the above-mentioned expiry date i.e. 5 September 2008 subject to the following condition:

**ICICI Bank Canada**  
Exchange Tower  
130 King Street West, Suite 2130  
Toronto, ON M5X 1B1  
Canada  
Tel: (416) 360-0909  
Fax: (647) 436-1178  
Website: icicibank.ca



This Letter of Credit shall be deemed to be automatically extended without amendment for successive one year periods from the present or any future expiration date, unless cancelled by any one of the following events:

- 1 - Upon our receipt of your written authorization to us to cancel this Letter of Credit; or
- 2 - Upon our written notification to you of the immediate cancellation of this Letter of Credit and at the same time forwarding to you together with such notification a bank draft, in the above amount less any amount previously drawn under this Letter of Credit, payable to the Accountant, Superior Court of Justice, Toronto, Ontario.

Yours truly,

For ICICI Bank Canada

Piyush Bhatia

VP, Comm., Corp & Investment Bkg.

Sandeep Goel

Vice President, Credit & CRO

**ICICI Bank Canada**

Exchange Tower  
130 King Street West, Suite 2130  
Toronto, ON M5X 1B1  
Canada

Tel: (416) 360-0909  
Fax: (647) 436-1178  
Website: [icicibank.ca](http://icicibank.ca)



**Letter of Credit Reference  
No. SBLCTOR070246**

**Beneficiary:**  
Accountant  
Superior Court of Justice  
808 - 595 Bay Street  
Toronto, Ontario M5G 2N3

**Applicant:**  
ICICI BANK CANADA

**Date of Issue:** 6 September 2007

**Amount:** CAD\$196,097.50

**Date of**  
**Expiry:** 5 September 2008

CANADIAN DOLLARS ONE HUNDRED  
NINETY SIX THOUSAND NINETY SEVEN  
DOLLARS AND FIFTY CENTS

Pursuant to the request of ICICI BANK CANADA (hereinafter called the "Customer"), we, ICICI BANK CANADA, Trade Finance Centre, 130 KING STREET WEST, STE 2130, TORONTO, ONTARIO. M5X1B1 hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of CAD\$196,097.50 (CANADIAN DOLLARS ONE HUNDRED NINETY SIX THOUSAND NINETY SEVEN DOLLARS AND FIFTY CENTS) which may be drawn on by you at any time and upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

Your drawing by sight draft drawn on ICICI Bank Canada, Toronto must bear reference to this Letter of Credit No.SBLCTOR070246 Dated 6 September 2007, and must be accompanied by a certified copy of an order, or judgment, or report of the Superior Court of Justice directing that an amount up to CAD\$196,097.50 (CANADIAN DOLLARS ONE HUNDRED NINETY SIX THOUSAND NINETY SEVEN DOLLARS AND FIFTY CENTS) be paid. All claims are to be presented to our office located at Exchange Tower, 130 King Street, Toronto, ON M5X 1B1.

This Letter of Credit has been established for delivery to the Superior Court of Justice as security in lieu of and in place of the property described in Instrument No. WE436883.

**ICICI Bank Canada**  
154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca



The land is described in Instrument No. WE436883, registered in the Registry Office for the Land Titles Division of the Regional Municipality of Peel at Brampton and for the purpose of vacating the Claim for Lien of:

- CROTECH ELECTRICAL CONTRACTORS in the amount of CAD\$196,097.50 registered against the said property as Instrument No. WE454808 on MARCH 13, 2007.

Partial drawings are permitted under this Letter of Credit.

This Letter of Credit expires on the above-mentioned expiry date i.e. 5 September 2008 subject to the following condition:

This Letter of Credit shall be deemed to be automatically extended without amendment for successive one year periods from the present or any future expiration date, unless cancelled by any one of the following events:

- 1 - Upon our receipt of your written authorization to us to cancel this Letter of Credit; or
- 2 - Upon our written notification to you of the immediate cancellation of this Letter of Credit and at the same time forwarding to you together with such notification a bank draft, in the above amount less any amount previously drawn under this Letter of Credit, payable to the Accountant, Superior Court of Justice, Toronto, Ontario.

Yours truly,

For ICICI Bank Canada

Piyush Bhatia

VP, Comm., Corp & Investment Bkg.

Murugesh Umapathy

AVP, Trade Finance

**ICICI Bank Canada**

154 University Avenue, Suite 400 Tel: (416) 847-7881  
Toronto, ON M5H 3Y9 Fax: (416) 214-5174  
Canada Website: icicibank.ca



Court File No. 07-31172

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the Construction Lien Act,  
R.S.O. 1990, Ch. C-30, as amended;**

THE HONOURABLE Justice ) THE 2nd DAY  
Festeryga ) OF OCTOBER, 2007  
BETWEEN

**BUILDING TECHNOLOGY SPECIALISTS INC.**

Plaintiff

-and-

**1539304 ONTARIO INC.,  
ICICI BANK CANADA and CITY OF HAMILTON**

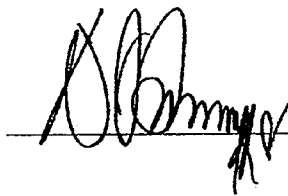
Defendants

**ORDER**

**THIS MOTION**, made by the Defendant, ICICI Bank Canada, for an order pursuant to Section 44(1) of the Construction Lien Act, R.S.O. 1990, CH. C. 30 as amended, to vacate the registration of the claim for lien and certificate of action referred to in Schedule "A" hereto, was heard on the 2nd day of October, 2007 at 45 Main St. East, Hamilton, Ontario L8N 2B7.

ON READING the Motion Record filed, the Affidavit of Heath P.I. Whiteley and on hearing submissions of counsel for the Moving Party, ICICI Bank Canada and upon the Moving Party, having posted a letter of credit in the amount of \$302,947.84 with the Accountant of the Ontario Superior Court of Justice to the credit of this matter in Account No.

1. **THIS COURT ORDERS** that the Plaintiff's Claim for Lien listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
2. **THIS COURT ORDERS** that the registration of the Certificate of Action listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
3. **THIS COURT FURTHER ORDERS** that a copy of this Order be sent forthwith by fax upon the solicitor for the lien claimant, Sullivan Mahoney LLP, Barristers and Solicitors, 40 Queen Street, Box 1360, St. Catharines, Ontario L2R 6Z2 Attention: Joseph M. Gottli, Telephone No. 905-688-6655, Facsimile No. 905-688-5814.
4. **THIS COURT ORDERS** that the Plaintiff pay costs for this motion to the Moving Party in the amount of \$1,500.00.



ENTERED AT HAMILTON	
SN Book No.	199
Document No.	446
CA	200807
by	Dr

- 3 -

**SCHEDULE "A"**

Lien claimant: Building Technology Specialists Inc.

**CLAIM FOR LIEN**

Instrument Registration Number: WE453301

Date of Registration: March 2, 2007

**CERTIFICATE OF ACTION**

Instrument Registration Number: WE466582

Date of Registration: May 11, 2007

- 4 -

**SCHEDULE "B"**

**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)**

TOR\_LAW 668220615

Court File No.: 07-31172	
<b>BUILDING TECHNOLOGY SPECIALISTS INC.</b> - Plaintiff -	<b>1539304 ONTARIO INC. et al</b> - Defendants -
v.	
<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> (PROCEEDING COMMENCED AT HAMILTON)	
<b>ORDER</b>	
<b>GOWLING LAFLEUR HENDERSON LLP</b> Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5  Neil S. Abbott LSUC No.: 32715Q  Telephone: (416) 862-4376 Facsimile: (416) 862-7661  SOLICITORS FOR THE DEFENDANT, ICICI BANK CANADA	

Court File No. 07-33860

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF** the *Construction Lien Act*,  
R.S.O. 1990, Ch. C-30, as amended;

THE HONOURABLE Justice ) THE 2<sup>nd</sup> DAY  
Festeryga ) OF OCTOBER, 2007

**BETWEEN**

**SIBBALD ROOFING LTD.**

Lien Claimant

-and-

**ICICI BANK CANADA**

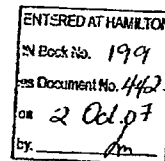
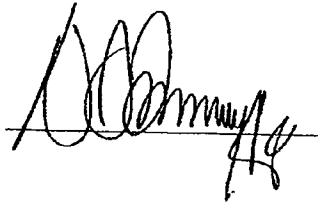
Moving Party

**ORDER**

**THIS MOTION** made by the Moving Party, ICICI Bank Canada for an Order pursuant to Section 44(1) of the Construction Lien Act, R.S.O. 1990, Ch. C.30 as amended, to vacate the registration of the claim for lien referred to in Schedule "A" hereto, was heard this day at 45 Main Street East, Hamilton, Ontario

ON READING the Motion Record filed, the affidavit of Heath P.L. Whiteley and on hearing submissions of counsel for the Moving Party, ICICI Bank Canada and upon the Moving Party, having posted a letter of credit in the amount of \$29,006.25 with the Accountant of the Ontario Superior Court of Justice to the credit of this matter in Account No.

1. **THIS COURT ORDERS** that the registration of the Claim for Lien listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
2. **THIS COURT FURTHER ORDERS** that a copy of this Order be sent forthwith by fax upon the solicitor for the lien claimant, Martens Lingard LLP, Barristers and Solicitors, 195 King Street, St. Catharines, Ontario L2R 3J6 Attention: Peter J. Lingard, Telephone No. 905-687-6551, Facsimile No. 905-687-6553.



- 3 -

**SCHEDULE "A"**

Lien claimant: Sibbald Roofing Ltd.

**CLAIM FOR LIEN**

Instrument Registration Number: WE454704

Date of Registration: March 12, 2007



- 4 -

**SCHEDULE "B"**

**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)

TOR\_LAW 66823912

SIBBALD ROOFING LTD. - Plaintiff -		Court File No.: 0	ICICI BANK CANADA - Defendants -
		v.	
		ONTARIO SUPERIOR COURT OF JUSTICE (PROCEEDING COMMENCED AT HAMILTON)	
		ORDER	
		GOWLING LAFLEUR HENDERSON LLP Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5 Neil S. Abbott LSUC No.: 32715Q Telephone: (416) 862-4376 Facsimile: (416) 862-7661 SOLICITORS FOR THE DEFENDANT, ICICI BANK CANADA	

TOR/LAW/66823701

Court File No. 07-31420

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Lien Act*,  
R.S.O. 1990, Ch. C-30, as amended;**

THE HONOURABLE Justice )  
Festenberg ) THE 2nd DAY  
OF OCTOBER, 2007

BETWEEN

**BASIC DRYWALL INC.**

Plaintiff

-and-

**1539304 ONTARIO INC., BUILDING TECHNOLOGY SPECIALISTS INC.,  
ICICI BANK CANADA and CITY OF HAMILTON**

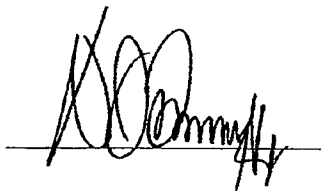
Defendants

**ORDER**

**THIS MOTION** made by the Moving Party, ICICI Bank Canada for an Order pursuant to Section 44(1) of the Construction Lien Act, R.S.O. 1990, Ch. C.30 as amended, to vacate the registration of the claim for lien and certificate of action referred to in Schedule "A" hereto, was heard the 2<sup>nd</sup> day of October, 2007 at 45 Main Street East, Hamilton, Ontario L8N 2B7.

ON READING the Motion Record filed, the affidavit of Heath P.L. Whiteley and on hearing submissions of counsel for the Moving Party, ICICI Bank Canada and upon the Moving Party, having posted a letter of credit in the amount of \$362,859.74 with the Accountant of the Ontario Superior Court of Justice to the credit of this matter in Account No.

1. **THIS COURT ORDERS** that the registration of the Claim for Lien listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
2. **THIS COURT FURTHER ORDERS** that the registration of the Certificate of Action listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
3. **THIS COURT FURTHER ORDERS** that a copy of this Order be sent forthwith by fax upon the solicitor for the lien claimant, Martens Lingard LLP, Barristers and Solicitors, 195 King Street, St. Catharines, Ontario L2R 3J6 Attention: John K. Lefurgey, Telephone No. 905-685-4321, Facsimile No. 905-687-6553.



ENTERED AT HAMILTON	
IN Book No.	199
Document No.	447
on	2 Oct 07
by	Am

- 3 -

**SCHEDULE "A"**

Lien claimant: Basic Drywall Inc.

**CLAIM FOR LIEN**

Instrument Registration Number: WE454807

Date of Registration: March 13, 2007

**CERTIFICATE OF ACTION**

Instrument Registration Number: WE469048

Date of Registration: May 24, 2007

- 4 -

**SCHEDULE "B"**

**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 I on 62R16706; Hamilton

PIN: 17167-0115(LT)

TOR\_LAW\668214311

Court File No.: 07-31420	
BASIC DRYWALL INC. - Plaintiff -	v. 1539304 ONTARIO INC. et al - Defendants -
	ONTARIO SUPERIOR COURT OF JUSTICE (PROCEEDING COMMENCED AT HAMILTON )
	ORDER
	GOWLING LAFLEUR HENDERSON LLP Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5  Neil S. Abbott LSUC No.: 32715Q  Telephone: (416) 862-4376 Facsimile: (416) 862-7661  SOLICITORS FOR THE DEFENDANT, ICICI BANK CANADA

Court File No. 07-30470

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Lien Act*,  
R.S.O. 1990, Ch. C-30, as amended;**

THE HONOURABLE Justice ) THE 2nd DAY  
Festeryga ) OF OCTOBER, 2007  
BETWEEN

**CROTECH ELECTRICAL CONTRACTORS LTD.**

Plaintiff

-and-

**1539304 ONTARIO INC., BUILDING TECHNOLOGY SPECIALISTS INC.,  
and ICICI BANK CANADA**

Defendants

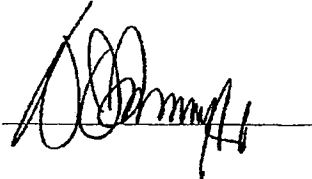
**ORDER**

**THIS MOTION** made by the Moving Party, ICICI Bank Canada for an Order pursuant to Section 44(1) of the Construction Lien Act, R.S.O. 1990, Ch. C.30 as amended, to vacate the registration of the claim for lien and certificate of action referred to in Schedule "A" hereto, was heard this day at 45 Main Street East, Hamilton, Ontario



ON READING the Motion Record filed, the affidavit of Heath P.L. Whiteley and on hearing submissions of counsel for the Moving Party, ICICI Bank Canada and upon the Moving Party, having posted a letter of credit in the amount of \$196,097.86 with the Accountant of the Ontario Superior Court of Justice to the credit of this matter in Account No.

1. **THIS COURT ORDERS** that the registration of the Claim for Lien listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
2. **THIS COURT FURTHER ORDERS** that the registration of the Certificate of Action listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.
3. **THIS COURT FURTHER ORDERS** that a copy of this Order be sent forthwith by fax upon the solicitor for the lien claimant, Movat Eccleston, Barristers and Solicitors, Scotia Plaza, Suite 2708, 40 King St. West, Toronto, Ontario M5H 3Y2 Attention: Kenneth W. Movat, Telephone No. 416-504-2724, Facsimile No. 416-504-2686.



ENTERED AT HAMILTON
IN Book No. 199
as Document No. 444
on 2 Oct 97
by [signature]

- 3 -

**SCHEDULE "A"**

Lien claimant: Crotech Electrical Contractors Ltd.

**CLAIM FOR LIEN**

Instrument Registration Number: WE454828

Date of Registration: March 13, 2007

**CERTIFICATE OF ACTION**

Instrument Registration Number: WE459176

Date of Registration: April 4, 2007

- 4 -

**SCHEDULE "B"**

**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)

TOR\_LAW\66823162

CROTECH ELECTRICAL CONTRACTORS LTD. - Plaintiff -		v.		Court File No.: 07-30470	
				1539304 ONTARIO INC. et al - Defendants -	
		<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> (PROCEEDING COMMENCED AT HAMILTON)			
		<b>ORDER</b>			
		<b>GOWLING LAFLEUR HENDERSON LLP</b> Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5  Neil S. Abbott LSUC No.: 32715Q  Telephone: (416) 862-4376 Facsimile: (416) 862-7661  SOLICITORS FOR THE DEFENDANT, ICICI BANK CANADA			

Court File No. 07-33861

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the Construction Lien Act,  
R.S.O. 1990, Ch. C-30, as amended;**

THE HONOURABLE *Justice,*      THE *2nd* DAY  
*Festeryga*      )  
OF OCTOBER, 2007  
BETWEEN

**CASTLE PLUMBING + HEATING INC.**

Lien Claimant

-and-

**ICICI BANK CANADA**

Moving Party

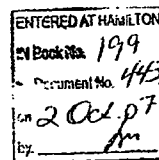
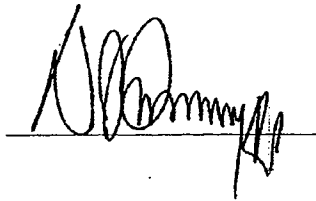
**ORDER**

THIS MOTION made by the Moving Party, ICICI Bank Canada for an Order pursuant to Section 44(1) of the Construction Lien Act, R.S.O. 1990, Ch. C.30 as amended, to vacate the registration of the claim for lien referred to in Schedule "A" hereto, was heard this day at 45 Main Street East, Hamilton, Ontario.

ON READING the Motion Record filed, the affidavit of Heath P.L. Whiteley and on hearing submissions of counsel for the Moving Party, KICI Bank Canada and upon the Moving Party, having posted a letter of credit in the amount of \$77,395.86 with the Accountant of the Ontario Superior Court of Justice to the credit of this matter in Account No.

1. **THIS COURT ORDERS** that the registration of the Claim for Lien listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.

2. **THIS COURT FURTHER ORDERS** that a copy of this Order be sent forthwith by regular lettermail upon the lien claimant, Castle Plumbing + Heating Inc., 80 King William Street Hamilton, Ontario L8R 1A5 and to the corporate address of Castle Plumbing + Heating Inc. at 23 Seapark Drive, St. Catharines, Ontario L2M 6S5.



- 3 -

**SCHEDULE "A"**

**Lien claimant:** Castle Plumbing + Heating Inc.

**CLAIM FOR LIEN**

**Instrument Registration Number:** WE455805

**Date of Registration:** March 19, 2007

-4-

**SCHEDULE "B"**

**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)

TOR\_LAW\6682472\1



Court File No.: 0	
CASTLE PLUMBING + HEATING INC. - Plaintiff -	v. ICICI BANK CANADA - Defendants -
	ONTARIO SUPERIOR COURT OF JUSTICE (PROCEEDING COMMENCED AT HAMILTON)
	ORDER
	GOWLING LAFLEUR HENDERSON LLP Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5 Neil S. Abbott LSUC No.: 32715Q Telephone: (416) 862-4376 Facsimile: (416) 862-7661 SOLICITORS FOR THE DEFENDANT, ICICI BANK CANADA

Court File No. 07-U-341418

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Lien Act*,  
R.S.O. 1990, Ch. C-30, as amended;**

~~THE HONOURABLE~~

MASTER J. POLIKA

THE 10th DAY  
OF OCTOBER, 2007

**BETWEEN**

**MATTHEWS EQUIPMENT LIMITED carrying on business as  
HERTZ EQUIPMENT RENTAL**

Lien Claimant

-and-

**ICICI BANK CANADA**

Moving Party

**ORDER**

**THIS MOTION** made by the Moving Party, ICICI Bank Canada for an Order pursuant to Section 44(1) of the Construction Lien Act, R.S.O. 1990, Ch. C.30 as amended, to vacate the registration of the claim for lien referred to in Schedule "A" hereto, was heard this day at 363 University Avenue, Toronto, Ontario.

*and the consent of the lien claimant to the terms of the order*  
ON READING the Motion Record filed, the affidavit of Heath P.L. Whiteley and on

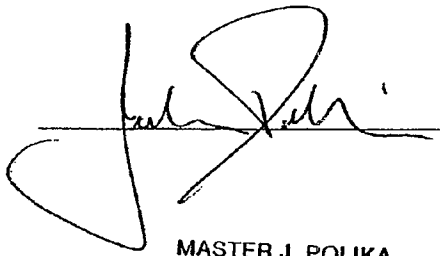
hearing submissions of counsel for the Moving Party, ICICI Bank Canada and upon the Moving

Party, having posted a letter of credit in the amount of \$30,092.44 with the Accountant of the

Ontario Superior Court of Justice to the credit of this matter in Account No. 504 900. *✓ M*

1. **THIS COURT ORDERS** that the registration of the Claim for Lien listed in Schedule "A" attached hereto is hereby vacated from the title to the lands described in Schedule "B" attached hereto.

2. **THIS COURT FURTHER ORDERS** that a copy of this Order be sent forthwith by fax upon the solicitor for the lien claimant, Movat Eccleston, Barristers and Solicitors, Scotia Plaza, Suite 2708, 40 King St. West, Toronto, Ontario M5H 3Y2 Attention: Kenneth Eccleston, Telephone No. 416-504-2724, Facsimile No. 416-504-2686.



MASTER J. POLIKA

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO.:  
LE / DANS LE REGISTRE NO.:

OCT 11 2007

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:  
PER / PAR:



**SCHEDULE "A"**

Lien claimant: Matthews Equipment Limited carrying on business as  
Hertz Equipment Rental

**CLAIM FOR LIEN**

Instrument Registration Number: WE498253

Date of Registration: September 19, 2007

**SCHEDULE "B"**

**DESCRIPTION**

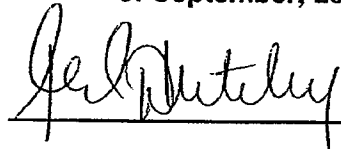
Lot 21 and Part of Lot 22 Nathaniel Hughson Survey(unregistered), south side King William Street, Between John Street and Catharine Street, Being Part 1 on 62R16706; Hamilton

PIN: 17167-0115(LT)

TOR\_LAW\66995372

<b>MATTHEWS EQUIPMENT LIMITED</b> - Plaintiff -		<b>Court File No.: 07-cv-34148</b>	
<b>v.</b>		<b>ICICI BANK CANADA</b> - Defendants -	
		<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> (PROCEEDING COMMENCED AT TORONTO)	
		<b>ORDER</b>	
		<b>GOWLING LAFLEUR HENDERSON LLP</b> Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5  Neil S. Abbott LSUC No.: 32715Q  Telephone: (416) 862-4376 Facsimile: (416) 862-7661  SOLICITORS FOR THE DEFENDANT, ICICI BANK CANADA	

This is ...Exhibit "I"... referred to in the  
Affidavit of ...Lionel Meunier ...  
sworn before me, this 4<sup>th</sup> day  
of September, 2008

  
A Commissioner of Oaths

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN THE MATTER OF The Construction Lien Act, R.S.O., Chapter 30 as**  
**amended**

THE HONOURABLE  
MILANETTO

) TUES DAY, THE 17<sup>TH</sup> DAY  
) OF Dec ., 2007

BETWEEN:

BUILDING TECHNOLOGY SPECIALISTS INC.

Plaintiff

- and -

1539304 ONTARIO INC.,  
ICICI BANK OF CANADA and CITY OF HAMILTON

Defendants

**ORDER**

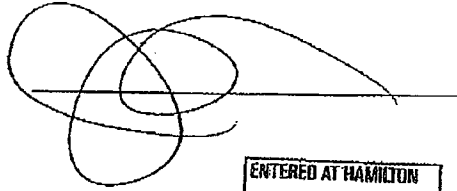
**THIS MOTION** for an Order dismissing this action and directing the Accountant of this Court to deliver up the security posted to the credit of this action was heard this day at Hamilton.

**UPON** reading the Affidavit of Lorna Groves, sworn and upon hearing submissions of counsel for the Defendants, 1539304 Ontario Inc. and ICICI Bank of Canada, no one appearing for the Plaintiff although properly served as appears from the Affidavit of Lorna Groves, filed,

1. **THIS COURT ORDERS** that the within action be and the same is hereby dismissed.



2. **THIS COURT ORDERS** that the Accountant of this Court to deliver up to the Defendant, ICICI Bank of Canada, the letter of credit posted to the credit of this action.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

ENTERED AT HAMILTON
IN Book No. 202
as Document No. 339
on: Dec 11/07
by: SB.

BUILDING TECHNOLOGY SPECIALISTS INC.

Lien Claimant

- and -

Court File No. 07-3117

1539304 ONTARIO INC.

Owner

**SUPERIOR COURT OF JUSTICE**  
Proceeding Commenced at Hamilton  
In the matter of *The Construction Lien Act*

**ORDER**

**HOWARD L. SHANKMAN**  
Barrister and Solicitor  
40 Pleasant Blvd.  
Suite 801  
Toronto, Ontario  
M4T 1J9

Tel: (416) 920-3220  
Fax: (416) 966-4421  
Solicitor for the Defendant,  
**1539304 Ontario Inc.**

Court No: CV-08-7714-00CL  
Estate No: 31-455723

**Receiver's Interim Statement of Receipts and Disbursements**  
**IN THE MATTER OF THE RECEIVERSHIP OF**  
**1539304 ONTARIO INC., OPERATING AS TRINITY LANDING**

**RECEIPTS**

Advance from ICICI Bank - Receiver's Certificate No. 1	\$ 50,000.00
Advance from ICICI Bank - Receiver's Certificate No. 2	\$ 50,000.00
Advance from ICICI Bank - Receiver's Certificate No. 3	\$ 100,000.00
Advance from ICICI Bank - Receiver's Certificate No. 4 (Cancelled)	\$ -
Advance from ICICI Bank - Receiver's Certificate No. 5	\$ 41,000.00
Advance from ICICI Bank - Receiver's Certificate No. 6	\$ 110,000.00
Advance from ICICI Bank - Receiver's Certificate No. 7	\$ 29,000.00
Advance from ICICI Bank - Receiver's Certificate No. 8	\$ 130,000.00
Advance from ICICI Bank - Receiver's Certificate No. 9	\$ 70,000.00
Deposit re: Offer to Purchase (1)	\$ 210,000.00
Interest (2)	\$ 7.18

<b>TOTAL RECEIPTS:</b>	<b>\$ 790,007.18</b>
------------------------	----------------------

**DISBURSEMENTS**

Receiver's Fee	106,139.00
Pelican Woodcliff Inc.	146,805.31
Solicitor to the Receiver (Lang Michener LLP.)	110,254.46
Pinchin Environmental	19,475.11
Romanov Architect	7,035.00
Appraisal	4,687.50
Insurance	31,764.00
Property Tax (inclusive of arrears)	27,757.84
Security	14,117.25
Utilities	28,796.45
Electrical Repairs	1,810.73
Harold Epp - Emergency & Contracted Work	7,565.00
Fees paid to the Official Receiver	70.00
GST paid	24,684.13
Provincial sales tax paid	2,541.92
Locksmith	750.00
Newspaper Ads/Graphic Artist	7,482.08
Mould Removal	36,382.00
Bank Charges	208.27

<b>TOTAL DISBURSEMENTS</b>	<b>578,326.05</b>
<b>AMOUNT ON HAND AS AT September 11, 2009 (3)</b>	<b>\$ 211,681.13</b>

Note 1: Maintained separately in Corporate General Trust Account

Note 2: Includes \$5.25 accrued on funds held per note 1

Note 3: \$210,005.25 on hand in Corporate General Trust Account, balance, \$1,675.88 are funds borrowed from ICICI Bank of Canada and are on deposit with that institution.

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 IRA SMITH  
(Sworn September 17, 2009)**

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

1. I am the President of Ira Smith Trustee & Receiver Inc. ("ISI"), the court-appointed interim receiver and receiver and manager (the "Receiver") of 1539304 Ontario Inc. (the "Debtor"). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true.
2. ISI was appointed Receiver of all of the property, assets and undertaking of the Debtor pursuant to an Order of the Ontario Superior Court of Justice dated November 12, 2008 (the "Receivership Order").
3. Pursuant to paragraph 18 of the Receivership Order, the Receiver and its legal counsel are required to pass their accounts from time to time.

4. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a summary of the fees charged and accounts rendered by the Receiver in respect of the proceedings (the "**Accounts Summary**") for the period from June 1, 2009 to August 31, 2009 (the "**Time Period**"). A copy of the invoice rendered by the Receiver and referenced in the Accounts Summary are attached to this my Affidavit as **Exhibit "B"**.

5. The Receiver has filed its Third Report with this Honourable Court, which outlines, among other things, the Receiver's overall actions and activities since June 8, 2009, the date of its Second Report.

6. A total of 93.0 hours were expended by the Receiver in connection with this matter during the Time Period, giving rise to fees totaling \$27,007.50 (excluding GST) for an average hourly rate of \$290.40 and allocated approximately as outlined in the Accounts Summary.

7. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Greater Toronto Area for the provision of similar services.

8. The hourly billing rates outlined on the Accounts Summary are the normal hourly rates charged by the Receiver for services rendered in relation to similar proceedings.

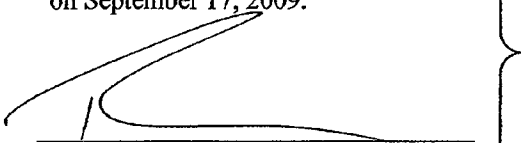
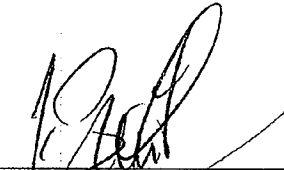
9. I verily believe that the Receiver's accounts are fair and reasonable in the circumstances.

10. Attached as Exhibit "A" to the Affidavit of Leslie Wittlin sworn September 17, 2009 and filed in support of the within motion are copies of the accounts rendered by Lang Michener LLP ("**LM**"), counsel to the Receiver, for the period from May 1, 2009, to August 31, 2009.

11. LM has rendered services throughout these proceedings consistent with instructions from the Receiver, the Receiver has approved all such accounts and I verily believe that the fees and disbursements of LM are fair and reasonable in the circumstances.

12. The said Affidavit is sworn in connection with the Receiver's motion to have, among other things, its fees and disbursements approved by this Honourable Court and for no improper purpose.

SWORN BEFORE ME at the City of  
Vaughan, in the Province of Ontario,  
on September 17, 2009.

  
A Commissioner for taking affidavits  
Ira Smith


Brandon Smith, a Commissioner, etc.,  
Province of Ontario, for Ira Smith Trustee  
& Receiver Inc. Trustee in Bankruptcy.  
Expires May 2, 2011.

**IRA SMITH TRUSTEE & RECEIVER INC.  
INTERIM RECEIVER AND RECEIVER AND MANAGER OF  
1539304 ONTARIO INC.**

**JUNE 1, 2009 – AUGUST 31, 2009**

Staff Member	Title	Total Hours	Hourly Rate (\$CDN)	Amount Billed (\$CDN)
Ira Smith MBA, CA•CIRP, Trustee	President	21.8	425.00	9,265.00
Brandon Smith BA	Estate Manager	70.7	250.00	17,675.00
Cheryl Meads	Technician	<u>0.5</u>	135.00	<u>67.50</u>
<b>Total</b>		<b><u>93.0</u></b>	<b>Average hourly rate of \$290.4</b>	<b>27,007.50</b>
<b>Disbursements (as at May 31, 2009)</b>				<b>620.16</b>
<b>Net Fees and Disbursements (excluding GST)</b>				<b><u>27,627.66</u></b>

This Exhibit A referred to in the  
Affidavit of IRA SMITH  
Sworn before me this 17 day of Sept, 2009

  
A Commissioner, etc.

Brandon Smith, a Commissioner, etc.,  
Province of Ontario, for Ira Smith Trustee  
& Receiver Inc. Trustee in Bankruptcy.  
Expires May 2, 2011.

# Ira Smith

TRUSTEE & RECEIVER INC.  
167 Applewood Cres., Suite 6, Concord, ON L4K 4K7

This Exhibit B referred to in the  
Affidavit of IRA SMITH  
Sworn before me this 17 day of Sept, 2009

A Commissioner, etc.

Tel: (905) 738-4167

Fax (905) 738-9848

Email: ira@irasmithinc.com

Website: www.irasmithinc.com

Brandon Smith, a Commissioner, etc.,  
Province of Ontario, for Ira Smith Trustee  
& Receiver Inc. Trustee in Bankruptcy.  
Expires May 2, 2011.

R-TRINITY

GST # 86236 5699

September 15, 2009

## IN THE MATTER OF THE RECEIVERSHIP OF 1539304 ONTARIO INC. O/A TRINITY LANDING CONDOMINIUMS

For professional services rendered for the period from June 1, 2009 to August 31, 2009 inclusive, in acting as Receiver of 1539304 Ontario Inc. in accordance with the Order of the Ontario Superior Court of Justice (Commercial List) dated November 12, 2008 as follows (detail attached):

<u>Staff</u>	<u>Hourly rate</u>	<u>Hours</u>
I. Smith, President and Trustee	\$425	21.8
B. Smith, BA, Estate Manager	\$250	70.7
C. Meads, Technician	\$135	0.5
		<u>93.0</u>
		\$27,007.50

### Disbursements (June 1, 2009 to August 31, 2009):

Travel – mileage, tolls and parking	\$ 398.36	
Postage	10.80	
Phone/Long distance/Fax	7.00	
Courier	<u>204.00</u>	
		620.16
		<u>\$27,627.66</u>
	GST	<u>1,381.38</u>
		<u>\$29,009.04</u>
Less: August 25, 2009 interim draw		(23,921.94)
		<u>\$5,087.10</u>

Account Due When Rendered



# Ira Smith Trustee & Receiver Inc.

## Detail Time Sheet

Period from: 2009-08-01 to 2009-08-31

Key name Full Estate Name  
R- TRINITY 1539304 Ontario Inc.

Date	Name	Duration	Activity	\$
1-Jun-09	Brandon Smith	1.4	TC w/ Les re Data Room Docs; emails w/ pot purch/ TC w/ IT re data rooms	350.00
2-Jun-09	Brandon Smith	2.5	TC w/ PWI re sales process; emails & TC w/ J. Gorber re data room; emails w/ pot purch re access; payables	625.00
3-Jun-09	Brandon Smith	3.0	Emails w/ PW & Pot. Purch; prep WIP & R&D for 2nd report	750.00
4-Jun-09	Brandon Smith	5.0	Writing 1st draft of 2nd report; TC's w/ A. Rousseau & L. Wittlin; emails w/ PW re report	1,250.00
4-Jun-09	Ira Smith	1.6	Rw and changes and sending to LM of draft Second Report to Court	680.00
5-Jun-09	Ira Smith	1.2	Finalize changes to draft 2nd report and email to LM	510.00
8-Jun-09	Brandon Smith	5.0	finalize 2nd report, correspondence w/ LM & PWI re exhibits and drafts; prep exhibits, commission affidavits of I. Smith; send Report & exhibits to LM for service	1,250.00
8-Jun-09	Brandon Smith	2.0	Review Ganatra affidavit	500.00
8-Jun-09	Ira Smith	4.3	Finalization of Second Report to Court	1,827.50
9-Jun-09	Brandon Smith	4.0	TC w/ A. Rousseau re Ganatra & Kaplan; prepare supp 2nd report and revise	1,000.00
9-Jun-09	Ira Smith	1.8	Finalizing Supp Second Report to Court	785.00
10-Jun-09	Brandon Smith	1.0	Email correspondence w/ PWI re pot purch; email correspondence & review letter from M. Caplan re court attendance; prep for court attendance for 2nd report	250.00
11-Jun-09	Brandon Smith	5.4	Travel to and from and attendance in Court re approval of second report	1,350.00
11-Jun-09	Brandon Smith	0.4	Emails w/ PWI re sales process	100.00
11-Jun-09	Cheryl Deshane	0.3	Voice msg. from. B. Smith re: notes of units, locating and email back	40.50
11-Jun-09	Cheryl Deshane	0.2	E-mail from/to B. Smith re: receiver's certificate	27.00
11-Jun-09	Ira Smith	5.4	Travel to and from and attendance in Court re approval of second report	2,295.00
12-Jun-09	Ira Smith	0.8	Email from A. Rousseau re lien claimant request, email reply to Rousseau et al, Telcon w. N. Ary re sales process, rvw of endorsement and order of Pepall J, email to pot purchaser	340.00
15-Jun-09	Brandon Smith	0.3	TC w/ L. Meunier; matters re sales process	75.00
18-Jun-09	Brandon Smith	0.7	TC & Emails w/ pot purch; TC w/ K. Ng	175.00
22-Jun-09	Brandon Smith	0.2	Discussion w. Ira re undertaking to city; update schedule	50.00
25-Jun-09	Brandon Smith	1.0	matters re dishonoured cheques, reconcile gas account; TC w/ gas co re o/s chq/bal & consolidated acct	250.00
25-Jun-09	Brandon Smith	0.3	TC and emails w/ N. Ary re Pot purch questions	75.00
29-Jun-09	Brandon Smith	1.2	matters re sales process; emails/tc w/ pot purch; A/P issues	300.00
30-Jun-09	Brandon Smith	0.3	request appraisal proposals	75.00
2-Jul-09	Brandon Smith	1.5	TC's w/ pot purch; upload APA to data room; emails w/ PWI & Appraisers; tc w/ Horizon	375.00

**Ira Smith Trustee & Receiver Inc.**  
**Detail Time Sheet**

Period from: 2009-06-01 to 2009-08-31

Key name Full Estate Name  
R- TRINITY 1539304 Ontario Inc.

<u>Date</u>	<u>Name</u>	<u>Duration</u>	<u>Activity</u>	<u>\$</u>
6-Jul-09	Brandon Smith	1.0	emails & voicemails re sales process; execute Pocrnic engagement letter and return, set up data room access for Pocrnic; email to Steve and Natan re co-operation and appraisal	250.00
7-Jul-09	Brandon Smith	0.5	emails w/ PWI & the bank re Sales Process	125.00
8-Jul-09	Brandon Smith	1.0	emails w/ bank and phi re sales process & mtg	250.00
8-Jul-09	Brandon Smith	1.0	Calculate borrowing needs; reconcile gas bills; payables	250.00
8-Jul-09	Ira Smith	1.2	Trinity Landing offer issues, emails w. LM	510.00
9-Jul-09	Brandon Smith	4.5	prep for mtg, prepare material for circulation and analysis; travel to from & attend w/ bank & city	1,125.00
9-Jul-09	Brandon Smith	0.3	issue rcvr's cert #8	75.00
9-Jul-09	Ira Smith	2.1	Meeting at Lang Michener w. ICICI, City of Hamilton and legal counsel	892.50
10-Jul-09	Brandon Smith	0.2	TC w/ POT PURCH	50.00
13-Jul-09	Brandon Smith	2.5	email w/ N. Ary; discussion w/ I. Smith re offers and response; respond to offerees	625.00
14-Jul-09	Brandon Smith	1.0	process funds from rcvr's cert 8 and issue payments as required	250.00
15-Jul-09	Ira Smith	0.4	Telcon w. Lionel Meunier re sales process to date and steps going forward	170.00
16-Jul-09	Brandon Smith	0.3	TC w/ pot purch; emails/telecons re payables	75.00
17-Jul-09	Brandon Smith	4.0	travel to from @ attend at mtg w/ N. Ary & S. Pocrnic re appraisal	1,000.00
23-Jul-09	Brandon Smith	2.0	numerous email and telephone discussions w. pot purch's	500.00
27-Jul-09	Brandon Smith	0.7	TC/email from pot purch; rcv final APA; review same and prepare analysis; emails & tc's w/Pocrnic re appraisal	175.00
28-Jul-09	Brandon Smith	0.7	TC w/ N. Ary; TC's w/ V. S.; TC w/ K. Ng; Email to group re offers; email w/ M/ Mascarenhas	175.00
29-Jul-09	Brandon Smith	0.4	review Pocrnic dollar value; TC w/ appraiser re report to follow; email to PWI & LM; MTG w/ V. S. Partner re deposit funds	100.00
30-Jul-09	Brandon Smith	0.4	TCs w/ N. Ary & A. Rousseau re game plan	100.00
30-Jul-09	Brandon Smith	0.5	Review Pocrnic Appraisal	125.00
31-Jul-09	Brandon Smith	0.5	email; corresp w/ LM/PWI	125.00
4-Aug-09	Brandon Smith	1.5	Conf. call w/ Bank/City & LM; TC w/ LM; TC w/ bank; TC w/ V. S.	375.00
5-Aug-09	Brandon Smith	0.1	tc w/ pot purch	25.00
5-Aug-09	Brandon Smith	0.5	review o/s alp reconcile utilities	125.00
6-Aug-09	Brandon Smith	1.0	Prepare docket; billing and calculate borrowing needs; issue rcvr's cert 9	250.00
7-Aug-09	Brandon Smith	0.5	tc W/ Forum Equity - wanted info on Trinity subsequent to earlier call where I asked for NBLOI to justify derailing sales process; dlanter; Review LOI discussion w. I. Smith; TC w/ L. Meunier	125.00
10-Aug-09	Brandon Smith	1.5	TC w/ Lionel; email to Kory; emails w/ LM & V. S.; acceptance of Canlight and rejection of Houshan	375.00

# Ira Smith Trustee & Receiver Inc. Detail Time Sheet

Period from: 2009-06-01 to 2009-08-31

Key name Full Estate Name  
R- TRINITY 1539304 Ontario Inc.

<u>Date</u>	<u>Name</u>	<u>Duration</u>	<u>Activity</u>	<u>\$</u>
10-Aug-09	Brandon Smith	1.5	Prepare rev's 3rd report; payables	375.00
10-Aug-09	Ira Smith	0.3	VARIOUS EMAILS REGARDING SALES PROCESS AND TIMING FOR APPROVAL APPLICATION	127.50
11-Aug-09	Brandon Smith	1.4	emails w/ LM & V. S./ TC w/ V. S.; tc w/ K. Ng at Icecap; emails from to A. Rousseau re liens	350.00
12-Aug-09	Brandon Smith	0.5	emails w/ pot purch; prepare conf. agreement and grant data room access	125.00
13-Aug-09	Brandon Smith	0.5	matters re pot purch and offers	125.00
18-Aug-09	Brandon Smith	0.3	Emails w. PWI, Hamilton & V. S.	75.00
19-Aug-09	Brandon Smith	0.2	TC w/ pot purch	50.00
19-Aug-09	Brandon Smith	0.7	TC w/ creditor claiming ownership of photocopier and send Property POC	175.00
20-Aug-09	Brandon Smith	0.3	TC w/ pty professing to be lien holder seeking advice re his rights, advised him to seek advice of his counsel; he wished to discuss hypothetical situation of buying property to protect his position.	75.00
24-Aug-09	Brandon Smith	0.3	VM from and leave message for L. Meunier & H. Epp; emails from PWI re V. S.	75.00
25-Aug-09	Brandon Smith	0.5	TC w/ L. Meunier re closing/due diligence; issue chqs to extend insurance, LM & Security	125.00
27-Aug-09	Brandon Smith	1.4	matters re V. S. email re extension of waiver; conf call w/ I. Smith & LM	350.00
28-Aug-09	Brandon Smith	0.3	TC w/ Lionel re V. extension	75.00
28-Aug-09	Ira Smith	2.3	V. S./Canlight Realty extension request and issues, various telcons and emails w. Brandon and legal counsel re same, telcon w. V. S., nww letter from Canlight legal counsel re extension request	977.50
31-Aug-09	Brandon Smith	1.0	Emails & TC w/ V. S. & ICIC; rev. waiver; advise bank and city; reject unsolicited offer	250.00
31-Aug-09	Ira Smith	0.4	Emails from and to Ron Weston and Les Wtlin re Canlight Realty et al	170.00
		<b>93.0</b>		<b>27,007.50</b>

<u>Employee name</u>	<u>Hourly Rate</u>	<u>Amount</u>
IRA SMITH	21.8	425.00
BRANDON SMITH	70.7	250.00
CHERYL DESHANE	0.5	135.00
<b>Total:</b>	<b>93.0</b>	<b>27,007.50</b>
<b>Average Hourly Rate:</b>	<b>290.4</b>	

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 IRA SMITH  
(Sworn September 17, 2009)**

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

Ira Smith CA • CIRP  
Tel: 905-738-4167  
Fax: 905-738-9848

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

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

**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*.

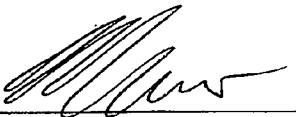
**AFFIDAVIT OF LESLIE A. WITTLIN  
(Sworn September 17, 2009)**

I, Leslie A. Wittlin, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY AS FOLLOWS:**

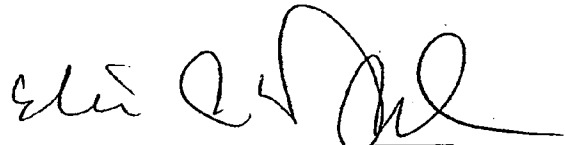
1. I am a partner in the law firm of Lang Michener LLP ("Lang Michener"). I am the billing professional for billings related to the retainer of Lang Michener as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as Court-appointed Interim Receiver and Receiver and Manager of 1539304 Ontario Inc. (the "Debtor") and as such I have personal knowledge of the matters to which I refer to herein.
2. Pursuant to an Order of this Court dated November 12, 2008, the Receiver was appointed effective November 12, 2008 (the "Initial Order").
3. Pursuant to the Initial Order, Lang Michener has acted as independent counsel to the Receiver in its dual capacities as Interim Receiver and Receiver and Manager of the Debtor's current and future assets, undertakings and properties.

4. Lang Michener has provided services and incurred disbursements as independent counsel to the Receiver for the period from May 1, 2009 to August 31, 2009 as described in the Sixth, Seventh, Eighth and Ninth Interim Bills of Costs rendered in the receivership, copies of which Interim Bills of Costs are attached hereto as **Exhibits "A", "B", "C" and "D"** respectively.
5. Based upon my review of the Interim Bills of Costs and my knowledge of the services provided and disbursements incurred in relation to the receivership, I am of the view that the Interim Bills of Costs contain a fair and accurate description of the services provided, the fees billed by Lang Michener for such services and the disbursements incurred by Lang Michener necessary and incidental to the provision of such services.
6. I make this Affidavit in support of the motion of the Receiver for approval of its fees and disbursements of those of its counsel, and for no other or improper purpose.

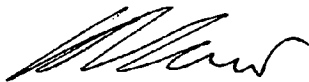
**SWORN BEFORE ME** at the City of )  
 )  
Toronto, in the Province of Ontario, )  
 )  
This 17<sup>th</sup> day of September, 2009 )  
 )

  
A COMMISSIONER IN AND FOR  
THE PROVINCE OF ONTARIO

Aaron Parnseu

  
Leslie A. Wittlin

This is Exhibit "A" referred to in the  
Affidavit of Leslie A. Whittlin  
sworn before me, this 17<sup>th</sup>  
day of September, 2009



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A COMMISSIONER IN AND FOR  
THE PROVINCE OF ONTARIO

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

BETWEEN

**ICICI BANK CANADA**

**Applicant**

**- and -**

**1539304 ONTARIO INC.**

**Respondents**

**SIXTH INTERIM BILL OF COSTS OF INDEPENDENT  
COUNSEL FOR THE INTERIM RECEIVER AND THE  
RECEIVER AND MANAGER OF 1539304 ONTARIO INC.**

---

FOR PROFESSIONAL SERVICES RENDERED as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as court appointed interim receiver and receiver and manager of 1539304 Ontario Inc., for the period from May 1, 2009 to May 31, 2009 as particularized in the Schedule of time docket entries annexed hereto;

Professional	Year of Call	Rate	Total Time	Total Fees
Leslie A. Wittlin	1974	725.00	3.60	226.00
Aaron Rousseau	2007	315.00	5.40	1,701.00
Alex A. Ilchenko	1993	\$565.00	.40	1,299.50

Fees and Disbursements	\$4,575.36
GST on Fees and Disbursements	<u>228.77</u>
<b>Total Fees and Disbursements</b>	<b><u>\$4,804.13</u></b>



I hereby certify that I have examined the above bill, the services have been duly authorized and rendered and the charges are in my opinion fair and reasonable.

Dated at Toronto, Ontario, this            day of June, 2009.

**Ira Smith Trustee & Receiver Inc., in its capacity as  
interim receiver and the receiver and manager of  
1539304 Ontario Inc.**

Per:

---

**Ira Smith, President**

**Schedule of time docket entries for the period  
from May 1, 2009 to May 31, 2009**

01 MAY 09	AR	Email to I. Smith regarding instructions to consent to continuance of action by Basic Drywall; review consent to continuance of action by Basic Drywall;	.20
04 MAY 09	AR	Draft letter to counsel for Basic Drywall regarding consent to continuance of action; send scan of consent to counsel for Basic Drywall;	.20
05 MAY 09	AR	Emails from B. Smith and L. Wittlin conveying and responding to complaints from M. Caplan, creditor, regarding court-approved sales process; receive and read letter from H. Ganatra complaining of difficulties with service of motion materials as well as general unfair treatment by receiver; emails to and from I. Smith and L. Wittlin regarding complaints by H. Ganatra; draft responding letter to H. Ganatra addressing service issue complaints;	1.00
06 MAY 09	LAW	Reviewing memorandum from I. Smith regarding dealing with certain creditors, reviewing draft letter responding to one unsecured creditor and suggesting various changes therein; reviewing complaints from debtor and draft responses thereto prepared by A. Rousseau; notes to file;	.80
06 MAY 09	AR	Revise letter to H. Ganatra; read emails regarding response to M. Caplan;	.20
11 MAY 09	LAW	Reviewing interim report of receiver under section 246(2) of the Bankruptcy and Insolvency Act; reviewing e-mail exchange with creditor and responding to inquiry regarding execution of confidentiality agreement by an individual on behalf of a corporation to be incorporated and legal effect thereof;	.40
11 MAY 09	AR	Read letter from counsel for Basic Drywall and copy of order regarding continuance against Receiver; review writ of seizure and sale of land by G. Ksiazek; email L. Wittlin regarding costs of motion to set aside writ;	.20
12 MAY 09	LAW	Reviewing exchange of e-mail with P. Smith and A. Rousseau regarding confidentiality agreement and position of one ordinary creditor;	.20

12 MAY 09	AR	Review interim receiver's report under section 246 of Bankruptcy Act; confer with A. Ilchenko regarding court approval of interim receiver's report; emails to and from M. Caplan regarding address for service list; email from B. Smith regarding expression of interest by multiple investors considering incorporating a company to pursue venture and necessary executions on confidentiality agreement; consider requirement for executions of confidentiality agreement;	.50
13 MAY 09	AR	Emails to and from B. Smith regarding application of confidentiality agreement and to group of multiple joint investors;	.10
14 MAY 09	LAW	Reviewing correspondence from the City of Hamilton regarding non-assign ability of the development aid program offered by the City; note to I. Smith in respect thereof;	.30
14 MAY 09	AR	Read letter from R. Weston regarding assignment of tax benefits; receive and read letter from H. Ganatra regarding motion availability;	.10
15 MAY 09	AR	Receive and read letter from counsel for Basic Drywall regarding trial record; review trial record of Basic Drywall;	.10
20 MAY 09	AR	Confer with A. Ilchenko regarding effect of writ of seizure and sale of land from G. Ksiazek; draft letter to counsel for G. Ksiazek; add counsel for G. Ksiazek to service list;	.50
22 MAY 09	AR	Read letter from counsel for Basic Drywall Inc. with s. 39 Construction Lien Act demand for information; consider appropriate response to request; review relevant sections of Act; confer with A. Ilchenko regarding Construction Lien Act;	.40
25 MAY 09	AAI	Reviewing letter from lien claimant under s.39(1) of the Construction Lien Act; discussing letter with A. Rousseau;	.20
25 MAY 09	LAW	Telephone call from I. Smith regarding status of LOIs gathered from interested bidders on the project and to review next steps in terms of the marketing and sales process;	.30
25 MAY 09	AR	Further discussion with A. Ilchenko of letter from counsel for Basic Drywall Inc. with s. 39 Construction Lien Act demand for information and appropriate response;	.10

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 5

26 MAY 09	LAW	Reviewing memorandum regarding letters of intent obtained by receiver; receiving and reviewing memorandum with respect to next steps prepared by receiver;	.30
26 MAY 09	AR	Emails from I. Smith and L. Wittlin outlining process for bringing letters of intent before court and continuing sales process; consider Construction Lien Act section 39 request for information from counsel for Basic Drywall and stay of proceedings;	.60
27 MAY 09	AAI	Discussing with A. Rousseau response to counsel for lien claimant; reviewing letter to lien claimant;	.20
27 MAY 09	LAW	Reviewing exchange of memoranda relating to construction lien issues to be determined and the manner in which the construction lien issues ought to be addressed in the next report of the receiver; brief consultation with A. Rousseau;	.30
27 MAY 09	AR	Draft letter to counsel for Basic Drywall regarding Construction Lien Act section 39 request for information and stay of proceedings; confer with A. Ilchenko regarding same; revise letter; emails to and from B. Smith regarding letter to counsel for Basic Drywall and obligation to provide information sought in s. 39 request;	1.10
29 MAY 09	LAW	Receiving instructions regarding non-binding letters of intent received by Receiver, letter to H. Whiteley and R. Weston in respect of the letters of intent received and the next steps that would be involved in the marketing and sales process; reviewing memorandum from B. Smith regarding post-mould remediation efforts; brief consultation with A. Rousseau regarding preparation of motion record for June 11, 2009 court appearance; notes to file;	1.00
29 MAY 09	AR	Emails to and from B. Smith regarding non-binding letters of intent received and mould infiltration report;	.10

## TOTAL TAXABLE HOURS

9.40

## OUR FEE

\$ 4,537.00

**TAXABLE DISBURSEMENTS**

Copies	\$	27.50
Courier Delivery		10.11
Fax		<u>.75</u>

<b>TOTAL TAXABLE DISBURSEMENTS</b>		38.36
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Goods and Services Tax (5% of \$4,575.36)		<u>228.77</u>
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<b>TOTAL BALANCE DUE</b>	<b>\$</b>	<b><u>4,804.13</u></b>
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**THIS IS OUR FIFTH INTERIM BILL OF COSTS**

**LANG MICHENER LLP**  
Per:

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Leslie A. Wittlin

BETWEEN:  
ICICI BANK CANADA  
Applicant

- AND -

Court File No.: CV-08-7714-00CL  
1539304 ONTARIO INC.  
Respondent

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(PROCEEDING COMMENCED AT  
TORONTO)

**BILL OF COSTS**

LANG MICHENER LLP  
Barristers & Solicitors  
P.O. Box 747, Suite 2500  
BCE Place, 181 Bay Street  
Toronto, Ontario  
M5J 2T7

Leslie A. Witlin  
LSUC No.: 14629M

Telephone: (416) 307-4087  
Facsimile: (416) 304-3855

This is Exhibit "B" referred to in the  
Affidavit of Leslie A. Whittlin  
sworn before me, this 17<sup>th</sup>  
day of September, 2009



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A COMMISSIONER IN AND FOR  
THE PROVINCE OF ONTARIO

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

BETWEEN

**ICICI BANK CANADA**

**Applicant**

**- and -**

**1539304 ONTARIO INC.**

**Respondents**

**SEVENTH INTERIM BILL OF COSTS OF INDEPENDENT  
COUNSEL FOR THE INTERIM RECEIVER AND THE  
RECEIVER AND MANAGER OF 1539304 ONTARIO INC.**

---

FOR PROFESSIONAL SERVICES RENDERED as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as court appointed interim receiver and receiver and manager of 1539304 Ontario Inc., for the period from June 1, 2009 to June 30, 2009 as particularized in the Schedule of time docket entries annexed hereto;

Professional	Year of Call	Rate	Total Time	Total Fees
Leslie A. Wittlin	1974	725.00	10.50	7,612.50
Aaron Rousseau	2007	315.00	20.10	6,331.50
David Young	1977	745.00	.30	223.50
Matthew German	2004	360.00	2.95	1,062.00
Catherine Ma	Paralegal	115.00	1.60	184.00

Fees and Disbursements	\$16,231.74
GST on Fees and Disbursements	805.24
<b>Total Fees and Disbursements</b>	<b><u>\$17,036.98</u></b>

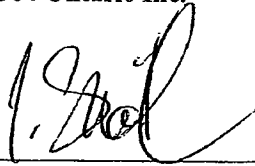


I hereby certify that I have examined the above bill, the services have been duly authorized and rendered and the charges are in my opinion fair and reasonable.

Dated at Toronto, Ontario, this 10<sup>th</sup> day of July, 2009.

**Ira Smith Trustee & Receiver Inc., in its capacity as  
interim receiver and the receiver and manager of  
1539304 Ontario Inc.**

Per:



Ira Smith, President

**Schedule of time docket entries for the period  
from June 1, 2009 to June 30, 2009**

01 JUNE 09	LAW	Telephone call from B. Smith regarding disclaimer of mould and seepage problems and advising as to how to address those matters with prospective purchasers in the due diligence exercise;	.30
01 JUNE 09	AR	Receive and read letter from counsel for Basic Drywall regarding trial list and assignment court; consider appropriate response to letter;	.20
03 JUNE 09	LAW	Reviewing e-mail from B. Smith and proposal for dealing with disclosure to qualified offerors; notes to file regarding issues to be addressed to qualified offerors;	.30
04 JUNE 09	LAW	Telephone calls from B. Smith regarding settling contents of disclosure package through electronic data room and organization thereof; brief consultation with A. Rousseau regarding bringing motion on as required and matters to be addressed therein;	.50
04 JUNE 09	AR	Call with B. Smith regarding second report from receiver and motion of June 11; draft Notice of Motion and draft order; call with J. Quigg, counsel for Crotech responding to request for information about content of June 11 motion; brief conference with L. Wittlin regarding planning for next motion;	.50
07 JUNE 09	AR	Review Receiver's second report; draft affidavit of L. Wittlin for motion record for motion of June 11 regarding interim bills of costs; consider appropriate detail to provide to court regarding trust funds held by Vasan Burns; email B. Smith and L. Wittlin regarding same;	2.00
08 JUNE 09	LAW	Reviewing draft notice of motion, Receiver's report and making suggested revisions thereto; conferring with A. Rousseau in respect thereof; reviewing revised report together with schedules thereto; exchanging e-mail memoranda with I. Smith, B. Smith and A. Rousseau; notes to file;	3.00
08 JUNE 09	AR	Voicemail message to S. Vasan regarding trust deposits; suggest revisions to Receiver's second report; revise draft	4.00

order; prepare and assemble motion record for motion of June 11; draft letter to service list regarding motion record for motion of June 11; arrange to courier motion record for H. Ganatra; telephone message for H. Ganatra; review responding motion record with affidavit from H. Ganatra; emails to L. Wittlin, B. Smith and I. Smith regarding responding motion record and affidavit from H. Ganatra; email from M. Caplan regarding privacy infringements in motion record and suggested revision to sales process; confer with L. Wittlin and B. Smith; email to M. Caplan regarding privacy issues and sales process;

09 JUNE 09	LAW	Conferring with A. Rousseau regarding outstanding items in preparation for court attendance on June 11, 2009; exchanging memoranda with B. and I. Smith concerning various issues and subsequently with A. Rousseau;	.40
09 JUNE 09	AR	Leave voicemail for and review detailed voicemail from B. Smith regarding responding motion record and affidavit of H. Ganatra; emails to and from H. Whiteley, counsel for ICICI Bank, regarding service difficulties; call with K. Ng. of ICICI Bank; emails to and from K. Ng. of ICICI Bank regarding service of Receiver's second report; review supplementary report prepared by B. Smith to respond to affidavit of H. Ganatra; email B. Smith regarding revisions to supplementary report; plan submissions to court for motion of June 11; conferring with L. Wittlin;	1.90
09 JUNE 09	CM	Attend at Commercial List and filed the Motion Record of the receiver with proof of service;	.70
10 JUNE 09	DMWY	Telephone call from Aaron Rousseau regarding bankruptcy privacy issue;	.30
10 JUNE 09	LAW	Reviewing e-mail exchange regarding matters to be addressed in court including comments of M. Caplan and H. Ganatra; advising the Receiver as to the responses to be made to the points raised by those two individuals in court; reviewing detailed responding material filed by H. Ganatra; exchanging further e-mail memoranda with I. Smith, B. Smith and A. Rousseau; notes to file;	1.20
10 JUNE 09	AR	Leave voicemails for H. Whiteley, counsel for ICIC Bank, and R. Weston, counsel for City of Hamilton, seeking to address concerns regarding upcoming motion of June 11;	2.20

email to H. Whiteley regarding same; email from S. Vasan regarding trust deposits; confer with D. Young regarding allegation by M. Caplan that disclosure of individual details in agreements of purchase and sale violated Privacy Legislation; receive letter from M. Caplan to service list and to court; confer with L. Wittlin and I. Smith regarding letter from M. Caplan; email to and from I. Smith regarding supplementary report responding to affidavit of H. Ganatra; receive supplementary affidavit from H. Ganatra; confer with B. Smith regarding supplementary affidavit of H. Ganatra; prepare for hearing of motion;

11 JUNE 09	LAW	Reviewing endorsement and order of Justice Pepall; brief consultations with I. Smith, B. Smith and A. Rousseau regarding next steps and preparation of draft offer for use with LOI bidders for the project; notes to file;	.60
11 JUNE 09	AR	Attend motion for approval of Receiver's second report, increase in borrowing authority and order for return of trust deposits; conduct resolution discussions on issues in motion with H. Ganatra, H. Whiteley, M. Caplan and J. Longo; discuss next steps and strategies to reduce likelihood of courtroom disputes and increase consent motions with L. Wittlin, I. Smith and B. Smith; review order and endorsement made on motion; receive and read letter from counsel for Cyber Specialists lien claimant requesting access to confidential information;	6.00
12 JUNE 09	AR	Arrange for filing of order; call with clerk to revise typed order; draft letter to service list attaching order and endorsement; emails to and from L. Wittlin and I. Smith regarding response to letter from Cyber Specialists; draft letter to S. Vasan regarding order;	1.00
12 JUNE 09	CM	Attend at Commercial List and attempt to issue and enter Order of Pepall, J.; call to A. Rousseau regarding same;	.40
15 JUNE 09	AR	Leave voicemail for C. Ma regarding issuing order of June 11; email from C. Ma regarding problems with issuing order;	.10
16 JUNE 09	CM	Attend at Commercial List and issued and entered Order of Pepall, J. dated June 11, 2009;	.50

18 JUNE 09	LAW	Reviewing correspondence with lien claimant requesting access to LOI's received and other information; begin preparation of draft form of agreement of purchase and sale for use by purchasers in the sales and marketing process;	1.00
18 JUNE 09	AR	Draft letter to S. Jaffrey, counsel for Cyber Services, regarding request for confidential information regarding sales process and concerns regarding fees and disbursements of receiver; emails to and from B. Smith regarding calculation of receiver's projected costs and fees to answer undertaking to City of Hamilton;	1.10
22 JUNE 09	AR	Correct omission in issued and entered order of June 11 of appendix of purchasers under defaulted agreements of purchase and sale;	.20
23 JUNE 09	AR	Review revised issued and entered order; draft letter to service list regarding issued and entered order; emails to and from B. Smith regarding spreadsheet calculating receiver's projected fees and disbursements; review spreadsheet; draft letter to J. Longo, counsel for City of Hamilton, with answer to undertaking to provide basis for receiver's projected fees and disbursements; brief conference with L. Wittlin;	.60
24 JUNE 09	LAW	Reviewing interchange with M. Caplan and A. Rousseau regarding return of trust funds to purchasers; confer with A. Rousseau regarding status;	.20
24 JUNE 09	AR	Distribute issued and entered order of June 11 to service list; emails to and from M. Caplan regarding privacy concerns regarding contact with purchasers under defaulted agreements of purchase and sale named in court order regarding same;	.30
29 JUNE 09	LAW	Exchanging voice messages with I. Smith regarding preparation of draft form of agreement of purchase and sale for guidance of potential purchasers of the property, completing review of precedents and continue drafting; review status of conducting process;	1.00

30 JUNE 09	MRG	Met with L. Wittlin to discuss reviewing title search for 80 King William St., Hamilton and preparing schedule of permitted encumbrance and encumbrances to be discharged for Offer to Purchase; obtained parcel register from Teraview, review of title and prepared schedule of permitted encumbrance and encumbrances to be discharged; review and revised Offer to Purchase for L. Wittlin;	2.95
30 JUNE 09	LAW	Completing preparation of draft agreement of purchase and sale to be utilized by purchasers, conferring with M. German regarding certain title matters and how they ought to be addressed in the draft agreement of purchase and sale, drafting cover note to I. Smith and notes to file;	2.00

**TOTAL TAXABLE HOURS**

34.95

**OUR FEE**

\$ 15,413.50

**TAXABLE DISBURSEMENTS**

Copies	\$ 643.95
Courier Delivery	22.17
Taxi	7.62
Fax	<u>17.50</u>

**TOTAL TAXABLE DISBURSEMENTS**

691.24

**NON-TAXABLE DISBURSEMENTS**

Filing Fees	<u>\$ 127.00</u>
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**TOTAL NON-TAXABLE DISBURSEMENTS**

127.00

Goods and Services Tax (5% of \$16,104.74)

805.24

**TOTAL BALANCE DUE**

\$ 17,036.98

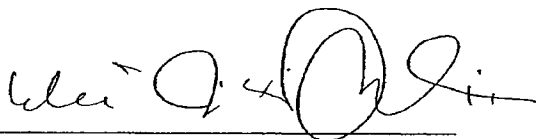
**TIME SUMMARY**

Lawyer/Staff		Hours	Rate	Value
David M. W. Young	DMWY	.30	745.00	223.50
Matthew German	MRG	2.95	360.00	1,062.00
Leslie A. Wittlin	LAW	10.50	725.00	7,612.50
Aaron Rousseau	AR	20.10	315.00	6,331.50
Catherine Ma	CM	1.60	115.00	184.00

**THIS IS OUR SEVENTH INTERIM BILL OF COSTS**

**LANG MICHENER LLP**

Per:



Leslie A. Wittlin

This is Exhibit "C" referred to in the  
Affidavit of Leslie A. Whittlin  
sworn before me, this 17<sup>th</sup>  
day of September, 2009



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A COMMISSIONER IN AND FOR  
THE PROVINCE OF ONTARIO



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**BETWEEN**

**ICICI BANK CANADA**

**Applicant**

**- and -**

**1539304 ONTARIO INC.**

**Respondents**

**EIGHTH INTERIM BILL OF COSTS OF INDEPENDENT  
COUNSEL FOR THE INTERIM RECEIVER AND THE  
RECEIVER AND MANAGER OF 1539304 ONTARIO INC.**

---

FOR PROFESSIONAL SERVICES RENDERED as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as court appointed interim receiver and receiver and manager of 1539304 Ontario Inc., for the period from July 1, 2009 to July 31, 2009 as particularized in the Schedule of time docket entries annexed hereto;

Professional	Year of Call	Rate	Total Time	Total Fees
Leslie A. Wittlin	1974	725.00	6.10	4,422.50
Aaron Rousseau	2007	315.00	5.50	1,732.50

Fees and Disbursements	\$6,307.00
GST on Fees and Disbursements	<u>315.35</u>
<b>Total Fees and Disbursements</b>	<b><u>\$6,622.35</u></b>

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 2

I hereby certify that I have examined the above bill, the services have been duly authorized and rendered and the charges are in my opinion fair and reasonable.

Dated at Toronto, Ontario, this            day of August, 2009.

**Ira Smith Trustee & Receiver Inc., in its capacity as  
interim receiver and the receiver and manager of  
1539304 Ontario Inc.**

Per:

---

Ira Smith, President

**Schedule of time docket entries for the period  
from July 1, 2009 to July 31, 2009**

07 JULY 09	LAW	Reviewing offers received through sales process and discussion of next steps to be taken; telephone call to I. Smith in respect thereof and brief conference with A. Rousseau;	.80
08 JULY 09	LAW	Multiple e-mails with I. Smith, B. Smith, A. Rousseau, H. Whiteley and R. Weston regarding setting-up meeting and agenda for meeting; notes to file;	1.00
08 JULY 09	AR	Call with B. Smith regarding final offers received, whether approval appropriate and need to confer with major stakeholders; confer with L. Wittlin; send emails to and leave voicemails for counsel for ICICI Bank and City of Hamilton regarding proposed meeting to consider offers received and alternatives;	1.80
09 JULY 09	LAW	Completing preparation for meeting with representatives of Bank and of City; reviewing summary of proposals prepared by Receiver; brief discussion with A. Rousseau, B. Smith and I. Smith, attending meeting; notes to file;	2.80
09 JULY 09	AR	Leave voicemails for R. Weston and J. Longo, counsel for City of Hamilton; email R. Weston; preparation for meeting with representatives of ICICI Bank and City of Hamilton to consider offers for property; meeting with B. Smith to discuss meeting with ICICI Bank and City of Hamilton; conference call with B. Smith and new offer or seeking entry into the sales process; meet with representatives of ICICI Bank and City of Hamilton to consider offers for property;	3.20
24 JULY 09	LAW	Reviewing status of formal offers to purchase and comments by I. and B. Smith in respect thereof;	.30
27 JULY 09	LAW	Reviewing memorandum from B. Smith regarding offers received and next steps;	.30
28 JULY 09	LAW	Reviewing memorandum from B. Smith regarding formal offers received and response to be made;	.20
29 JULY 09	LAW	Reviewing memorandum from B. Smith regarding appraisal of property in current condition and dealing with formal offers to purchase as received;	.30

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 4

30 JULY 09	LAW	Exchanging memoranda regarding setting-up conference to review formal offers received by the Receiver in respect of the property and planning of action required; brief consultation with A. Rousseau; notes to file;	.40
30 JULY 09	AR	Call with B. Smith regarding second round offers received for property, obtaining support from ICICI Bank and City of Hamilton for recommendation to approve offer and subsequent court procedures; confer with L. Wittlin regarding same;	.50

## TOTAL TAXABLE HOURS

11.60

## OUR FEE

\$ 6,155.00

## TAXABLE DISBURSEMENTS

Copies \$ 152.00

## TOTAL TAXABLE DISBURSEMENTS

152.00

Goods and Services Tax (5% of \$6,307.00)

315.35

## TOTAL BALANCE DUE

\$ 6,622.35

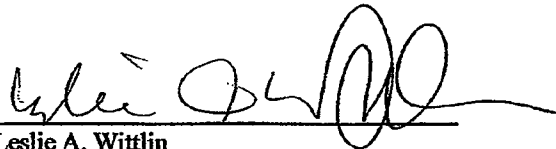
## TIME SUMMARY

Lawyer/Staff		Hours	Rate	Value
Leslie A. Wittlin	LAW	6.10	725.00	4,422.50
Aaron Rousseau	AR	5.50	315.00	1,732.50

## THIS IS OUR SEVENTH INTERIM BILL OF COSTS

## LANG MICHENER LLP

Per:

  
Leslie A. Wittlin

**BETWEEN:**  
**ICICI BANK CANADA**  
**Applicant**

**- AND -**

**Court File No.: CV-08-7714-00CL**  
**1539304 ONTARIO INC.**  
**Respondent**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(PROCEEDING COMMENCED AT**  
**TORONTO)**

**BILL OF COSTS**

**LANG MICHENER LLP**  
**Barristers & Solicitors**  
**P.O. Box 747, Suite 2500**  
**BCE Place, 181 Bay Street**  
**Toronto, Ontario**  
**M5J 2T7**

**Leslie A. Within**  
**LSUC No.: 14629M**  
**Telephone: (416) 307-4087**  
**Facsimile: (416) 304-3855**

This is Exhibit "D" referred to in the  
Affidavit of Leslie A. Whittlin  
sworn before me, this 17<sup>th</sup>  
day of September, 2009



---

A COMMISSIONER IN AND FOR  
THE PROVINCE OF ONTARIO

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

BETWEEN

**ICICI BANK CANADA**

**Applicant**

**- and -**

**1539304 ONTARIO INC.**

**Respondents**

**NINTH INTERIM BILL OF COSTS OF INDEPENDENT  
COUNSEL FOR THE INTERIM RECEIVER AND THE  
RECEIVER AND MANAGER OF 1539304 ONTARIO INC.**

---

FOR PROFESSIONAL SERVICES RENDERED as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as court appointed interim receiver and receiver and manager of 1539304 Ontario Inc., for the period from August 1, 2009 to August 31, 2009 as particularized in the Schedule of time docket entries annexed hereto;

Professional	Year of Call	Rate	Total Time	Total Fees
Alex A. Ilchenko	1993	565.00	.80	452.00
Matthew German	2004	360.00	.80	288.00
Leslie A. Wittlin	1974	725.00	4.70	3,407.50
Aaron Rousseau	2007	315.00	10.40	3,276.00

Fees and Disbursements	\$7,442.75
GST on Fees and Disbursements	<u>372.14</u>
<b>Total Fees and Disbursements</b>	<b><u>\$7,814.89</u></b>

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 2

I hereby certify that I have examined the above bill, the services have been duly authorized and rendered and the charges are in my opinion fair and reasonable.

Dated at Toronto, Ontario, this            day of September, 2009.

**Ira Smith Trustee & Receiver Inc., in its capacity as  
interim receiver and the receiver and manager of  
1539304 Ontario Inc.**

Per:

---

Ira Smith, President



**Schedule of time docket entries for the period  
from August 1, 2009 to August 31, 2009**

04 AUG 09	LAW	Preparing for and participating in conference telephone discussion with bank and subsequently with counsel for City of Hamilton; notes to file;	1.40
04 AUG 09	AR	Conference call with counsel for and representatives of ICICI Bank and counsel for City of Hamilton to evaluate second round of offers received and obtain support for acceptance of offer and motion for approval of sale; conference call with I. Smith, B. Smith and L. Wittlin regarding next steps, motion for sales process, timelines for motion for approval of sale and claims process; emails to and from I. Smith, B. Smith regarding available motion dates and importance of arranging date to appear before Pepall, J;	2.00
05 AUG 09	LAW	Exchanging e-mail regarding scheduling court approval application regarding offer as recommended for acceptance; notes to file;	.20
05 AUG 09	AR	Emails to and from I. Smith and B. Smith regarding instructions for motion date; emails to all counsel and emails from lien claimant counsel regarding August 20 2009 motion date; instructions to assistant to prepare motion request form; review motion request form;	.60
06 AUG 09	LAW	Settling court date for approval of agreement of purchase and sale;	.20
06 AUG 09	AR	Emails to and from H. Whitley, counsel for ICICI Bank and R. Weston, counsel for City of Hamilton, and counsel for lien claimants regarding proposed Aug 20 motion date;	.10
07 AUG 09	AR	Emails to and from M. Caplan regarding location of August 20 motion and need for affidavit material;	.20
10 AUG 09	AAI	Discussing with A. Rousseau practicality of claims process, method for resolving construction lien claims and motion for approval of sale;	.60

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 4

10 AUG 09	MRG	Review of accepted Offer for Trinity Landing; review of email correspondence and acceptance letter from B. Smith; discussion with A. Rousseau regarding next steps;	.50
10 AUG 09	LAW	Exchanging numerous e-mail memoranda with I. Smith and others regarding late coming offer for the property outside the authorized process; brief review of case law and advising the receiver in respect of response to be made; notes to file;	.40
10 AUG 09	AR	Emails to and from I. Smith, B. Smith and L. Wittlin to arrange time for conference call with lien claimants in advance of motion date; draft letter to service list regarding proposed motion date and conference call; confer with A. Ilchenko regarding details for and advisability of claims procedure; confer with L. Wittlin regarding advisability of claims procedure; emails to and from I. Smith and B. Smith regarding advisability of claims procedure;	2.10
11 AUG 09	MRG	Review of email correspondence from V. Shaw and B. Smith regarding closing date and court date;	.20
11 AUG 09	LAW	Reviewing e-mail exchanges among V. Shaw, B. Smith, A. Rousseau and others;	.30
11 AUG 09	AR	Emails to and from B. Smith, I. Smith and L. Wittlin regarding purchaser's refusal to waive conditions and impact on motion date; review executed offer regarding conditional dates; research draft order vesting property with purchaser; review letter from J. Lefurgey, counsel for Basic Drywall, seeking information regarding amount and date of advances from ICICI Bank to 1539304 Ontario Inc.; emails to and from B. Smith regarding letter from J. Lefurgey and propriety of providing requested information;	.80
12 AUG 09	AR	Draft letter to service list regarding adjournment of August 20 motion date and seeking approval to September 9 motion date; emails to and from B. Smith regarding request by J. Lefurgey, counsel for Basic Drywall, for information on dates and amounts of advances from ICICI to 1539304 Ontario Inc.; draft letter to J. Lefurgey regarding available information to answer request; confer with L. Wittlin regarding review of ICICI mortgage as building mortgage, lien claims, letter of credit bonding off lien claims and strategy for discussion and settlement with client claimants;	.80

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 5

13 AUG 09	AAI	Reviewing correspondence regarding additional bids received;	.20
13 AUG 09	AR	Emails to and from R. Weston, counsel for City of Hamilton, and H. Whitley, counsel for ICICI Bank re September 9 motion date; emails to and from I. Smith, B. Smith and L. Wittlin regarding receipt of new offer; irrevocability of acceptance of previous offer, strategies to leverage existing offer, opportunities presented by any default of existing offer and need to revise motion date;	.40
14 AUG 09	AR	Review letter from J. Lefurgey, counsel to Basic Drywall, regarding assignment court traversal for lien action; review consent to adjournment from J. Lefurgey; execute consent to adjournment; draft letter to J. Lefurgey;	.30
17 AUG 09	AR	Listen to voicemail from court clerk regarding hearing requisition form;	.10
18 AUG 09	AR	Review letter from J. Lefurgey, counsel for Basic Drywall, with letter to court enclosing executed authorization for traversal of assignment court until Oct 2009; email from B. Smith regarding refusal of Receiver to release previous PEER report for 80 King William Street;	.20
19 AUG 09	AR	Draft letter to Service list regarding rescheduling of motion date targeted for September 9, 2009 and related dates for delivery of motion materials on August 18, 2009; conference call with lien claimants on August 25, 2009;	.20
20 AUG 09	LAW	Reviewing e-mail memoranda from B. Smith to a prospective purchaser concerning the process;	.30
20 AUG 09	AR	Attend 9:30 court appearance to obtain order adjourning motion of August 20; emails to and from C. Duran, counsel for Castle Plumbing and Heating regarding change of service list; change service list;	1.80
27 AUG 09	LAW	Exchanging e-mails concerning request for extension of condition from purchasers; brief consultation with A. Rousseau, conference telephone discussion with I. and B. Smith and A. Rousseau; regarding response to be made to conditional purchaser; reviewing confirming memorandum from I. Smith to purchaser regarding inability to extend condition date; notes to file;	1.30

# Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 6

27 AUG 09	AR	Emails to and from B. Smith regarding request for extension by Canlight; conference call with B. Smith, I. Smith and L. Wittlin regarding request for extension by Canlight, obligations under agreement of purchase and sale, options to leverage Canlight, permissible and advisable disclosure of unsolicited offer, and communications strategy with Canlight; review letter from H. Ganatra suggesting that Receiver not notifying debtor of motion date changes;	.60
28 AUG 09	AR	Review and send letter to H. Ganatra confirming that notice of motion dates and adjournments is provided; review email from I. Smith confirming conversation with Canlight representative; review letter from lawyer for Canlight threatening litigation if conditional period on agreement of purchase and sale not extended; review responding letter from L. Wittlin;	.20
31 AUG 09	MRG	Review of email correspondence from B. Smith regarding Purchaser's waiver of conditions and closing date;	.10
31 AUG 09	LAW	Reviewing memorandum from B. Smith regarding purchaser firming-up agreement of purchase and sale and waiving conditions; reviewing inquiry by R. Weston and responding thereto; further memorandum from R. Weston and responding thereto; receiving letter from L. Shapiro confirming waiver of conditions;	.60

## TOTAL TAXABLE HOURS

16.70

## OUR FEE

\$ 7,423.50

## TAXABLE DISBURSEMENTS

Copies

\$ 16.75

Fax

2.50

## TOTAL TAXABLE DISBURSEMENTS

19.25

Goods and Services Tax (5% of \$7,442.75)

372.14

## TOTAL BALANCE DUE

\$ 7,814.89

# Lang Michener <sup>LLP</sup>

Lawyers – Patent & Trade Mark Agents

Page 7

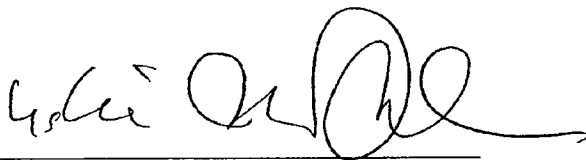
## TIME SUMMARY

Lawyer/Staff		Hours	Rate	Value
Alex A. Ilchenko	AAI	.80	565.00	452.00
Matthew German	MRG	.80	360.00	288.00
Leslie A. Wittlin	LAW	4.70	725.00	3,407.50
Aaron Rousseau	AR	10.40	315.00	3,276.00

## THIS IS OUR NINTH INTERIM BILL OF COSTS

LANG MICHENER LLP

Per:



Leslie A. Wittlin

Court File No.: CV-08-7714-00CL	
<b>BETWEEN:</b> <b>ICICI BANK CANADA</b> <b>Applicant</b>	<b>- AND -</b>
	<b>Respondent</b>
	<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b>  <b>(PROCEEDING COMMENCED AT</b> <b>TORONTO)</b>
	<b>BILL OF COSTS</b>
	<b>LANG MICHENER LLP</b> Barristers & Solicitors P.O. Box 747, Suite 2500 BCE Place, 181 Bay Street Toronto, Ontario M5J 2T7  <b>Leslie A. Wittlin</b> LSUC No.: 14629M  Telephone: (416) 307-4087 Facsimile: (416) 304-3855

**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

**AFFIDAVIT OF LESLIE WITTLIN**

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

**Leslie A. Wittlin**  
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Tel: (416) 307-4087

**Alex Ilchenko**  
Law Society Registration #33944Q  
Tel: (416) 307-4116

**Aaron Rousseau**  
Law Society Registration #53833E  
Tel: (416) 307-4081  
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.

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 IRA SMITH  
(Sworn September 17, 2009)**

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

1. I am the President of Ira Smith Trustee & Receiver Inc. ("**ISI**"), the court-appointed interim receiver and receiver and manager (the "**Receiver**") of 1539304 Ontario Inc. (the "**Debtor**"). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true.
2. ISI was appointed Receiver of all of the property, assets and undertaking of the Debtor pursuant to an Order of the Ontario Superior Court of Justice dated November 12, 2008 (the "**Receivership Order**").
3. Pursuant to paragraph 18 of the Receivership Order, the Receiver and its legal counsel are required to pass their accounts from time to time.



4. The Receiver has filed its Second Report with this Honourable Court, which outlines, among other things, the Receiver's overall actions and activities since the date of its First Report.

5. Attached hereto and marked as **Exhibit "A"** to this my Affidavit are copies of the accounts rendered by Pelican Woodcliff Inc., consultant to the Receiver, for the period from June 1, 2009 to August 31, 2009. The total of the fee and disbursements of Pelican Woodcliff Inc. (excluding GST) is \$28,289.77.

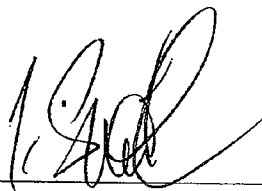
6. Pelican Woodcliff Inc. has rendered services throughout these proceedings consistent with instructions from the Receiver, the Receiver has approved all such accounts and I verily believe that the fees and disbursements of Pelican Woodcliff Inc. are fair and reasonable in the circumstances.

7. The said Affidavit is sworn in connection with the Receiver's motion to have, among other things, its fees and disbursements approved by this Honourable Court and for no improper purpose.

SWORN BEFORE ME at the City of  
Vaughan, in the Province of Ontario,  
on September 17, 2009.



A Commissioner for taking affidavits



Ira Smith

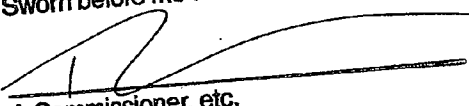
Brandon Smith, a Commissioner, etc.,  
Province of Ontario, for Ira Smith Trustee  
& Receiver Inc. Trustee in Bankruptcy.  
Expires May 2, 2011.

**INVOICE NO. 120651**

June 30, 2009

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

RECEIVED  
This Exhibit A referred to in the  
Affidavit of IRA SMITH  
Sworn before me this 7 day of Sept, 2009

  
A Commissioner, etc.  
Brandon Smith, a Commissioner, etc.,  
Province of Ontario, for Ira Smith Trustee  
& Receiver Inc. Trustee in Bankruptcy.  
Expires May 2, 2011.

**Re: Trinity Landing, 80 King William, Hamilton  
Property Management and Project Management Services**

Our fee for work on the above project during the month of June, as per our proposal dated November 17, 2008, is as follows:

TOTAL FEES	As Attached	14,102.50
G.S.T. - 5%		705.13
DISBURSEMENTS	As Attached	<u>1,028.65</u>
<b>TOTAL THIS INVOICE</b>		<b><u>\$15,836.28</u></b>

Terms: Net 30 Days  
GST No. 868471244

[illegible]

DISBURSEMENTS

PROJECT: 80 KING WILLIAM, HAMILTON

DATE: JUNE 2009

			<u>Sub-Total</u>	<u>GST</u>	<u>Total</u>
407 ETR			145.90	0.00	145.90
Parking			25.48	1.27	26.75
Mileage	km	Rate			
	1,391	\$0.60	794.86	39.74	834.60
Photocopies	No.	Rate			
	107	\$0.20	<u>20.38</u>	<u>1.02</u>	<u>21.40</u>
<b>TOTAL</b>			<u><b>\$986.62</b></u>	<u><b>\$42.03</b></u>	<u><b>\$1,028.65</b></u>

**INVOICE NO. 120747**



July 31, 2009

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

**Re: Trinity Landing, 80 King William, Hamilton  
Property Management and Project Management Services**

Our fee for work on the above project during the month of July, as per our proposal dated November 17, 2008, is as follows:

TOTAL FEES	As Attached	9,167.50
G.S.T. - 5%		458.38
DISBURSEMENTS	As Attached	<u>718.40</u>
<b>TOTAL THIS INVOICE</b>		<b><u>\$10,344.28</u></b>

Terms: Net 30 Days  
GST No. 868471244

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[illegible]

DISBURSEMENTS

PROJECT: 80 KING WILLIAM

DATE: JULY 2009

			<u>Sub-Total</u>	<u>GST</u>	<u>Total</u>
Parking			3.33	0.17	3.50
			3.33	0.17	3.50
			3.33	0.17	3.50
			3.33	0.17	3.50
Mileage	km	Rate			
	844	\$0.60	482.29	24.11	506.40
407 ETR			<u>198.00</u>	<u>0.00</u>	<u>198.00</u>
TOTAL			<u>\$693.61</u>	<u>\$24.79</u>	<u>\$718.40</u>



7100 Woodbine Avenue  
Suite 208  
Markham, Ontario L3R 5J2  
tel: (905) 477-4507  
fax: (905) 477-4509  
e-mail: pwi@pelicanwoodcliff.com

**INVOICE NO. 120852**

August 31, 2009

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

**Re: Trinity Landing, 80 King William, Hamilton  
Property Management and Project Management Services**

Our fee for work on the above project during the month of August, as per our proposal dated November 17, 2008, is as follows:

TOTAL FEES	As Attached	2,932.50
G.S.T. - 5%		146.63
DISBURSEMENTS	As Attached	<u>340.22</u>
<b>TOTAL THIS INVOICE</b>		<b><u>\$3,419.35</u></b>

Terms: Net 30 Days  
GST No. 868471244



ICICI BANK CANADA

And

1539304 ONTARIO INC.

Applicants

Respondents

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST -

Proceeding commenced at Toronto

AFFIDAVIT OF IRA SMITH  
(Sworn September 17, 2009)

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

Ira Smith CA●CIRP  
Tel: 905-738-4167  
Fax: 905-738-9848

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

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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 SEPTEMBER 17, 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

**BETWEEN:**

**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

**MOTION RECORD**

**LANG MICHENER LLP**

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

**Leslie A. Wittlin**

Law Society Registration #14629M  
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**Alex Ilchenko**

Law Society Registration #33944Q  
Tel: (416) 307-4116

**Aaron Rousseau**

Law Society Registration #53833E  
Tel: (416) 307-4081  
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.