

Court File No. CV-23-00693494-00CL

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

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

**1871 BERKELEY EVENTS INC., 1175484 ONTARIO INC.,
111 KING STREET EAST INC., 504 JARVIS INC. AND
SOUTHLINE HOLDINGS INC.**

Respondents

**SUPPLEMENT TO THE
FIRST REPORT OF MSI SPERGEL INC. IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER OF
1871 BERKELEY EVENTS INC., 1175484 ONTARIO INC.,
111 KING STREET EAST INC., 504 JARVIS INC. AND
SOUTHLINE HOLDINGS INC.**

JANUARY 10, 2024

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APPENDICES

1. Revised Agreement of Purchase and Sale replacing Appendix “3” in the First Report.

I. PURPOSE OF THE FIRST SUPPLEMENT TO THE FIRST REPORT

1. The purpose of the First Supplement to the First Report is to provide the Court with a revised Agreement of Purchase and Sale which replaces Appendix “3” to the First Report dated January 3, 2024, for which approval is sought from this Honourable Court.

II. REVISED APPENDIX “3” TO THE FIRST REPORT

2. Attached to this First Supplement to the First Report (the “**First Supplement**”) As Appendix “1” is a copy of a revised Draft Agreement of Purchase and Sale, (the “**Revised APS**”) replacing Appendix “3” of the First Report and referenced in Paragraph 27b) of the First Report.
3. Revisions were necessitated to the original draft Agreement of Purchase and Sale in an effort to more closely mirror the terms and conditions contained in the Draft Agreement of Purchase and Sale included with the materials filed by MNP in its capacity as Receiver of the adjoining property as referenced in Paragraph 27 of the First Report.

Respectfully submitted to this Honourable Court.

Dated at Toronto, this 10th day of January 2024

msi Spergel inc.,
solely in its capacity as Court-appointed
Receiver of 1871 Berkeley Events Inc.,
1175484 Ontario Inc., 111 King Street East Inc.,
504 Jarvis Inc., and Southline Holdings Inc., and
not in any corporate or personal capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

Managing Partner

Appendix 1

JANUARY 10, 2024

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the ● day of ●, 20●.

BETWEEN:

MSI SPERGEL INC., solely in its capacity as court-appointed Receiver of all of the property and assets of 1871 BERKELEY EVENTS INC., 1175484 ONTARIO INC., 111 KING STREET EAST INC., 504 JARVIS INC. and SOUTHLINE HOLDINGS INC. and **1175484 Ontario Inc.** (1175484 Ontario Inc. hereinafter the “**Company**”) (the Company with 1871 BERKELEY EVENTS INC., 1175484 ONTARIO INC., 111 KING STREET EAST INC., 504 JARVIS INC. and SOUTHLINE HOLDINGS INC. collectively the **Debtors**)

and not in any other capacity and with no personal or corporate liability

(hereinafter called the “**Vendor**”)

OF THE FIRST PART

- and -

●

(hereinafter called the “**Purchaser**”)

OF THE SECOND PART

RECITALS:

Whereas:

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (**the “Court”**) in Court file CV-23-00693494-00CL (the “**Proceedings**”), dated the 7th day of July, 2023 (the “**Appointment Order**”), the Vendor was appointed as Receiver of all the assets, property and undertakings of the Debtors including the assets, property and undertakings of the Company (the Company’s assets, property and undertakings hereinafter the “**Assets**”).
- B. Pursuant to the Appointment Order, the Vendor is authorized to sell the Assets and apply for an Order of the Court approving the sale of any or all of the Assets and vesting title to such Assets in the Purchaser.
- C. On ●, the Court made an order (the “**Marketing Process Order**”) approving, among other things, a marketing process (the “**Marketing Process**”) for the solicitation of offers (each, a “**Bid**”) for the purchase of the Lands and related Purchased Assets, which Bid must include (among other things) a binding agreement of purchase and sale, in the form attached contained in the Data Room as defined below.
- D. Subject to an order being issued by the Court approving the sale of the Purchased Assets (defined herein) and pursuant to the terms of this Agreement, the Purchaser has offered to purchase the Purchased Assets and the Vendor has accepted such an offer on the terms and conditions contained herein. The Purchaser acknowledges that the Vendor’s

acceptance of such offer and execution of this Agreement are subject to the terms and conditions contained herein and approval of the Court of such actions.

NOW THEREFORE IN CONSIDERATION of the premises and the mutual agreements in this Agreement, and for other consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree as follows.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“160” means 1606077 Ontario Inc.;

“160 Real Property” means the lands and Building owned by 160 and known municipally as 305-311 Queen Street East Toronto, Ontario and legally described as denoted by PIN 21091-0081;

“Acceptance Date” means the date upon which this Agreement has been accepted by both parties;

“Additional Consideration” has the meaning set out in Schedule E hereto;

“Adjustments” means the adjustments to the Purchase Price made pursuant to Section 2.6 hereof;

“Agreement” means this agreement of purchase and sale resulting from the acceptance, by the Vendor, of the offer provided for in Section 6.15 and all Schedules attached hereto and the terms “hereof” and “hereto” refer to this Agreement as a whole and references to **“Section”** and **“subsection”** mean the relevant section or subsection of this Agreement unless the context specifically indicates otherwise;

“Applicable Law” means any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, restriction, regulatory policy or guideline, by-law (zoning or otherwise), or Order, or any consent, exemption, approval or License of any Governmental Authority, that applies in whole or in part to the Transaction, the Vendor, the Purchaser, the Company or to any of the Purchased Assets;

“Appointment Order” means the Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) Court File No. CV-23-00693494-00CL dated the 7th day of July, 2023, appointing the Vendor as Receiver of all of the assets, property and undertaking of the Company, including the Purchased Assets, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act*, R.S.O 1990, c.C.43, as amended;

“Approval Order” means an Order or Orders of the Court in a form substantially in accordance with Schedule A authorizing and approving the Transaction contemplated under this Agreement (and which Order may, at the option of the Vendor, be combined, in one Order, with the Vesting Order);

“Assignment of Contracts and Warranties” means the assignment and assumption agreement in respect of the Assumed Contracts and any Warranties, including an

indemnity by the Purchaser in favour of the Vendor in respect of all obligations arising prior to or after the Closing Date in the form attached hereto as Schedule G;

“Assumed Contracts” means the Contracts that are legally assignable by the Vendor and which the Purchaser agrees to assume on Closing, as set out in Schedule H;

“Authorization” means any Order, permit, approval, consent, waiver, licence, development agreement or other authorization issued, granted, given or authorized by, or made applicable under the authority of, any Governmental Authority having jurisdiction.

“BIA” means the *Bankruptcy and Insolvency Act* of Canada as the same may be amended from time to time;

“Building” means, collectively, the buildings and all other structures, fixtures, equipment and improvements located on the Lands;

“Business Day” means a day other than a Saturday or Sunday, on which chartered banks are open for the transaction of domestic business in Toronto, Ontario;

“Chattels” means the chattels and equipment owned by the Company located on, incorporated or situated in, on, around or upon any Building or upon the Lands, and includes all equipment, devices or any other chattels or other tangible personal property owned by the Company and located on the Lands or in any Building and used exclusively in the operation and maintenance of the Lands, excluding any chattels and equipment owned by persons other than the Company;

“Claims” shall have the meaning ascribed thereto in the Vesting Order;

“Closing” means the completion of the sale to, and purchase by, the Purchaser of the Purchased Assets in accordance with the terms of this Agreement;

“Closing Date” means ten (10) Business Days after the Court grants the Approval Order and the Vesting Order or such other date as the parties hereto agree to in writing;

“Closing Document” means any document delivered at or subsequent to the Closing Time as provided in or pursuant to this Agreement;

“Closing Time” means 5:00 p.m. Toronto time on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing shall take place;

“Collateral Charge” means a registrable first mortgage of the Lands by the Purchaser in favour of the Vendor in the maximum principal amount of ● DOLLARS (\$●), collaterally securing the Purchaser’s obligations under the Density Increase Participation Agreement, incorporating standard charge terms no. 200033 and containing the additional terms set out in Schedule E to this Agreement.

“Company” means 1175484 Ontario Inc.;

“Concert Real Property” means the real property known municipally as 132 Berkeley Street and legally described as denoted by PIN 21091-0091(LT) and PIN 21091-0004 (LT) to the south of the Lands;

“Concert Settlement Agreement” means the agreement between Gault, 160, the Company, Concert Real Estate Corporation (“**CREC**”) and OPG132 Holdings Inc. (“**OPG**”

and, together with CREC, “**Concert**”) relating to the Gault Real Property, the 160 Real Property, the Lands and the Concert Real Property;

“**Confidentiality Agreement**” means the confidentiality agreement dated • delivered by the Purchaser in favour of the Vendor;

“**Consent Certificates**” means any certificates issued pursuant to section 53(42) of the Planning Act with respect to the conveyance of the Easements;

“**Contracts**” means the full benefit and advantage of all contracts, agreements and entitlements of the Company related to the Lands[, other than the interest of the Company in any of the Accounts Receivable, any Equipment Leases, or any Intellectual Property,][if required.].

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**Data Room**” means the online virtual data room hosted by the Vendor’s Agent containing the Project Documents and other information pertaining to the Purchased Assets to which the Purchaser has been given access;

“**Density Increase Participation Agreement**” means the agreement to be executed and delivered on the Closing between the Vendor and the Purchaser in the form attached at Schedule D hereto;

“**Deposit**” means the deposit to be paid by the Purchaser pursuant to 2.4(a);

“**DRA**” has the meaning ascribed to it in Section 6.7;

“**Easements**” means, collectively, the easements affecting the Gault Real Property, the 160 Real Property, the Lands and the Concert Real Property contemplated by the Concert Settlement Agreement to be conveyed by the owners of the respective servient lands as described in the Concert Settlement Agreement.

“**Encumbrances**” shall have the meaning ascribed to thereto in the Vesting Order;

“**Excluded Assets**” means all Assets except for the Purchased Assets – for greater certainty, all bank accounts of the Company and any cash on hand and cash equivalents at Closing shall not be included in the Purchased Assets;

“**Gault**” means James Gault Holdings Inc.;

“**Gault Real Property**” means the lands and Building owned by Gault and known municipally as 301 Queen Street East, Toronto, Ontario and legally described as denoted by PIN 21091-0080;

“**Governmental Authority**” means any domestic or foreign government whether federal, provincial, state or municipal and any governmental agency, governmental authority, governmental tribunal or governmental commission of any kind whatever;

“**HST Certificate and Indemnity**” means the HST Certificate and Indemnity in the form attached at Schedule I hereto;

“**including**” means “**including without limitation**” and the term “**including**” shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;

“**KPSP Appeals**” means any ongoing appeals by the Company relating to the Lands in connection with the King Parliament Secondary Plan from OLT;

“**Lands**” means the lands and Building owned by the Company and known municipally as 315-317 Queen Street East Toronto, Ontario and more particularly described in Schedule F;

“**Letter of Credit**” means an irrevocable standby letter of credit issued in favour of the Vendor by a schedule I chartered Canadian bank in the principal amount of ● million dollars (\$●) collaterally securing the Purchaser’s obligations under the Density Increase Participation Agreement, with an initial term of one year, renewing automatically for successive one year terms, and providing that, in the event the issuing bank intends not to renew, the bank shall provide not less than thirty (30) days prior written notice of such intention to the Vendor allowing the full amount of the Letter of Credit to be drawn.

“**Notices of Decision**” means the notices of decision issued on June 3, 2022 by the Committee of Adjustment pursuant to section 53 of the *Planning Act* in respect of the Easements;

“**OLT**” means Ontario Land Tribunal;

“**OLT Order**” means the Order dated August 2, 2022 of the OLT approving a zoning by-law for the redevelopment of the Gault Real Property, the 160 Real Property and the Lands with a contemplated 19-storey building of not more than 12,200 square metres in gross floor area pursuant to zoning By-Law 1150-2022 by order of the OLT issued August 2, 2022 in Tribunal File PL161267;

“**Order**” means any order (draft or otherwise), judgment, injunction, decree, award or writ of any court, tribunal, arbitrator, Governmental Authority, or other Person;

“**Other Party**” has the meaning ascribed to it in Section 6.8;

“**Parties**” means the Purchaser and the Vendor collectively, and “**Party**” means any one of them;

“**Permitted Encumbrances**” shall mean those encumbrances listed in Schedule D;

“**Person**” or “**person**” shall be broadly interpreted and includes an individual, body corporate, partnership, joint venture, trust, association, unincorporated organization, the Crown, any Governmental Authority or any other entity recognized by law;

“**Plans, Reports and Specifications**”, means any plans, drawings, architect, planner or other consultant reports and specifications relating to the redevelopment of the Lands;

“**Private Laneway**” means the laneway adjacent to the Lands and legally described as denoted by PIN 21091-0090 (LT);

“**Project Documents**” means the documents, information, reports and materials relating to the Purchased Assets which: (a) are in existence as of the Acceptance Date; (b) are in the possession and control of the Vendor as of the Acceptance Date; and (c) which have

been made available to the Purchaser, by access to the Data Room or otherwise, for review and examination including any confidential information memorandum, if applicable but excluding documents and instruments registered on title to the Lands and other information available in the public domain. Without limiting the foregoing, the Project Documents include copies of the following:

- (a) the Plans, Reports and Specifications;
- (b) any building condition reports relating to the Lands;
- (c) any environmental reports relating to the Lands;
- (d) all property tax and water/sewer bills for 2022, 2023 and 2024 to date;
- (e) any documentation relating to any realty tax appeals related to the Lands;
- (f) operating, property and security manuals with respect to the Chattels, the Buildings and the fixtures and systems located within, on or under the Lands;
- (g) copies of the Contracts;
- (h) a list of Chattels, if any;
- (i) copies of the Notices of Decision;
- (j) copies of Consent Certificates;
- (k) the Concert Settlement Agreement and other documents and agreements between the owners of the Concert Real Property and the Company;
- (l) the OLT Order;
- (m) the Zoning By-Law;
- (n) •; and
- (o) •.

“Purchase Price” means the purchase price payable for the Purchased Assets pursuant to Section 2.2 and Section 2.3;

“Purchased Assets” means, subject to the terms hereof all of the interest of the Companies in the following:

- (a) the Lands;
- (b) any Assumed Contracts and Warranties, if any;
- (c) Plans, Reports and Specifications, to the extent assignable;
- (d) any Chattels, if any;
- (e) any applications for any Authorizations relating to development of the Lands;

- (f) the right to assume KPSP Appeals, if and to the extent the KPSP Appeals have not been dismissed, and to the extent assignable;

“Purchaser’s Solicitors” means the firm of ●, or such other firm or firms of solicitors as are retained by the Purchaser from time to time and written notice of which is delivered to the Vendor;

“Realty Tax Refund” has the meaning ascribed to it in Section 2.9;

“Related Person” has the meaning in the BIA;

“Statement of Adjustments” means the statement to be prepared by the Vendor setting out the Adjustments and to be delivered as contemplated by Section 3.2.1(h);

“Transaction” means the transaction of purchase and sale contemplated pursuant to this Agreement;

“Vendor’s Agent” means ●;

“Vendor’s Solicitors” means the firm of Harrison Pensa LLP, or such other firm or firms of solicitors as are retained by the Vendor from time to time and written notice of which is delivered to the Purchaser;

“Vesting Order” means an Order or Orders of the Court in a form substantially in accordance with Schedule C ordering that the right, title and interest of the Vendor in the Purchased Assets be vested in the Purchaser free and clear of any right, title or interest of the Company or of any other Claims and Encumbrances, except for Permitted Encumbrances, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of all Persons; and

“Warranties” means any existing warranties and guarantees, if any, for the initial construction or subsequent additions to or upgrading of the Lands or the Building and the systems therein.

1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended or to any restated or successor legislation of comparable effect.

1.3 Headings

The division of this Agreement into articles, Sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Number and Gender

In this Agreement, words in the singular include the plural and vice-versa and words in one gender include all genders.

1.5 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements,

understandings, negotiations and discussions, whether oral or written, of or between the Parties.

1.6 Amendment

This Agreement may only be amended, modified or supplemented by a written agreement signed by each Party.

1.7 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.8 Schedules

The following Schedules form part of this Agreement:

- Schedule A - Approval Order
- Schedule B - Permitted Encumbrances
- Schedule C - Vesting Order
- Schedule D - Density Increase Participation Agreement
- Schedule E - Collateral Charge
- Schedule F - Description of the Lands
- Schedule G - Assignment of Contracts and Warranties
- Schedule H - Assumed Contracts
- Schedule I - HST Certificate and Indemnity

1.9 Applicable Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in Ontario (excluding any conflict of laws, rule or principle which might refer such interpretation to the laws of another jurisdiction). Each Party irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto. The parties exclude the application of the UN Convention on Contracts for the International Sale of Goods, and the International Sale of Goods Act (Ontario) as amended, replaced or re-enacted from time to time.

1.10 Currency

Unless specified otherwise, all statements of or references to dollar amounts in this Agreement are to Canadian dollars.

1.11 Third Party Beneficiaries

Nothing in this Agreement or in any Closing Document is intended expressly or by implication to, or shall, confer upon any Person other than the Parties, any rights or remedies of any kind.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

The Vendor shall sell, assign and transfer to the Purchaser and the Purchaser shall purchase the Purchased Assets on the Closing Date pursuant to the Vesting Order and the Purchaser shall pay the Purchase Price on the Closing Date, subject to the terms and conditions contained in this Agreement.

2.2 Purchaser Acknowledgements and Agreements

The Purchaser acknowledges and agrees as follows:

- (a) the Project Documents have been made available for review by the Purchaser and its representatives;
- (b) the Vendor does not guarantee title to the Purchased Assets and the Vendor shall not be required to furnish or produce any document, record or evidence of title with respect to the Purchased Assets except those in its possession, which have already been reviewed by the Purchaser, and the Purchaser has conducted or will have conducted prior to Closing such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters;
- (c) on Closing, title to the Purchase Assets shall be subject to the Permitted Encumbrances.
- (d) the Purchaser has had reasonable access to the Lands and other Purchased Assets and conducted its own investigations and inspections of the Purchased Assets and that the Purchaser is responsible to conduct its own inspections and investigations of all matters and things connected with or in any way related to the Purchased Assets, that the Purchaser has satisfied itself with respect to the Purchased Assets and all matters and things connected with or in any way related to the Purchased Assets;
- (e) the Purchaser has relied entirely upon its own investigation and inspections in entering into this Agreement, that the Purchaser is purchasing the Purchased Assets entirely on an "as is, where is" basis as at the date hereof and as at the Closing Date at the Purchaser's own risk and peril;
- (f) the Purchaser will accept the Purchased Assets in their state, condition and location on Closing and that the Purchaser hereby acknowledges that the Vendor has made no express or implied agreement, representations, warranties, statements or promises of any kind whatsoever, legal or conventional, as to the title, condition, area, square footage, suitability for development, physical characteristics, profitability, use or zoning, the existence of latent defects, outstanding work orders, deficiency notices, compliance requests, development

fees, imposts, lot levies, sewer charges, zoning and building code violations, the existence, validity, terms and conditions of any licences, permits, consents or other regulatory approvals relating to or in any way connected with the Lands or other Purchased Assets or the existence of zoning or building entitlements affecting the Lands, any environmental matter, contamination or condition (including without limitation, any remediation, containment, restoration and/or any other works related to any environmental matter, contamination, or condition, on, in, abutting, above or below the Lands) or any other aspect or characteristic of the Lands or other Purchased Assets whatsoever, or as to the compliance with any Applicable Laws affecting the Transaction, save and except as are expressly contained in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) (including sections 13, 14 and 15) do not apply to the sale of the Purchased Assets and have been waived by the Purchaser, and the Vendor, their affiliates (as defined in the *Ontario Business Corporations Act*), managers, partners, general partner, trustees, shareholders, directors, officers, employees and agents of each and any of them, and each and any of their respective heirs, successors, personal representatives, executors, trustees, successors and assigns, and all such Persons are hereby fully, finally and irrevocably released accordingly;

- (g) except as expressly set out in this Agreement, no adjustment shall be allowed to the Purchaser for any changes in condition, quality or quantity of the Purchased Assets to and including the Closing Date. Except as specifically contemplated and provided for in this Agreement, the Purchaser acknowledges that the Vendor is not required to inspect, or provide any inspection, of the Purchased Assets or any parts thereof and the Purchaser shall be deemed, at its own expense, to have relied entirely upon its own inspection and investigation of the Purchased Assets. Nothing contained herein shall require the Vendor, following Closing, to take possession of, protect, preserve, or otherwise safeguard any Purchased Assets.
- (h) any and all information relating to the Purchased Assets (including any Project Documents or any information memorandum given by the Vendor, the Company, or any other person to the Purchaser) was delivered to the Purchaser solely for the Purchaser's convenience and there is no representation or warranty of any kind whatsoever made by the Vendor nor the Company nor any other person with respect to the accuracy or completeness of any such information. Without limiting the foregoing, it is agreed that the Vendor does not represent or warrant the accuracy and/or inaccuracy and/or the completeness or incompleteness of any such information and shall not have any liability to the Purchaser as a result of any errors or omissions in such information or any use that may be made of the information by the Purchaser. The Purchaser acknowledges and agrees that the Purchaser is solely responsible for the verification of any Project Documents or other information provided hereunder.
- (i) there is no representation whatsoever as to the presence or absence of hazardous substances on, within or under the Lands including urea formaldehyde foam insulation and any "contaminant" within the meaning of the *Environmental Protection Act*. There is no representation or warranty, statement or promise concerning:
 - (i) the presence or absence of contaminants on, in or about the Lands;

- (ii) the discharge of contaminants from, on, or in relation to the Lands;
- (iii) the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario) in relation to the Lands;
- (iv) the existence, state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfill any obligations with respect to the environmental condition or quality of the Lands.

The Purchaser acknowledges and agrees that it accepts each of the Lands and other Purchased Assets subject to its environmental condition and any contamination, and acknowledges that the Purchaser will have no recourse against the Vendor for any such existing environmental condition or contamination;

- (j) the descriptions of any of the Purchased Assets contained in this Agreement and/or in the Schedules appended hereto are for the purposes of identification only and the Vendor is not liable for any error or omission in such Schedules, nor shall any such descriptions constitute or be deemed to be representations or warranties of the Vendor;
- (k) it shall be the Purchaser's sole responsibility to obtain, at its own expense, and the Purchaser shall use its best efforts to obtain, any consents, approvals or any further documentation or assurances which may be required to be obtained by Purchaser (but not the Company nor the Vendor) to carry out the terms of this Agreement.
- (l) the Purchaser shall assume, at its own cost, complete responsibility for compliance with all Applicable Laws in connection with the Purchased Assets, or the use thereof by the Purchaser, after the Closing Date.
- (m) without limiting any of the foregoing or anything else contained herein, the Purchaser further acknowledges and agrees as follows:
 - (i) the Purchaser has reviewed the OLT Order and City of Toronto Zoning By-law No. 1150-2022 (OLT) and acknowledges the terms of each such document;
 - (ii) any acquisition by the Purchaser of any rights in and to the whole or any part (including any air and/or subsurface rights) of the Gault Real Property or the 160 Real Property, including without limitation any rights to develop the Gault Real Property, the 160 Real Property and the Lands as a single, integrated project, shall be subject to the Purchaser entering into an agreement of purchase and sale with the vendor of the Gault Real Property and the 160 Real Property;
 - (iii) that the Vendor has full discretion to complete this Agreement with the Purchaser in the absence of the Purchaser entering into an agreement of purchase and sale with the vendor of the Gault Real Property and the 160 Real Property;
 - (iv) notwithstanding that the Company may have previously sought development approvals in respect of the Lands from applicable

Governmental Authorities in conjunction and coordination with the owners of the Gault Real Property and the 160 Real Property, the Vendor is under no obligation whatsoever to market or sell the Lands in conjunction with a sale by the vendors of the Gault Real Property and the 160 Real Property of such property, and the Vendor specifically reserves the right to sell the Lands independently of the Gault Real Property and the 160 Real Property;

- (v) the Purchaser has reviewed the Concert Settlement Agreement and acknowledges and agrees that the Vendor has no liability whatsoever under or in respect of the Concert Settlement Agreement, including but not limited to any obligations relating to easements, restrictions, shared facilities or other cost-sharing agreement or any other agreement, instrument, approval or other delivery that may affect the Lands in whole or in part, nor any liability in connection with any default or breach of or non-compliance with any of the terms of the Concert Settlement Agreement, nor any liability in the event that the Concert Settlement Agreement is not existing, valid or enforceable;
 - (vi) the Purchaser has reviewed the Notices of Decision and the Consent Certificates and acknowledges and agrees that the Vendor has no liability or obligation whatsoever under or in respect thereof;
 - (vii) the Purchaser acknowledges that it has satisfied itself with respect to any interests affecting the Private Laneway;
 - (viii) any acquisition by the Purchaser of any rights in and to any part of the Concert Real Property is subject to the Purchaser entering into an appropriate agreement with the owners of the Concert Real Property; and
 - (ix) the obligation of the Purchaser to complete the Transaction on the Closing Date is not subject to any condition relating to any of the foregoing matters nor any other condition except as expressly set out in Section 5.1 of this Agreement.
- (n) The Purchaser acknowledges and agrees that this Section 2.2 shall survive and not merge on Closing.

2.3 Purchase Price

The purchase price for the Purchased Assets (not including all applicable taxes, for which the Purchaser shall also be liable in accordance with Section 2.6) shall be ● Dollars (\$●), and the Purchase Price shall be allocated among the Purchased Assets as follows):

Lands and Building	\$
●	\$
●	\$
All other Purchased Assets	\$

2.4 Payment of Purchase Price

The Purchaser shall pay the Purchase Price to the Vendor as follows:

- (a) the sum of CDN \$●, which is equal to ten per cent (10%) of the Purchase Price, shall be paid by delivery of certified funds or bank draft payable to the Vendor "in Trust," with the submission of this Agreement by the Purchaser to the Vendor and held by the Vendor without interest as a deposit (the "**Deposit**") which shall be dealt with in accordance with Section 2.5; and
- (b) the balance of the Purchase Price shall be delivered to the Vendor at Closing payable in cash, by delivery of a certified cheque or bank draft or by wire transfer.

2.5 Deposit

- (a) The Deposit shall be paid by the Purchaser and held in escrow by the Vendor, until the Closing Time, at which time the Deposit shall be applied on account of the Purchase Price or as otherwise provided for in this Agreement.
- (b) If this Agreement:
 - (i) is terminated or the Closing otherwise fails to occur for any reason other than a breach by the Purchaser of its obligations under this Agreement, then the Purchaser shall be entitled to the return of the Deposit without interest within three (3) Business Days, the Purchaser shall have no recourse against the Receiver and this Agreement shall become null and void;
 - (ii) is terminated or the Closing otherwise fails to occur as a result of the breach of the Purchaser of its obligations under this Agreement, then the Vendor shall be entitled to retain the Deposit as liquidated damages, and shall be entitled to pursue all of its other rights and remedies against the Purchaser.

2.6 Adjustments

- (a) The Vendor shall endeavour to prepare and deliver to the Purchaser at least two (2) Business Days prior to the Closing Date, the Statement of Adjustments with all adjustments made as of the Closing Date. The Statement of Adjustments shall have annexed to it complete details of the calculations used by the Vendor to arrive at all of the debits and credits thereon. Except as aforesaid, no adjustments shall be allowed to the Purchaser for changes in the Purchased Assets from the time of acceptance of this Agreement up to and including the Closing Date. If the final cost or amount of any item that is to be adjusted cannot be determined at Closing, then the adjustment for such item shall be made at Closing on the basis of the cost or amount as estimated by the Vendor, acting reasonably, as of the Closing Date on the basis of the best evidence available at Closing as to what the final adjustment should be. The estimated adjustments, as determined in accordance with this Agreement, shall, for all purposes, be a final adjustment or final adjustments and the Vendor shall be under no obligation to re-adjust any item on the Statement of Adjustments after Closing, save and except for any increase to the Purchase Price resulting from the Purchaser paying any Additional Consideration to the Vendor pursuant to the Density Increase Participation Agreement. The Closing Date shall be for the Purchaser's account both as to revenue and as to expenses.

- (b) The Purchaser hereby acknowledges that there may be outstanding arrears with respect to real property taxes and utilities and agrees that the Vendor, at its option, shall be entitled to make adjustment on the Statement of Adjustments for such matters or, in the alternative, direct that a portion of the proceeds due on Closing be used to pay out such arrears. The Purchaser further covenants and agrees to deliver an irrevocable direction to the applicable Governmental Authority authorizing it to pay to the Vendor any realty tax rebate (together with interest thereon) obtained by the Vendor for the period prior to Closing, provided that in the event the Governmental Authority does not deliver such rebate directly to the Vendor, the Purchaser hereby irrevocably undertakes to deliver same to the Vendor upon either receipt or readjustment of same. This Section 2.6(b) shall survive Closing.

2.7 Density Increase Price Escalation Provision

Notwithstanding any other provision herein, it is expressly acknowledged and agreed that the Purchase Price shall be increased, and the Purchaser shall pay any Additional Consideration owing to the Vendor, in accordance with the Density Increase Participation Agreement. The Purchaser shall deliver to the Vendor on Closing as security therefor either the Collateral Charge or, at the Purchaser's option, the Letter of Credit.

2.8 Taxes

The Purchaser shall be liable for and shall pay, in addition to the Purchase Price, all federal and provincial sales taxes, land transfer taxes and any other taxes or duties payable in connection with the conveyance and transfer of the right, title and interest, if any, of the Vendor in and to the Purchased Assets (collectively, the "**Taxes**") to the Purchaser and the Purchaser undertakes and agrees to pay all such Taxes on Closing, subject to the Purchaser's right to deliver the HST Certificate and Indemnity, and provided that the Vendor and the Purchaser agree that the appropriate elections with respect to the payment of Taxes shall be made. The Purchaser shall indemnify and agrees to hold and save the Vendor harmless from and against any and all costs, expenses, liabilities and damages incurred or suffered by the Vendor as a result of the failure of the Purchaser to pay any of the Taxes exigible in connection with the Transaction.

2.9 Realty Tax Refunds and Appeals

The Purchaser shall account to the Vendor for any realty tax refunds, credits, abatements or reductions received by the Purchaser (each being a "**Realty Tax Refund**"), to the extent such credits, abatements or reductions are attributable to reassessments or reductions of realty taxes for any period prior to the Closing Date. The Vendor may (but shall not be obligated to) continue any appeals with respect to any realty taxes or assessments for periods prior to the ● taxation year and shall be entitled to all Realty Tax Refunds in respect thereof in accordance with this provision. If the Vendor elects not to continue to pursue any such appeal, the Purchaser may (but shall not be obligated to) assume carriage thereof. If the Vendor has not, prior to the Closing Date, commenced an appeal for any such taxation year, the Purchaser may do so after Closing at its own expense if permitted by applicable law, provided that any increase in realty taxes resulting from appeals assumed or commenced by the Purchaser pursuant to this subsection shall, as between the Vendor and the Purchaser, be solely for the Purchaser's account. The party having carriage of any such appeal or reassessment of realty taxes shall advise the other party of the status of any such appeal or reassessment as developments occur or upon request. No such appeal or reassessment shall be settled or compromised by the party

having carriage without the prior consent of the other party, such consent not to be unreasonably withheld or delayed, if the other party would be adversely affected in any way by the outcome of the appeal or reassessment. The Vendor and the Purchaser shall jointly direct the relevant municipality to pay any Realty Tax Refunds or other amounts arising from any such appeals or reassessments of realty taxes for calendar years including and prior to • to the Vendor and the Purchaser (as follows) who shall release and distribute such Realty Tax Refunds or other amounts firstly to the Vendor and Purchaser for reimbursement of their respective out of pocket costs (including any fee payable to any consultant) incurred in connection with such appeals, and any balance shall be paid to the Vendor. This Section 2.9 shall not merge upon but shall survive Closing.

2.10 Assumption of Liabilities

- (a) The Purchaser shall not assume and shall not be responsible for any liabilities or obligations of the Vendor or the Company other than as contemplated herein (and in such latter case only, the Purchaser shall assume, and pay for, and discharge and perform all such liabilities and obligations).
- (b) The Purchaser acknowledges and agrees that it shall assume as of the Closing Date and shall pay for, and discharge and perform, the liabilities and obligations under and in connection with Permitted Encumbrances, the Assumed Contracts, any Warranties, any Authorizations and any limitations and restrictions on the use or application of any of the Purchased Assets, except only to the extent that any such liabilities and obligations are expunged and discharged by the Vesting Order.

2.11 Capacity of the Receiver

The Vendor is entering into this Agreement solely in its capacity as the Receiver of the Assets pursuant to the Appointment Order, and not in its personal or any other capacity, and the Vendor and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement or otherwise in connection with this Agreement or the Transaction. Any claim against the Vendor shall be limited to and only enforceable against the Assets then held by or available to it in its said capacity as Receiver of the Assets and shall not apply to its personal property and asset held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Lands.

ARTICLE 3 CLOSING

3.1 Time and Place of Closing

The Closing shall take place at the Closing Time at the offices of the Vendor's Solicitors, 130 Dufferin Avenue, Suite 1101, London, Ontario, or at such other place as may be agreed upon by the Vendor and the Purchaser, subject to Section 6.8 hereof.

3.2 The Closing

3.2.1 Vendor's Deliveries

On or before the Closing Date, the Vendor shall execute (where applicable) and deliver to the Purchaser or the Purchaser's Solicitors the following:

- (a) the Receiver's Certificate in the form appended as Schedule "A" to the Vesting Order;
- (b) the Approval Order and the Vesting Order;
- (c) a bill of sale to convey, assign and transfer the Chattels (if any), Plans, Reports and Specifications and rights to assume the KPSP Appeals to the Purchaser;
- (d) a Transfer/Deed with respect to the Lands
- (e) the Density Increase Participation Agreement;
- (f) the Assignment of Contracts and Warranties executed by the Vendor, if applicable;
- (g) the certificate with respect to the Vendor's representations and warranties referred to in Section 5.1.1;
- (h) the Statement of Adjustments, which the Vendor shall endeavour to deliver to the Purchaser at least two (2) Business Days prior to the Closing Date with all back-up calculations;
- (i) all master keys (and duplicate keys, if any), together with all combinations as may be applicable, for all locks in the Building which are in the Vendor's possession or in the possession of its property manager, if any;
- (j) a direction with respect to payment of the balance of the Purchase Price; and
- (k) any other documents required by this Agreement.

3.2.2 Purchaser's Deliveries

On the Closing Date, the Purchaser shall execute (where applicable) and deliver to the Vendor or the Vendor's Solicitors the following:

- (a) the balance of the Purchase Price in accordance with Article 2;
- (b) if applicable, a direction to Vendor with respect to the transfer of title to any of the Purchased Assets;
- (c) the Density Increase Participation Agreement and either the Collateral Charge or, if applicable, the Letter of Credit;
- (d) the Assignment of Contracts and Warranties;
- (e) the certificate with respect to the Purchaser's representations and warranties referred to in Section 5.1.1;
- (f) the HST certificate and indemnity referred to in Section 3.2.3;
- (g) an acknowledgement of the Purchaser with respect to the matters set out in Section 2.2; and
- (h) any other documents required by this Agreement.

3.2.3 With respect to harmonized sales tax (“**HST**”) payable by the Purchaser pursuant to the Excise Tax Act (Canada) (the “**Act**”), the parties covenant and agree that, if on Closing, the Purchaser is a registrant for purposes of the Act, then, to the extent provided under the Act:

- (a) the Vendor shall not collect HST from the Purchaser in respect of the Transaction and the Purchaser shall file returns and remit such HST to the applicable Authorities, when and to the extent required by the Act;
- (b) the Purchaser shall indemnify the Vendor and hold the Vendor harmless from any liability under the Act arising because of breach of the obligations of the Purchaser set out in this Section 3.2.3 or arising under the Act, together with all losses, costs and expenses resulting from such breach; and
- (c) the Purchaser shall provide a certificate and indemnity in the form set out in Schedule I on Closing confirming its HST registration number under the Act,

failing which, the Purchaser shall pay to the Vendor on Closing the HST payable by the Purchaser with respect to the Transaction and the Vendor shall remit such HST to the applicable Authorities in accordance with the Act. The obligations of the Purchaser and the Vendor under this Section 3.2.3 shall not merge on, and shall survive, Closing. Notwithstanding the foregoing, the Purchaser shall pay, and the Vendor shall collect, on Closing any HST exigible on ●, and the price allocated to ● is as set out in Section 2.3.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Vendor

The Vendor represents and warrants to the Purchaser as follows and acknowledges that the Purchaser is relying upon such representations and warranties in entering into this Agreement:

- (a) The Vendor has been appointed Receiver of the Company pursuant to the Appointment Order.
- (b) The Vendor has done no act to dispose of or encumber any of the Purchased Assets.
- (c) The Vendor is not a non-resident person of Canada within the meaning of the *Income Tax Act* (Canada).
- (d) The Vendor: (i) has duly executed this Agreement and (ii) has, or will have after obtaining the Approval Order and the Vesting Order, all necessary power, authority and capacity to enter into this Agreement and the Closing Documents to which it is a party and to carry out its obligations under this Agreement and the Closing Documents to which it is or will be party to in connection with the Transaction and to perform its obligations hereunder and thereunder.
- (e) There are no outstanding options, agreements of purchase and sale or other agreements or commitments obligating the Vendor to sell any of the Purchased Assets other than this Agreement;

- (f) This Agreement has been, and each Closing Document to which the Vendor is a party will on Closing be, duly executed and delivered by the Vendor, and this Agreement constitutes, and each Closing Document to which the Vendor is a party will, on Closing, constitute, a valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms.

4.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying upon such representations and warranties in entering into this Agreement:

- (a) The Purchaser is a corporation duly incorporated, organized, and validly existing under the laws of its jurisdiction of incorporation. No proceedings have been taken or authorized by the Purchaser or, to the best of the Purchaser's knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of the Purchaser.
- (b) The Purchaser has all necessary power and capacity to execute and deliver, and to observe and perform its covenants and obligations under, this Agreement and the Closing Documents to which it is a party. The Purchaser has taken all corporate action necessary to authorize the execution and delivery of, and the observance and performance of, its covenants and obligations under this Agreement and the Closing Documents to which it is or shall be a party.
- (c) This Agreement has been, and each Closing Document to which the Purchaser is a party will on Closing be, duly executed and delivered by the Purchaser, and this Agreement constitutes, and each Closing Document to which the Purchaser is a party will, on Closing, constitute, a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.
- (d) The Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada).
- (e) The Purchaser is an HST registrant under the Excise Tax Act (Canada).
- (f) Neither the execution and delivery of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under the constating documents or by-laws of the Purchaser or any indenture, mortgage, deed of trust or any other agreement to which the Purchaser is a party or by which it is bound.

4.3 Interpretation

Each representation and warranty made by a Party in this Agreement shall be treated as a separate representation and warranty in respect of each statement made and the interpretation of any statement made shall not be restricted by reference to, or inference from, any other statement made in a representation and warranty of such Party.

4.4 Commission

Each Party represents and warrants to each other Party that no other Party will be liable for any brokerage commission, finder's fee or other similar payment in connection with the

transactions contemplated hereby because of any action taken by, or agreement or understanding reached by, that Party.

4.5 Survival Provisions

All representations, warranties, statements, covenants and agreements made by the Purchaser in this Agreement or any Closing Document shall survive the Closing indefinitely.

ARTICLE 5 CONDITIONS PRECEDENT

5.1 Conditions of Closing

Either the Purchaser or the Vendor shall be obliged to complete the Closing only if each of the conditions precedent set out below in Section 5.1.1 through Section 5.1.5 inclusive, has been satisfied in full at or before the Closing Time.

5.1.1 Accuracy of Representations and Performance of Covenants

At the Closing Time, all of the representations and warranties of each of the Purchaser and the Vendor made in or pursuant to this Agreement shall be true and correct as if made at and as of the Closing Time (regardless of the date as of which the information in this Agreement or in any schedule or other document made pursuant hereto is given) except as such representations or warranties may be affected by the appeal of any Court Order referred to herein. At the Closing Time, each of the Purchaser and the Vendor shall have observed or performed in all respects all of the obligations, covenants and agreements which it must perform at or before the Closing Time. Each of the Purchaser and the Vendor shall have received immediately prior to the Closing Time a certificate from the other certifying, to the best of its knowledge, information and belief (after due enquiry) that the conditions in this Section 5.1.1 to be satisfied by it have been satisfied.

5.1.2 Consents, Authorizations and Registrations

All consents, approvals, Orders and authorizations of any Person or Governmental Authority (or registrations, declarations, filings or recordings with any of them), required for the Closing (other than routine post-closing notifications or filings), shall have been obtained or made on or before the Closing Time.

5.1.3 Litigation

No Order shall have been entered that prohibits or restricts the Closing. Neither of the Parties, nor any of their respective directors, officers, employees, or agents, shall be a defendant or third party to or threatened with any litigation or proceedings, before any court or Governmental Authority which, in the opinion of either the Purchaser or the Vendor, acting reasonably, could prevent or restrict that Party from performing any of its obligations in this Agreement or any Closing Document, including the appeal or any threatened appeal of the Vesting Order or the Approval Order.

5.1.4 Receipt of Closing Documentation

All documentation relating to the sale and purchase of the Purchased Assets and such other Closing Documents relating to the due authorization and completion of the sale and purchase and all actions and proceedings taken on or prior to the Closing in connection

with the performance by the Purchaser and the Vendor of their obligations under this Agreement shall be satisfactory to each of the Purchaser, the Vendor and their respective counsel, as applicable. Each of the Purchaser and the Vendor shall have received copies of the Closing Documents and all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to each of the Purchaser, the Vendor and their respective counsel.

5.1.5 **Orders**

The Vendor shall have obtained the Vesting Order and the Approval Order. The Vendor shall not have received notice of appeal in respect of the Approval Order or the Vesting Order.

5.2 **Waiver**

Any Party may waive, by notice to the other Parties, any condition set forth in this Article 5 which is for its benefit. No waiver by a Party or any condition, in whole or in part, shall operate as a waiver of any other condition.

5.3 **Failure to Satisfy Conditions**

If any condition set forth in Section 5.1 is not satisfied at the Closing Time, or if it becomes apparent that any such condition can not be satisfied at the Closing Time, the Party entitled to the benefit of such condition (the "**First Party**") may terminate this Agreement by notice in writing to the other Party and in such event, unless the other Party can show that the condition or conditions which have not been satisfied and for which the First Party has terminated this Agreement are reasonably capable of being performed or caused to be performed by the First Party or have not been satisfied by reason of a default by the First Party hereunder, the Parties shall be released from all obligations hereunder.

5.4 **Treatment of Project Documents**

If, for any reason, the Transaction is not completed, the Purchaser shall, forthwith upon request, return to the Vendor or destroy all of the Project Documents and any other files and information made available to the Purchaser, other than electronic files which the Purchaser agrees to keep confidential.

ARTICLE 6 GENERAL

6.1 **Non-Disclosure of Transaction**

In accordance with the Confidentiality Agreement, the Purchaser agrees that (without the express written consent of the Vendor) it will not, and will cause its officers, directors, employees, representatives and advisors not to, disclose or permit to be disclosed to any Person, any information relating to the Purchase Price or any of the other terms of this Agreement, other than to the equity holders of the Purchaser and Persons solicited by the Purchaser to provide financing in connection with the Transaction (and the Purchaser shall ensure, for the benefit of the Vendor, that such parties shall treat all such information in the strictest confidence and the Purchaser shall indemnify the Vendor in that regard).

6.2 Risk of Loss

Up to the time of the Closing, the Purchased Assets shall be and remain at the risk of the Vendor, and shall thereafter be at the Purchaser's risk. Pending Closing, the Vendor will hold all insurance policies and any proceeds derived therefrom and related to the Purchased Assets in trust for the parties as their respective interests may appear and, in the event of loss or damage to the Purchased Assets occurring before such time by reason of fire, tempest, lightning, earthquake, flood or other act of God, explosion, riot, civil commotion, insurrection, war or otherwise howsoever, the amount of such insurance proceeds paid or payable to the Vendor with respect thereto shall be applied in reduction of the Purchase Price and the transfer of the Purchased Assets to the Purchaser shall proceed in the manner described herein and without any reduction or adjustment to the Purchase Price or any other change in terms of this Agreement.

6.3 Expenses

Each Party shall pay all expenses it incurs in authorizing, preparing, executing and performing any aspect of the Transaction contemplated by this Agreement, whether or not the Closing occurs, including all fees and expenses of its legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.

6.4 Time

Time is of the essence of each provision of this Agreement.

6.5 Planning Act

This Agreement is subject to compliance with the subdivision control provision of the *Planning Act* (Ontario), and this Agreement shall be effective to create an interest in the Purchased Real Property only if such provisions are complied with on or prior to the Closing Date.

6.6 Solicitors as Agents

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor, and any tender of Closing Documents and the balance of the Purchase Price due on Closing may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

6.7 Electronic Registration

The Vendor and the Purchaser covenant and agree to cause their respective solicitors to enter into a document registration agreement substantially in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 or any successor version thereto, as the same may be amended by the agreement of both the Vendor's Solicitors and the Purchaser's Solicitors (the "**DRA**"), together with the requirement that the registering solicitor shall be obliged to provide the non-registering solicitor with evidence of the completion of registrations of electronic documents in the electronic registration system (the "**System**") upon the registration of the electronic documents promptly upon completion thereof. It is understood and agreed that the DRA shall outline or establish the procedures and timing for completing the Transaction, and shall be executed by both the Vendor's Solicitors and the Purchaser's Solicitors and

exchanged between such solicitors (such that each solicitor has a copy of the DRA duly executed by both solicitors) by no later than one Business Day before the Closing Date. The delivery and exchange of the Closing Documents and funds, and the release thereof to the Vendor and the Purchaser, as the case may be, shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents and/or funds will be required to hold them in escrow and will not be entitled to release them except in strict accordance with the provisions of the DRA.

6.8 Tender of Documents

Any tender of documents and money pursuant to this Agreement may be made on the Vendor or on the Purchaser or their respective solicitors, and money may be tendered by wire transfer. Notwithstanding the foregoing sentence, as the System is operative and mandatory for the Purchased Assets, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (the “**Tendering Party**”) upon the other party (the “**Other Party**”) when the Tendering Party’s solicitor has: (i) delivered electronically executed copies of all Closing Documents, keys, if any, and funds, if any, to the Other Party’s solicitor in accordance with the provisions of this Agreement and the DRA; (ii) advised the Other Party’s solicitor, in writing, that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and (iii) completed all steps required by the System in order to complete the Transaction that can be performed or undertaken by the Tendering Party’s solicitor without the co-operation or participation of the Other Party’s solicitor, including electronically signing the Transfer for completeness but not for release until all deliveries required hereunder have been delivered in accordance with the terms hereof) all without the necessity of personally attending upon the Other Party or the Other Party’s solicitor with the aforementioned documents and without any requirement to have an independent witness evidence the foregoing.

6.9 Notices

Any notice, demand or other communication (in this Section, a “notice”) required or permitted to be given or made hereunder shall be given in writing and addressed as follows:

- (a) In the case of a notice to the Vendor, addressed to it at:

MSI Spergel Inc., in its capacity as the Court appointed Receiver of all of the property and assets of 1175484 Ontario Inc.
200-505 Consumers Road
Toronto, Ontario
M2J 4V8

Attention: Mukul Manchanda, Managing Partner
Tel.: (416) 498-4314
Email: mmanchanda@spergel.ca

Attention: Philip H. Gennis, Licensed Insolvency Trustee
Tel.: (416) 498-4325
Email: pgennis@spergel.ca

and with a further copy to the Vendor's Solicitors at:

Harrison Pensa LLP
Barristers & Solicitors
130 Dufferin Avenue
Suite 1101
London, ON N6A 5R2

Attention: Tim Hogan
Tel.: (519) 661-6743
Email: thogan@harrisonpensa.com

(b) In the case of the Purchaser:

●

Attention: ●
Tel.: ●
Email: ●

and with a further copy to the Purchaser's Solicitors at:

●

Attention: ●
Tel.: ●
Email:

Any such notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the Business Day of such delivery and if sent by email with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received.

6.10 Public Announcements / Confidentiality of Agreement

Before the Closing Date, no Party shall make any public statement or issue any press release concerning the transactions contemplated by this Agreement except as may be necessary, in the opinion of counsel to the Party making such disclosure, to comply with the requirements of all Applicable Law or in connection with the obtaining of Orders necessary for the performance of this Agreement. If any such public statement or release is so required, the Party making such disclosure shall consult with the other Parties prior to making such statement or release, and the Parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such statement or release which is satisfactory to all Parties. This Section **Error! Reference source not found.** shall not apply to the report to be made by the Vendor to the Court in connection with seeking the Approval Order and the Vesting Order. The Parties expressly acknowledge and agree that the Vendor shall seek a Sealing Order from the Court with respect to this Agreement and the Purchase Price such that certain of the terms of this Agreement shall not become public until after Closing has been fully contemplated.

6.11 Assignment

(a) The Purchaser may not assign any or all rights or benefits under this Agreement to any Person without the Vendor's written consent;

- (b) Except as provided in Section 6.11(a), no assignment of benefits or arrangement for substituted performance by one Party shall be of any effect.
- (c) This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation or statutory arrangement of any Party) and permitted assigns.

6.12 Further Assurances

Each Party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other Party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Agreement and each Closing Document.

6.13 Remedies Cumulative

The rights and remedies of the Parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any Party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such Party may be lawfully entitled for the same default or breach.

6.14 Counterparts

This Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

6.15 Irrevocable Offer

This Agreement shall constitute an irrevocable offer to purchase by the Purchaser which will be open for acceptance by the Vendor until 5:00 p.m. (Eastern Time) on the ● day of ●, 20●. If this Agreement has not been fully accepted in accordance with its terms by 5:00 p.m. (Eastern Time) on the ● day of ●, 20●, such offer shall be null and void and the Purchaser shall have no obligation to the Vendor and vice versa.

IN WITNESS WHEREOF this Agreement has been executed by the Purchaser on the ● day of ●, 20●

[COMPANY NAME]

Per: _____
Name:
Title:

Per: _____
Name:

Title:

I/We have the authority to bind the corporation

IN WITNESS WHEREOF this Agreement has been executed by MSI Spergel Inc., solely in its capacity as the Court appointed Receiver of 1175484 Ontario Inc. and not in any other capacity on the ● day of ●, 20●.

MSI SPERGEL INC., solely in its capacity as the Court appointed Receiver of 1175484 Ontario Inc. and not in any other capacity and with no personal or corporate liability

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation

**SCHEDULE A
APPROVAL ORDER**

**SCHEDULE B
PERMITTED ENCUMBRANCES**

**SCHEDULE C
VESTING ORDER**

SCHEDULE D
TERMS OF DENSITY INCREASE PARTICIPATION AGREEMENT

[terms TBD]

The Density Increase Participation Agreement shall contain the following terms and conditions:

1. The following terms shall have the meanings hereinafter ascribed to them:
 - (a) **“Additional Consideration”** means an amount calculated as follows:

Additional Density (in square metres) × (\$● per square foot).
 - (b) **“Additional Density”** means Gross Floor Area permitted on the Lands in excess of the Base GFA.
 - (c) **“Base GFA”** means 1,794 square metres.
 - (d) **“Gross Floor Area”** means the Gross Floor Area for residential uses within the meaning of City of Toronto Zoning By-law No. 1150-2022.
 - (e) **“Upzoning Event”** means a final and binding zoning by-law or minor variances that is not subject to appeal which results in the total maximum Gross Floor Area permitted on the Lands being greater than the Base GFA. For greater certainty, such proceedings shall be deemed to be final and binding notwithstanding that the site plan approval or decision or by-law requires agreements to be entered into with the City of Toronto or other governmental authority.
2. To the extent that an Upzoning Event has occurred to create Additional Density, the Purchaser shall pay to the Vendor the Additional Consideration within thirty (30) days following the date of the Upzoning Event. An Upzoning Event is deemed to be final and binding notwithstanding the fact that the lands may be subject to a holding symbol and additional conditions.
3. The Purchaser shall regularly keep the Vendor informed as to the status of any Planning Act or *Ontario Heritage Act* applications initiated by or on behalf of the Purchaser (including but not limited to any zoning by-law amendment or minor variance applications) or any actions initiated by the City of Toronto or any other government body to amend development approvals for the Lands [or the Gault Real Property or 160 Real Property (together, the **“Adjoining Lands”**)] (including but not limited to any zoning by-law amendment) within ● days of such application being made or notice being received..
4. No payment on account of Additional Consideration shall result in the merger of the Purchaser’s obligation to make further payments in the event of a subsequent Upzoning Event.
5. Any non-payment by the Purchaser of amounts owing under the Density Increase Participation Agreement shall bear interest from the due date to the date of payment in full at the annual interest rate of fifteen per cent (15%) calculated and compounded monthly.
6. The Additional Consideration, including interest thereon owing to the Vendor from time to time, shall be collaterally secured by the Collateral Charge or, at the option of the

Purchaser, by the Letter of Credit. In the event the issuer of the Letter of Credit delivers notice to the Vendor or the Vendor otherwise becomes aware that the issuer does not intend to renew the Letter of Credit, the Vendor shall be entitled to draw upon the Letter of Credit the full amount then secured thereby.

7. The obligations under the Density Increase Participation Agreement shall survive Closing and shall be binding upon the Purchaser and its successors and assigns for a period expiring on the earlier of (i) twenty (20) years following the Closing Date, (ii) the date of registration of a condominium corporation or corporations on the Lands such that the entire Lands are subject to a Plan or Plans of Condominium, and (iii) if the development is rental building, occupancy of more than the greater of 80% of rental units or 80% of the floor area of the building. The Purchaser shall cause any purchaser or mortgagee of all or part of the Lands (other than individual condominium unit purchasers or their lenders, or any governmental or quasi-governmental conveyances) to acknowledge the provisions of the Density Increase Participation Agreement and to confirm its agreement in writing with the Vendor to be bound by the Density Increase Participation Agreement as if it were the original Purchaser and to pay the Additional Consideration.
8. Any dispute as to the calculation of Additional Consideration shall be resolved by arbitration in accordance with arbitration provisions to be more particularly set out in the Density Increase Participation Agreement.
9. In the event that the Purchaser purchases all or part of the Adjoining Lands prior to, on or within twenty (20) years following the Closing Date, the Purchaser shall deliver written notice of the acquisition of the Adjoining Lands or any part thereof within five (5) Business Days following completion thereof and upon completion of such acquisition the following terms of the Density Increase Participation Agreement shall be deemed to be amended as set out below automatically, without the necessity of any further action by the Vendor or the Purchaser. Failure by the Purchaser to deliver notice of acquisition of the Adjoining Lands or any part thereof as contemplated herein shall not affect the obligations of the Purchaser under the Density Increase Participation Agreement, as so amended.

“1. The following terms shall have the meanings hereinafter ascribed to them:

- (a) **“Additional Density”** means the maximum gross floor area permitted on the Lands and the whole or any part of the Adjoining Lands acquired by the Purchaser in excess of the Base GFA.
- (b) **“Base GFA”** means 10,600 square metres.
- (c) **“Upzoning Event”** means a final and binding zoning by-law or minor variance that is not subject to appeal which results in the total maximum Gross Floor Area permitted on the Lands and the Adjoining Lands being greater than the Base GFA. For greater certainty, such proceedings shall be deemed to be final and binding notwithstanding that the site plan approval or decision or by-law requires agreements to be entered into with the City of Toronto or other governmental authority.

“2. To the extent that an Upzoning Event has occurred to create Additional Density, the Purchaser shall pay the Additional Consideration within thirty (30) days following the date of the Upzoning Event to the Vendor and the owner of the Adjoining Lands in their respective proportions based upon where the Additional Density is located. An Upzoning

Event is deemed to be final and binding notwithstanding the fact that the lands may be subject to a holding symbol and additional conditions.

“3. The Purchaser shall regularly keep the Vendor informed as to the status of any Planning Act or *Ontario Heritage Act* applications initiated by or on behalf of the Purchaser (including but not limited to any zoning by-law amendment or minor variance applications) or any actions initiated by the City of Toronto or any other government body to amend development approvals for the Lands or the Adjoining Lands (including but not limited to any zoning by-law amendment) within • days of such application being made or notice being received.”

SCHEDULE E COLLATERAL CHARGE

The Collateral Charge shall contain provisions relating to the following matters:

- (a) the chargor may apply to bring the charged lands under the *Land Titles Act* (Ontario) and/or *Condominium Act* (Ontario) and/or apply for plan(s) of subdivision under the *Planning Act* (Ontario) and the chargee will consent to any and all requisite applications with respect thereto;
- (b) the chargor may commence and complete servicing and/or construction thereon without being deemed to have committed waste;
- (c) provided the chargor is not in default under the Collateral Charge, the chargee shall execute and deliver, without any principal repayment and without any interest repayment hereunder and without any fee or charge, other than actual and reasonable out-of-pocket legal fees and disbursements incurred by the chargee, all consents and acknowledgments that may be reasonably required by the chargor to re-zone and/or subdivide the Lands to permit the development thereof, or to register the Lands under the Land Titles System pursuant to the provisions of the *Planning Act*, R.S.O. 1990, as amended, and/or any other legislation as well as any consents and acknowledgments required by the chargor in connection with the entering into of any condominium agreement, site plan agreement, engineering agreement, development agreement or similar agreement with any governmental authorities and/or any public or private utilities, and the chargee shall also consent to (and postpone this Collateral Charge in favour of) any easements now or hereafter granted to any such governmental authorities and/or to any public or private utility authorities in respect of the provision of services to the Lands or other lands, including but not limited to easements in connection with the installation, maintenance and/or repair or relocation of storm and sanitary sewers, gas, telephone, television, hydro-electric and water services and/or similar services (together with any easements for access and egress purposes in favour of any property adjacent to the Lands), provided that the chargee shall not be responsible for any financial or other obligations incurred in connection therewith, and further provided that the charger shall pay any reasonable legal fees and disbursements incurred by the chargee in connection therewith;
- (d) provided the chargor is not in default under the Collateral Charge, the chargee shall execute and deliver, without any principal repayment, and without any interest repayment hereunder and without any fee or charge, other than actual and reasonable out-of-pocket legal fees and disbursements incurred by the chargee, such partial discharges of this Collateral Charge as may be reasonably required in connection with the giving of any road widenings, one foot reserves, daylight corners, park dedications, or other land contribution(s) to any governmental authorities, required as part of the development approval process in respect of the Lands, provided that the charger shall pay any reasonable legal fees and disbursements incurred by the chargee in connection therewith;
- (e) this Collateral Charge may not be assigned by the chargee or the chargor without the express prior written consent of the other party, except that the chargee shall have the right to assign this Collateral Charge to (i) any affiliate, as such term is defined in the *Business Corporations Act* (Ontario) or its successor legislation, (ii) the City of Toronto, or (iii) to any agency, board or corporation of the City of Toronto;
- (f) the chargee shall not be required to postpone and subordinate the Collateral Charge to any mortgage or mortgages granted by the Purchaser against the security of the Lands

except that the chargee agrees to postpone and subordinate, without any fee or charge other than actual and reasonable out-of-pocket legal fees and disbursements incurred by the chargee, the Collateral Charge to (i) any financing in connection with the acquisition of the Lands, (ii) any bona fide construction financing, and (iii) any charge in connection with security for a Tarion deposit bond and/or any excess condominium deposit insurance ("ECDI") provider, provided that (A) the loan to value ratio of the total financing secured pursuant to (i) and (ii) above does not exceed **[seventy-five percent (75%)]** of the sum of (I) the then current fair market value of the Lands and (II) the reasonably expected hard and soft costs associated with the development of the Lands (both as determined to the satisfaction of the lender of the financing secured pursuant to (ii) above and the chargee, acting reasonably), and (B) the amount secured pursuant to (iii) above does not exceed one hundred percent (100%) of any unit purchasers' deposits in respect of which such Tarion or ECDI security has been obtained, satisfactory evidence of all of which shall be provided by the chargor to the chargee;

- (g) the chargee agrees, upon request, to enter a subordination and standstill agreement in favour of any lender providing the chargor's construction financing contemplated in (f) above, which agreement shall permit the chargee to receive any amounts owing to it under the Collateral Charge so long as the chargor is not in default under such construction financing, shall provide for the chargee to execute such other documents, agreements and assurances as may be reasonably requested by such construction lender with respect to such subordination and standstill agreement, and shall otherwise be on such reasonable commercial terms for such agreements as are acceptable to the chargee and to the chargor's construction lender, each acting reasonably.
- (h) the chargor shall pay any reasonable legal fees incurred by the chargee in dealing with requests from the chargor relating to the Collateral Charge following registration, and the chargee may require that such fees be paid in advance prior to executing any documents required by the chargor;
- (i) the Collateral Charge shall be collateral to, and secure all of the chargor's obligations under, the Density Increase Participation Agreement, with the intent that a default under the Density Increase Participation Agreement shall constitute a default under the Collateral Charge, entitling the chargee to exercise any and all remedies available thereunder or at law;
- (j) provided the chargor is not in default under the Density Increase Participation Agreement or the Collateral Charge and subject to compliance with the *Planning Act* (Ontario) at the chargor's expense (if applicable), the Collateral Charge shall be discharged by the chargee, without any principal or interest repayment and without any fee or charge, other than actual out-of-pocket legal fees and disbursements incurred by the chargee, from that portion of the charged lands in respect of which a condominium plan under the *Condominium Act* (Ontario) has been registered, and in such event the principal amount secured by the Collateral Charge shall be automatically partially reduced in the same proportion that the Gross Floor Area allocated to or permitted for such portion of the charged lands so discharged bears to the aggregate permitted Gross Floor Area for all the charged lands. Without limiting the generality of the foregoing, provided the chargor is not in default under the Density Increase Participation Agreement or the Collateral Charge, the chargee acknowledges and agrees that the chargor will be required to provide clear title to all arms-length purchasers of any residential units within any registered condominium plan and agrees to grant partial discharges for any portions of the charged lands required to be conveyed as and when necessary, and in particular shall provide in escrow to the chargor's solicitors registrable partial discharges of the Collateral Charge in

respect of any such residential units no later than five (5) days prior to any scheduled closing or closings in respect of such residential units as shown on a closing list which will be provided by the chargor to the chargee no later than thirty (30) days before the scheduled closings. The chargor and chargee agree that the draft discharges to the extent possible will be prepared in bulk. The chargor shall be responsible for any reasonable out-of-pocket legal fees and disbursements incurred by the chargee in respect of such discharges; and

- (k) the principal amount secured by the Collateral Charge shall be automatically partially reduced by the amount of any Additional Consideration paid by the chargor to the chargee at the time such payments are paid to the chargee. The Collateral Charge shall be deemed to have matured on that date which is twenty (20) years following the date of registration against the charged lands, on or after which date the chargor shall be entitled to request, subject to payment of any Additional Consideration then owing to the chargee under the Density Increase Participation Agreement, a complete and registerable discharge of the Collateral Charge, and upon receipt of payment of any such Additional Consideration, or upon determination that no Additional Consideration is due and owing, the chargee shall execute and deliver a registrable discharge of the Collateral Charge and the chargor shall pay the chargee's reasonable out-of-pocket legal fees and disbursements incurred in the preparation and registration of such discharge;
- (l) paragraphs 7, 14, 18 and 23 of Standard Charge Terms No. 200033 shall be deleted from the Collateral Charge;
- (m) notwithstanding any provision of the Collateral Charge to the contrary, the chargor shall be entitled, upon delivery to the chargee of a Letter of Credit, as defined in (n) below, to a complete discharge of the Collateral Charge, the intent being that such Letter of Credit shall stand as replacement or substitute security for the chargor's obligations under the Density Increase Participation Agreement; and
- (n) Letter of Credit means an irrevocable standby letter of credit issued in favour of the chargee by a Schedule I chartered Canadian bank in the principal amount equal to the then outstanding principal amount of the Collateral Charge, collaterally securing the chargor's obligations under the Density Increase Participation Agreement, with an initial term of one year, renewing automatically for successive one year terms, and providing that, in the event the issuing bank intends not to renew, the bank shall provide not less than thirty (30) days prior written notice of such intention to the chargee allowing the full amount of the Letter of Credit to be drawn.

**SCHEDULE F
LEGAL DESCRIPTION OF LANDS**

SCHEDULE G
FORM OF ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND WARRANTIES

**SCHEDULE H
ASSUMED CONTRACTS**

SCHEDULE I
HST CERTIFICATE AND INDEMNITY

THE TORONTO-DOMINION BANK

v.

1871 BERKELEY EVENTS INC., et al.

Applicant

Respondents

Court File No. CV-23-00693494-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

**SUPPLEMENT TO THE
FIRST REPORT OF RECEIVER**

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