

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

B E T W E E N:

CANADIAN EQUIPMENT FINANCE & LEASING INC.

Applicant

- and -

EVELEY INTERNATIONAL CORPORATION

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*

RESPONDING APPLICATION RECORD

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Barristers and Solicitors
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Corporation

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Court File No. CV-20-00639897-00CL

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APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*

AFFIDAVIT OF DAWN-MARIE EVELEY

(Sworn on April 22, 2020)

I, DAWN-MARIE EVELEY, of the community of Stoney Creek, in the City of Hamilton,
Province of Ontario MAKE OATH AND SAY:

1. I am the president Eveley International Corporation (“**Eveley**”) and as such have personal knowledge of the matters to which I hereinafter depose. Where such knowledge is based upon the information of others, I verily believe such information to be true.

2. Eveley, a family-owned manufacturer of trailer axles and suspensions, has been in business since September 1968. Its predecessor corporation – Eveley Alignment & Spring Service Limited (“**Old Eveley**”) – was incorporated as an Ontario corporation

in 1972. Eveley, as it is corporately constituted today, was formed on January 1, 2019 by an amalgamation between Old Eveley and two other Ontario Corporations.

3. Eveley currently employs 42 people.

4. It operated from a building located at 665 Arvin Avenue, Stoney Creek (the “**Building**”) from 2005 until it was locked out of same by its landlord on April 11, 2020. The details of that lock-out are detailed below.

5. At the time of the lock-out, Eveley was in the midst of completing customer orders (which are detailed) below. Given its lockout from the premises, it has been unable to complete all of those orders – the customer relations are at risk. Eveley has received new customer orders since its April 11, 2020 lock-out. Those orders and the relationships with the customers are at risk. Moreover, the livelihood of Eveley’s 42 employees are also at risk.

RELEVANT BACKGROUND

6. It is important, in my view, for the court to be made aware of the following facts (all of which would presumably be explored in more detail by the interim receiver should the application be granted).

(i) BENITO DIFRANCO

7. Mr. Di Franco is the principal of Eveley’s landlord 2565698 Ontario Inc. (“**256**”).

Hereto annexed and marked as **Exhibit 1** to this my affidavit is a copy of the corporate profile report of 2565698 Ontario Inc. produced on April 21, 2020.

8. Mr. Di Franco is also the principal of Innovative Trailer Design Industries Inc. (“**Innovative**”). Innovative is a manufacturer of custom trailers and transportation solutions. It has been a customer of Eveley – having ordered product as recently as April 9, 2020.

Hereto annexed and marked as **Exhibit 2** to this my affidavit is a copy of the corporate profile report of Innovative Trailer Design Industries Inc. produced on April 21, 2020

9. The relationship between Mr. Di Franco and I has been extremely strained as of late. On Monday of this week, I spoke to a representative of an important customer of Eveley that Mr. Di Franco had told him that his plan is to do everything possible to take the company. The facts set out in the next section of this affidavit are consistent with that intention.

(ii) ***THE RECEIVABLE OWING BY INNOVATIVE***

10. As at the date of hearing of this application, there are unpaid invoices payable by Innovative to Eveley in the aggregate sum of \$145,636.27 in unpaid invoices as follows:

<u>Invoice No.</u>	<u>Due Date</u>	<u>Amount Due</u>
34915	2019-12-27	\$354.54
34924	2019-12-30	\$43,336.07
34925	2019-12-30	\$16,718.21
34964	2020-01-20	\$1,030.85
34973	2020-01-24	\$19,067.87
34974	2020-01-24	\$3,466.89
35016	2020-03-02	\$122.15
35110	2020-04-23	\$5,347.16

35111	2020-04-23	\$5,347.16
35112	2020-04-24	\$21,388.64
35174	2020-05-15	\$29,456.73
TOTAL DUE		\$145,636.27

Hereto annexed and marked as **Exhibit 3** to this my affidavit is a copy of Eveley's statement of account dated April 13, 2020 setting out the amounts due by Innovative.

11. As of Friday of this week (April 24, 2020) all but one of those invoices are due and payable. The only one that will not be due by this Friday is invoice 35174 which is payable in about 3 weeks on May 15, 2020. As of Friday of this week, therefore, the total due and unpaid owing by Innovative to Eveley is \$116,179.54.

12. By way of further history regarding those invoices, Innovative had originally provided two post-dated cheques to Eveley in November 2019 to honour the first three invoices indicated above (invoices 34915, 34924 and 34925) as follows – both cheques were signed by Mr. Di Franco:

<u>Cheque No.</u>	<u>Amount</u>
7592	\$354.54
7611	\$60,054.28
TOTAL	\$60,409.08

Hereto annexed and marked as **Exhibit 4** to this my affidavit are copies of the two cheques provided to Eveley by Innovative.

13. In December 2019, shortly before the date that those post-dated cheques became payable, a representative of Innovative contacted me and asked me not to cash the above cheques until January as they were awaiting funds from a third party. I agreed not to cash the cheques.

14. I contacted Innovative (including Mr. Di Franco) on a number of occasions in January 2020 and thereafter about whether Eveley could cash the said cheques and it was refused on each occasion as Innovative was still awaiting third party funds. As of the date of this affidavit, Innovative has not granted Eveley permission to cash those cheques.

15. More recently, by email dated April 19, 2020, counsel for 256 - Mr. Di Franco's other company and Eveley's landlord - had indicated that the receivables by Innovative would not be paid until all payments due by Eveley to 256 were paid. Counsel wrote in part: *"I believe that there are some issues related between the parties on the A/Rs but in principle, the landlord is of the view that when the arrears of rent are made then its affiliate will make any payment that is due to the former tenant."*

Hereto annexed and marked as **Exhibit 5** to this my affidavit is a copy of an email from 256's counsel dated April 19, 2020.

16. The nature of the amounts allegedly owing by Eveley to the landlord are set out below. Although I agree that there are arrears, I dispute the amount of the arrears that 256 claims is owing and I expect that to be the subject of a relief from forfeiture application in the near future.

(iii) ACTIVITY BY 256 SINCE LOCK-OUT

17. As indicated above, 256 locked Eveley out of its premises on April 11, 2020 when it changed the locks to the premises thereby terminating the lease.

18. Since that time, 256 has denied Eveley access to its chattels left inside the premises.

19. Sometime on Tuesday, April 21, 2020, and without notice to Eveley, Mr. Di Franco turned off the power supply to the Building because, according to its counsel, *“a number of [Eveley’s] machines had not been turned off”*.

Hereto annexed and marked as **Exhibit 6** to this my affidavit is a copy of an email exchange dated April 22, 2020 between Eveley’s counsel and 256’s counsel.

20. The act by Mr. Di Franco of turning off the Building’s power had the following adverse consequences for Eveley (and likely the secured creditors):

- (1) Eveley’s on-premises **server** was shut-off as a result of the power shut down. As a result, Eveley’s employees could no longer access the company files remotely to process orders and otherwise deal with customers in the ordinary course; and
- (2) it also shut down various pieces of Eveley’s equipment being held by 256 on the premises, because the shutdown of the equipment did not follow a proper shutdown protocol, Mr. Di Franco also effectively knocked out all of the **programming** that is required to operate those machines.

21. An overview of the machines affected when Mr. Di Franco turned off the power to the Building is described in **Exhibit 7** attached hereto. Unfortunately, the programmers for the machines are all based in England and given the travel restrictions imposed by the ongoing COVID-19 pandemic it is not known when those programmers would be cleared to travel to Canada. We are currently exploring whether the programming can be done remotely with the assistance of local programmers.

Hereto annexed and marked as **Exhibit 7** to this my affidavit is a summary of Eveley's machines still held in the Building and their respective programming needs.

22. 256 has consented to Eveley's entry to the Building to reboot the server this morning and was told that Mr. Di Franco would let us know when he would be available to grant that access. As of 6:15 p.m. this evening, we have not been granted access nor have we heard from Mr. Di Franco or his counsel. We are currently in discussions with 256 regarding entry to restart, reprogram and test the machinery.

(iv) LEASE AND ITS TERMINATION

23. Eveley has operated from the Building since 2005. It owned the Building from 2005 until it was sold to 256 in January 2019.

24. Eveley and 256 entered into an industrial building lease dated January 2, 2019 (the "**Lease**") pursuant to which Eveley leased the Building from 256 for a 10 year term commencing on February 5, 2019 and ending on January 31, 2029. I personally guaranteed the obligations under the lease pursuant to an indemnity agreement dated January 2, 2019.

Hereto annexed and marked as **Exhibit 8** to this my affidavit is a copy of the industrial building lease dated January 2, 2019.

Hereto annexed and marked as **Exhibit 9** to this my affidavit is a copy of the indemnity agreement dated January 2, 2019 between 256 and Dawn Eveley.

25. The Building comprises approximately 66,000 square feet and 3.6 acres of land.

26. Eveley is obligated to pay Basic Rent under the Lease. The monthly amount of Basic Rent payable in the first two years of the Lease term is \$56,500.00 (inclusive of HST).

(a) *The Security Deposit*

27. Eveley provided 256 with a deposit of \$60,000.00 (which 256 is presumably still holding) is holding pursuant to sections 5.6 and 1.10 of the Lease which sections provide in part as follows:

5.6 Tenant shall pay to Landlord a deposit in the amount specified in section 1.10 to be held by the Landlord as security for Tenant's performance of its covenants under the Lease and, only to the extent specifically provided for in section 1.10.....If Tenant shall be in default of any such covenant, Landlord may appropriate and apply such portion of the security deposit as Landlord considers necessary to compensate it for rent outstanding or loss or damage suffered by Landlord arising out of or in connection with such default, without prejudice to any other right or remedy available to Landlord. When requested by Landlord following any such appropriation tenant shall pay to Landlord an amount sufficient to restore the original amount of the security deposit.....

1.10 ***Deposit*** The Tenant shall pay a deposit of \$60,000 to be applied as provided in section 5.6 of this Lease by paying an additional \$10,000 at the time of payment of each of the first 6 monthly payments on account of Basic Rent under the Lease.

(b) *Municipal Taxes*

28. Section 7.2 of the Lease provides as follows:

7.2 *Realty Taxes Payable by Landlord* To the extent that Realty Taxes are levied or imposed directly against the

Tenant or the Premises, ***Landlord shall pay*** all Realty Taxes (and Tenant acknowledges that there may be more than on such Realty Taxes assessed, charged or imposed upon or in respect of the Premises) ***in the first instance*** and Tenant shall pay to Landlord all Realty Taxes and an administration fee of 15% of the Realty Taxes. [emphasis added]

29. Pursuant to section 7.2 of the Lease, Eveley's obligation to reimburse 256 for Realty Taxes and to pay the corresponding administration fee does not arise until (i) the taxation authority levies or imposes taxes on the Building; and (ii) 256 *actually* pays the said Realty Taxes to the taxation authority.

30. In the case at bar, 256 has not paid the Realty Taxes imposed upon it in respect to the Building to the taxation authority for either 2019 or 2020 (as so far accrued for the latter) as is set out by a notice from the municipal taxing authority dated March 16, 2020 demanding payment of same. The notice indicates that \$9,417.40 of accrued interest has accrued on 256's tax account arising from its non-payment of same. 256's counsel had confirmed that the Realty Taxes has not been paid by an email dated April 20, 2020.

Hereto annexed and marked as **Exhibit 10** to this my affidavit is a copy of the municipal tax notice dated March 16, 2020.

Hereto annexed and marked as **Exhibit 11** to this my affidavit is a copy of an email from 256's counsel dated April 20, 2020.

31. Given Eveley's cash flow issues (contributed in part by Innovative's failure to pay its invoices), Eveley short paid it rent owing to 256 on February 1, 2020 in the amount of \$6,500.00. It was also not able to pay its March 2020 rent when it came due. As of March 27, 2020 there were no other breaches of the Lease by Eveley.

32. Despite the fact that Eveley, 256 delivered a demand for payment to Eveley dated March 27, 2020 alleging that Eveley was in fact also in breach of its section 7.2 obligation to pay Realty Taxes and for not paying the corresponding 15% administration fee. Pursuant to that demand, 256 demanded payment by Eveley of \$235,808.55 by no later than March 31, 2020 failing which 256 may exercise its remedies under the Lease without further notice. 256's demand particularized what it wrongly alleged were the arrears at the time as follows:

Unpaid Rent, February 2020	\$6,500.00
Unpaid Rent, March 2020	\$56,500.00
Property Taxes	\$149,285.70
Admin Fee on Property Taxes	\$22,392.85
Cost of collection to date	\$1,130.00
	\$235,808.55

Hereto annexed and marked as **Exhibit 12** to this my affidavit is a copy of 256's demand letter to Eveley dated March 27, 2020.

33. 256 knew or ought to have known that at the time that its March 27, 2020 demand was delivered to Eveley that the only arrears under the Lease were significantly less than set out in the demand and actually only amounted to \$63,000.00 (February and March rent). Since that time, the rent due on April 1, 2020 was not paid given Eveley's cash flow issues bringing the amount of the arrears to \$119,500.00 (hst inclusive). That amount of arrears could be almost entirely covered if Mr. Di Franco arranged for Innovation to pay the outstanding invoices that are due and payable to Eveley.

(v) ***ORDERS IN THE PIPELINE***

34. Given that it does not have access to the Building, Eveley is currently unable to deliver customer orders that are inside the Building, completed and ready to be delivered to customers. Those orders include:

- (1) 5 equalizers and related hardware;
- (2) 9 axles;
- (3) 6 suspensions;
- (4) and a number of other parts that I can't currently identify with any precision given that I don't have access the Building or my network.

35. I anticipate that with access to the Building, Eveley could get those orders shipped with a day or two of work.

36. If those orders are not shipped shortly there is a very real risk that Eveley will lose those customers as some have been calling very frequently for information about when they could expect delivery.

37. Apart from orders that are completed and ready to be shipped, there are also a number of orders that are partially completed and would require a days worth of work or so to be completed and prepared for delivery. Those orders include:

- (1) 20 axles;
- (2) 6 beams.

39. The anticipated accounts receivable related to the orders that are completed and almost completed are approximately \$60,000.00. Without access to the Building and Eveley's computer network I am not able to be more precise than that.

Commissioner for Taking Affidavits
Gustavo F. Camelino

~~DAWN-MARIE EYELEY~~

**THIS IS EXHIBIT 1 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

Request ID: 024452093
 Transaction ID: 75239433
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2020/04/21
 Time Report Produced: 14:56:39
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2565698	2565698 ONTARIO INC.	2017/03/10
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
161 THE WEST MALL	NOT APPLICABLE	NOT APPLICABLE
	New Amal. Number	Notice Date
TORONTO ONTARIO CANADA M9C 4V8	NOT APPLICABLE	NOT APPLICABLE
		Letter Date
Mailing Address		NOT APPLICABLE
161 THE WEST MALL	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
TORONTO ONTARIO CANADA M9C 4V8	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors	Date Commenced in Ontario
	Minimum	Maximum
	00001	00010
Activity Classification		Date Ceased in Ontario
NOT AVAILABLE		NOT APPLICABLE

Request ID: 024452093
Transaction ID: 75239433
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/21
Time Report Produced: 14:56:39
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2565698	2565698 ONTARIO INC.

Corporate Name History	Effective Date
2565698 ONTARIO INC.	2017/03/10

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
BENITO DI FRANCO	161 THE WEST MALL TORONTO ONTARIO CANADA M9C 4V8

Date Began	First Director	Resident Canadian
2017/03/10	NOT APPLICABLE	
Designation	Officer Type	
DIRECTOR		Y

Request ID: 024452093
Transaction ID: 75239433
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/21
Time Report Produced: 14:56:39
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

2565698

Corporation Name

2565698 ONTARIO INC.

Administrator:**Name (Individual / Corporation)**

BENITO
DI FRANCO

Address

161 THE WEST MALL

TORONTO
ONTARIO
CANADA M9C 4V8

Date Began

2017/03/10

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian**Administrator:****Name (Individual / Corporation)**

BENITO
DI FRANCO

Address

161 THE WEST MALL

TORONTO
ONTARIO
CANADA M9C 4V8

Date Began

2017/03/10

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Request ID: 024452093
Transaction ID: 75239433
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/21
Time Report Produced: 14:56:39
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2565698

2565698 ONTARIO INC.

Last Document Recorded

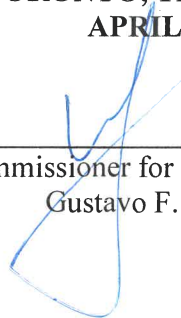
Act/Code	Description	Form	Date
CIA	INITIAL RETURN	1	2017/03/10 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

**THIS IS EXHIBIT 2 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

Request ID: 024452002
 Transaction ID: 75239201
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2020/04/21
 Time Report Produced: 14:46:22
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Amalgamation Date
1972223	INNOVATIVE TRAILER DESIGN INDUSTRIES INC.	2017/03/16
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
161 THE WEST MALL	NOT APPLICABLE	A
	New Amal. Number	Notice Date
TORONTO	NOT APPLICABLE	NOT APPLICABLE
ONTARIO		Letter Date
CANADA M9C 4V8		NOT APPLICABLE
Mailing Address	Revival Date	Continuation Date
NOT AVAILABLE	NOT APPLICABLE	NOT APPLICABLE
	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Date Commenced in Ontario	Date Ceased in Ontario
	NOT APPLICABLE	NOT APPLICABLE
Activity Classification	Number of Directors	
NOT AVAILABLE	Minimum 00001 Maximum 00010	

Request ID: 024452002
Transaction ID: 75239201
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/21
Time Report Produced: 14:46:22
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

1972223

Corporation Name

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

Corporate Name History

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

Effective Date

2017/03/16

Current Business Name(s) Exist:

YES

Expired Business Name(s) Exist:

NO

Amalgamating Corporations

Corporation Name

2210286 ONTARIO LIMITED

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

Corporate Number

2210286

1942330

Request ID: 024452002
Transaction ID: 75239201
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/21
Time Report Produced: 14:46:22
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

1972223

Corporation Name

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

Administrator:**Name (Individual / Corporation)**

DENITO
DI FRANCO

Address

1531 NARVA ROAD

MISSISSAUGA
ONTARIO
CANADA L5H 3H4

Date Began

2017/03/16

First Director

YES

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Request ID: 024452002
Transaction ID: 75239201
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/21
Time Report Produced: 14:46:22
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

1972223

Corporation Name

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

Last Document Recorded

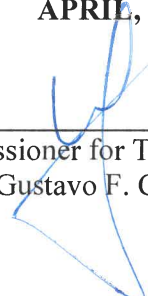
Act/Code	Description	Form	Date
BCA	ARTICLES OF AMALGAMATION	4	2017/03/16

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OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

EVELEY INTERNATIONAL CORP.

STATEMENT

665 ARVIN AVENUE
 STONEY CREEK, ONTARIO L8E 5R2
 Canada

CUSTOMER NO.: ITD1
 PAGE: 1
 DATE: 2020-04-13

SOLD INNOVATIVE TRAILER DESIGN IND.
 TO: 161 THE WEST MALL
 TORONTO, ON M9C 4V8

REMIT TO ADDRESS:

Eveley Alignment & Spring

Attn: howard.levy@itdtrailers.com

DOCUMENT NUMBER	DOCUMENT DATE	Type	REFERENCE/APPLIED NUMBER	DUE DATE	AMOUNT
34915	2019-11-12	IN	041425	2019-12-27	354.54
34924	2019-11-15	IN	PO041081	2019-12-30	43,336.07
34925	2019-11-15	IN	PO041063	2019-12-30	16,718.21
34964	2019-12-06	IN	041396	2020-01-20	1,030.85
34973	2019-12-10	IN	PO041329	2020-01-24	19,067.87
34974	2019-12-10	IN	041332	2020-01-24	3,466.89
35016	2020-01-17	IN	041832	2020-03-02	122.15
35110	2020-03-09	IN	41931	2020-04-23	5,347.16
35111	2020-03-09	IN	041642	2020-04-23	5,347.16
35112	2020-03-10	IN	41925	2020-04-24	21,388.64
35174	2020-03-31	IN	41956	2020-05-15	29,456.73

IN - Invoice
 DB - Debit Note
 CR - Credit Note
 IT - Interest Payable

PY - Applied Receipt
 ED - Earned Discount
 AD - Adjustment
 PI - Prepayment

UC - Unapplied Cash
 RF - Refund

Total: 145,636.27
 Credit Limit: 0.00
 Credit Available: 0.00

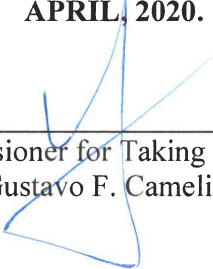
1 - 30 DAYS O/DUE
 0.00

31 - 60 DAYS O/DUE
 122.15

61 - 90 DAYS O/DUE
 23,565.61

OVER 90 DAYS O/DUE
 60,408.82

**THIS IS EXHIBIT 4 TO THE
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SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

itd INNOVATIVE TRAILER
DESIGN INDUSTRIES

161 THE WEST MALL, ETOBICOKE, ONTARIO M9C 4V8

SCOTIABANK
25 THE WEST MALL
ETOBICOKE, ON
M9C 1B8

7611

DATE 3 0 1 2 2 0 1 9
D/J D/J M/M M/M Y/A Y/A Y/A Y/A

PAY **** SIXTY THOUSAND FIFTY FOUR AND 28/100

\$ *****60,054.28

TO THE
ORDER OF
PAYER A
L'ORDRE DE

EVELEY INTERNATIONAL CORP
665 ARVIN AVENUE
STONEY CREEK, ON L8E 5R2
Canada

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

PER/PAR

AUTHORIZED SIGNATURES / SIGNATURES AUTORISEES

⑈007611⑈ ⑆47696⑈002⑆ 04943⑈13⑈

THIS CHEQUE CONTAINS A MICROLINE BORDER AND SECURITY FEATURES

itd INNOVATIVE TRAILER
DESIGN INDUSTRIES

161 THE WEST MALL, ETOBICOKE, ONTARIO M9C 4V8

SCOTIABANK
25 THE WEST MALL
ETOBICOKE, ON
M9C 1B8

7592

DATE 2 7 1 2 2 0 1 9
D/J D/J M/M M/M Y/A Y/A Y/A Y/A

PAY *** THREE HUNDRED FIFTY FOUR AND 54/100

\$ *****354.54

TO THE
ORDER OF
PAYER A
L'ORDRE DE

EVELEY INTERNATIONAL CORP
665 ARVIN AVENUE
STONEY CREEK, ON L8E 5R2
Canada

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

PER/PAR

AUTHORIZED SIGNATURES / SIGNATURES AUTORISEES

⑈007592⑈ ⑆47696⑈002⑆ 04943⑈13⑈

INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

EVELEY INTERNATIONAL CORP
December 27, 2019

7592

Check No. 7592

Document No.	Document Date	Amount	Discount	Net Amount
34915	11/12/19	354.54	0.00	354.54

Total	354.54
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INNOVATIVE TRAILER DESIGN INDUSTRIES INC.

EVELEY INTERNATIONAL CORP
December 30, 2019

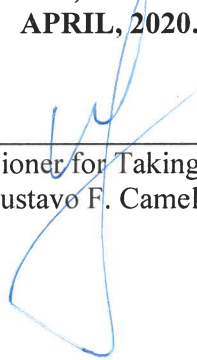
7611

Check No. 7611

Document No.	Document Date	Amount	Discount	Net Amount
34924	11/15/19	43,336.07	0.00	43,336.07
34925	11/15/19	16,718.21	0.00	16,718.21

Total	60,054.28
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**THIS IS EXHIBIT 5 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

Gustavo Camelino

From: Julian L. Doyle <jdoyle@beardwinter.com>
Sent: Sunday, April 19, 2020 2:22 PM
To: 'Brendan Bissell'; Gustavo Camelino
Subject: RE: License Agreement

I will not amend the license agreement with respect to a minimum license period of one week until I receive your other comments.

I don't know what further orders can be processed within one week. My client will be looking for guidance from the monitor. The agreement in principle that you and I had on Friday was lets make arrangements for Eveley to process the immediate shipment and to have a joint monitor appointed who could advise what further steps should be taken.

As you aware, there is no right of legal or equitable set off of rent in a commercial lease and even more so when dealing with an affiliate of the landlord. I believe there are some issues related between the parties on the A/Rs but in principle the landlord is of the view that when the arrears of rent are made then its affiliate will make any payment that is due to the former tenant.

Regards,

Julian

Julian L. Doyle | Partner

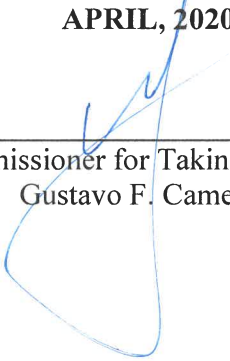
jdoyle@beardwinter.com

Direct Line: 416.306.1771 | Direct Fax: 416.593.7760



BEARD WINTER LLP

**THIS IS EXHIBIT 6 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

Gustavo Camelino

From: Julian L. Doyle <jdoyle@beardwinter.com>
Sent: Wednesday, April 22, 2020 11:39 AM
To: 'Harvey G. Chaiton'; Gustavo Camelino
Cc: Brendan Bissell
Subject: RE: Eveley International Corporation

Benny did turn the power off at the premises yesterday as a number of machines had not been turned off. He is going there shortly to restore the power and will switch the servers back on. If that does not restore access to the servers, a representative from Eveley International can arrange to meet Benny at the premises.

Julian

Julian L. Doyle | Partner

jdoyle@beardwinter.com
 Direct Line: 416.306.1771 | Direct Fax: 416.593.7760



BEARD WINTER LLP | LAWYERS
 130 Adelaide Street West, 7th Floor
 Toronto, Ontario M5H 2K4
 Main: 416.593.5555 | Fax: 416.593.7760 | www.beardwinter.com

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From: Harvey G. Chaiton [mailto:Harvey@chaitons.com]
Sent: Wednesday, April 22, 2020 11:28 AM
To: Gustavo Camelino
Cc: Brendan Bissell
Subject: Re: Eveley International Corporation

Gus

I assumed Julian Doyle to look into this. I will follow up with him.

Sent from my iPhone

Harvey G. Chaiton

Partner | Chaitons LLP | Tel: 416.218.1129

On Apr 22, 2020, at 11:24 AM, Gustavo Camelino <gcamelino@cglegal.ca> wrote:

Harvey,

Do you have an update for me?

Again, this is very urgent from my client's perspective as its it holding up its ability to conduct business.

I have confirmed that my client will have to attend the premises to either remove its server or reboot it.

May I please hear from you as soon as possible.

Gus

Gustavo F. Camelino
416-306-3834

From: Harvey G. Chaiton <Harvey@chaitons.com>
Sent: Wednesday, April 22, 2020 9:40 AM
To: Gustavo Camelino <gcamelino@cglegal.ca>
Cc: Brendan Bissell <bissell@gsnh.com>
Subject: Re: Eveley International Corporation

I will inquire

Sent from my iPhone

Harvey G. Chaiton
Partner | Chaitons LLP | Tel: 416.218.1129

On Apr 22, 2020, at 9:37 AM, Gustavo Camelino <gcamelino@cglegal.ca> wrote:

Brendan and Harvey:

I received a call from my frantic client this morning that it appears that its servers have been disconnected at its premises as of some time yesterday.

This is causing a serious problems.

If the landlord has done that purposely it is a serious overstep of its entitlement in my view and the server must be turned back on.

Harvey, would you please make inquiries about this. I don't know if rebooting the system will require any assistance from my client but if so I trust that my client will be provided access to take whatever steps are necessary to have the server back up and running.

I would appreciate it if this item could be prioritized.

Kind regards,

Gus

Gustavo F. Camelino
Partner

<image001.jpg>

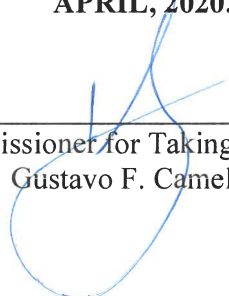
6 Adelaide St. East, Suite 220
Toronto, ON M5C 1H6
Tel: 416.306.3834
Fax: 416.306.3820
gcamelino@cglegal.ca
www.cglegal.ca

.....
.....
This message is solicitor-client privileged and contains confidential information intended only for the recipient(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error please notify us immediately by e-mail or telephone and destroy the materials received. Thank you.
.....

.....
Note: Occasionally, our spam scanner eliminates legitimate emails from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

Please consider the environment. Please don't print this email unless you really need to.

**THIS IS EXHIBIT 7 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

Issues with Disconnecting Power at 665 Arvin Avenue

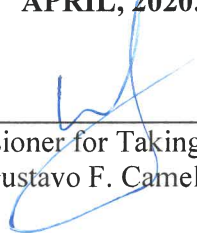
Plant			
	Item	Issue	Resolution
Equipment	Robots (1-7)	G Code specific to robot. <ul style="list-style-type: none"> - Positioning of table - Arm x & y positioning - All welding files - Home position G Code specific to parts <ul style="list-style-type: none"> - Each individual position to weld, tack, and rotate (i.e. create the part) 	Robotic technician (Ethal Automation) must assess and reprogram each individual robot as needed. (\$120/ hour) – estimated time 1 week per robot
	Plasma (ESAB)	New machine. Was in the process of setting it up. All 240 hours of installation programming, and troubleshooting lost.	(\$200/hour) – estimated 240 hours need to get back to where it stood.
	Thompson	Lost: <ul style="list-style-type: none"> - All programming for axle lengths (database) <ul style="list-style-type: none"> o Flash removal o Back stop positioning o Chuck data (i.e. cycle information) o G Code <ul style="list-style-type: none"> ▪ Safety ▪ Door positioning 	This machine is specific to Thompson. They are the only people able to work on it. Will need to bring in technician from over seas. Unknown cost/hour estimation
	Induction Welder	Lost: <ul style="list-style-type: none"> - G Code <ul style="list-style-type: none"> o Heating coil safety programming o Axle positioning inside spigot 	Technician needs to be brought in to assess and reprogram as required. Unknown cost/ hour estimation
	Press (4 & 5)	- PLC (Code) Lost: <ul style="list-style-type: none"> o Back stop setting o Tonnage settings o Safety guards 	Technician required to assess and reprogram as required. Unknown cost/ hour estimation
	CNC Equipment	All G Code lost: <ul style="list-style-type: none"> - Access points 	BWS must come in asses all missing code, and reprogram as needed.

	Decome (x1) Mazak (x3) Ikegai (x1) Matsuura (x1) Fanuc (x1)	<ul style="list-style-type: none"> - Homing positions - Pre set programs for production runs - All safety stops and switches - Specialty coding (DOS) 	(\$150/hour) – 14 to 20 hours per machine depending on severity of information lost
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Office			
	Item	Issue	Resolution
Server	Accounting	Backup has not been operating. Any lost data from module integration that isn't posted will have to be recreated and reposted through the day end processing. There will be a strong risk of error due to duplicate re-start errors.	<ul style="list-style-type: none"> • 4-5 hours for the controller to review source documents integrity against accounting package to ensure all information agrees from sub-ledgers to general ledger; • Ensure day end processing has no errors; if the data has been corrupted, the company's outside IT consultant assistance will be required. There will be an initial fee, and if the data has to be cleaned, additional time and charges. • Backup will have to be re-instated. This will require Eveley's IT consultants to correct.
	Inventory	<ul style="list-style-type: none"> • Unposted shipments will have to be reconciled; • Inventory receipts/shipments that were not posted to general ledger will have to be reconciled; and, • Cycle counts in progress will have to be reconciled and reviewed for input/posting 	<ul style="list-style-type: none"> • 2-3 hours—production manager and controller to reconcile bills of material and issued and received stock, and cycle count status; • may involve contacting customers or vendors.

	Order Management	<ul style="list-style-type: none"> Will need to determine orders that have been issued bills-of-material and status of all orders 	<ul style="list-style-type: none"> 1-2 hours to ensure integrity of sales orders.
	Employee Files and Records	-N/A	N/A
	Engineering & CAD Drawings	<ul style="list-style-type: none"> All in-progress drawings and quotes will have to be recreated as any information not saved will be lost; Files between the machinery and auto cad program will likely cause an access error. 	<ul style="list-style-type: none"> Need to have auto cad designer review file status to determine any loss of data creation; 2-4 hours; Errors between auto cad files sent to program robot welders and plasma cutter will have to be solved by the appropriate technicians, as detailed above.

**THIS IS EXHIBIT 8 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

INDUSTRIAL BUILDING LEASE

2565698 ONTARIO INC.

Landlord

- and -

EVELEY INTERNATIONAL CORPORATION


Tenant

665 Arvin Avenue, Stoney Creek, ON L8E 5R2

Rentable Area: 66,000 square feet and 3.6 acres of land

Date: January 2, 2019

Initials	
Landlord	Tenant



INDEX

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Initials	
Landlord	Tenant



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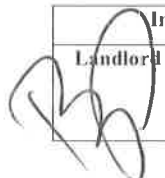
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Initials	
Landlord	Tenant



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Initials	
Landlord	Tenant



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Initials	
Landlord	Tenant

(Handwritten signature/initials over the Landlord box)

INDUSTRIAL BUILDING LEASE

THIS LEASE is made as of the 2nd day of January, 2019

between Landlord and Tenant listed below.

PART 1 - BASIC INFORMATION

- 1.1 **Landlord** Name: 2565698 Ontario Inc.
Address: 161 The West Mall, Toronto, ON M9C 4V8
- 1.2 **Tenant** Name: Eveley International Corporation
Address: 665 Arvin Avenue, Stoney Creek, ON L8E 5R2
- 1.3 **Indemnifier** Name: Dawn Eveley
- 1.4 **Building** 665 Arvin Avenue, Stoney Creek, Ontario and situate upon the Lands described in Schedule 1 to this Lease.
- 1.5 **Premises** The area indicated on Schedule 2 to this Lease, located in the Building and having a Rentable Area that is deemed to be 66,000 square feet on approximately 3.6 acres of land.
- 1.6 **Use** The Premises may not be used for any purpose other than for the manufacture, assembly, distribution, sale and marketing of trailer axles and suspensions and related products and office related uses required thereby.
- 1.7 **Term** Ten (10) years, commencing on the Closing Date (the "**Commencement Date**").
- 1.8 **Basic Rent**

<u>Lease Years</u>	<u>Monthly Amount (plus Rental Taxes)</u>	<u>Yearly Amount (plus Rental Taxes)</u>
Years 1 & 2	\$50,000	\$600,000
Years 3 & 4	\$52,500	\$630,000
Years 5 & 6	\$55,000	\$660,000
Years 7 & 8	\$57,500	\$690,000
Years 9 & 10	\$60,000	\$720,000

- 1.9 **Additional Rent** In addition to Basic Rent, Tenant shall pay Additional Rent in accordance with this Lease. Prior to the Commencement Date, the Landlord shall notify the Tenant as to the amount of Additional Rent payable by the Tenant for the Lease Year beginning on the Commencement Date.
- 1.10 **Deposit** The Tenant shall pay a deposit of \$60,000 to be applied as provided in section 5.6 of this Lease by paying an additional \$10,000 at the time of payment of each of the first 6 monthly payments on account of Basic Rent under this Lease.

PART 2 - BASIC TERMS AND PRINCIPLES

- 2.1 **Lease** This is a lease as well as a business contract. It is intended that this Lease be an absolutely net and carefree lease for Landlord and that rent be received by Landlord free of any cost or obligation concerning the Premises unless specified in this Lease. Each provision of this Lease applicable to each party although

not expressed as a covenant, shall be construed to be a covenant of such party for all purposes. The Schedules to this Lease form a part of this Lease.

- 2.2 **Grant** In consideration of the rents to be paid and the covenants contained in this Lease, Landlord leases the Premises to Tenant and Tenant leases and accepts the Premises from Landlord, to have and to hold the Premises during the Term, at the rent, subject to the conditions and limitations and in accordance with the covenants contained in this Lease.
- 2.3 **Quiet Enjoyment** Landlord agrees that so long as Tenant duly pays the Rent hereby reserved and duly observes and performs the agreements, terms and conditions herein on its part to be observed and performed, Tenant shall and may peaceably possess and enjoy the Premises for the Term without any hindrance, interruption or disturbance from Landlord, subject nevertheless to the terms, covenants, conditions and limitations of this Lease.
- 2.4 **Basic Covenants** Landlord covenants to observe and perform all of the terms and conditions to be observed and performed by Landlord under this Lease. Tenant covenants to pay the Rent when due under this Lease, and to observe and perform all of the terms and conditions to be observed and performed by Tenant under this Lease.
- 2.5 **Consent Not to be Unreasonably Withheld/Allocations to be Reasonable** Except as otherwise specifically provided in this Lease, Landlord and Tenant, and each person acting for them, in granting a consent or approval or making a determination, designation, calculation, estimate, conversion or allocation under this Lease, will act reasonably and in good faith and each Architect or other professional person employed or retained by Landlord or Tenant will act in accordance with the applicable principles and standards of such person's profession. If either party withholds any consent or approval where it is required to act reasonably, such party shall, on written request, deliver to the other party a written statement giving the reasons for withholding the consent or approval.
- 2.6 **Unavoidable Delay** If either party to this Lease is unable to perform any of the terms, obligations or conditions contained in this Lease due to Unavoidable Delay then such party will be deemed not to be in default under this Lease for the period of such delay and the time for the performance of any such term, obligation or condition will be extended for the period of such delay, provided that insolvency, lack of funds, inability to obtain financing or other financial contingency will not relieve any party to this Lease from fulfilment of any obligation arising under this Lease.
- 2.7 **Basic Information** Each reference in this Lease to any portion of the Basic Information shall incorporate the specific information described in Part 1 above. Certain words and phrases recurring throughout this Lease have defined meanings as set out in Schedule 2 to this Lease, unless otherwise provided.

PART 3 - USE

- 3.1 **Use** Tenant covenants to use the Premises only as specified in section 1.6.
- 3.2 **Compliance with Operating Standards** Tenant shall comply with the Operating Standards. Landlord may from time to time make other rules and regulations to amend and supplement the Operating Standards and which relate to the operation, use, reputation, safety, care or cleanliness of the Premises, the operation and maintenance of buildings and equipment, and any other matters affecting the operation and use of the Premises and conduct of business in the Premises, provided same do not conflict with the provisions of this Lease.
- 3.3 **Compliance with Laws** Tenant is responsible at all times to comply with and to keep the Premises, the Leasehold Improvements and Trade Fixtures in compliance and accordance with the requirements of all applicable laws of every Authority having jurisdiction and the Operating Standards including, without limitation, compliance with each Environmental Law and any agreements with adjoining owners and or third parties affecting the Premises and the Building. Tenant shall not allow or cause any act or omission to

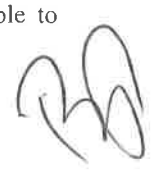
occur in or about the Premises which may result in an illegal or prohibited use or causes any breach of or non-compliance with such laws, and Operating Standards. If, due to Tenant's acts, omissions or use of the Premises, repairs, alterations or improvements to the Premises or the Building are necessary to comply with any of the foregoing or with the reasonable requirements of insurance carriers, Tenant will pay the entire cost thereof. Before being permitted to take possession of the Premises, and at any time and from time to time thereafter within ten (10) days after Landlord's request, Tenant shall provide a true and complete copy of all environmental permits and compliance certificates for the Tenant's permitted business operations and all other activities by Tenant at, upon or about the Premises required and/or issued by any Authority pursuant to any Environmental Law.

- 3.4 **No Waste or Nuisance** Tenant shall not commit or permit any waste or damage to the Premises. Tenant will not cause or permit any nuisance or hazard in or about the Premises and will keep the Premises free of any Contaminant, debris, trash, rodents, vermin and anything of a dangerous, noxious or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat or any noxious or strong noises or odours or anything which may disturb the owners or tenants of adjoining land. Without limiting the generality of the foregoing: (a) Tenant shall not use or permit the use of any equipment or device such as, without limitation, loudspeakers, stereos, public address systems, sound amplifiers, radios or televisions, which is in any manner audible or visible outside of the Premises; and (b) no noxious or strong odours shall be allowed to permeate outside the Premises; in each case without the prior written consent of Landlord which may be arbitrarily withheld or withdrawn on twenty-four (24) hours' notice to Tenant.
- 3.5 **After Hours Access** Subject to Landlord's rights in this Lease, and except in the case of a real or perceived emergency, Tenant shall be permitted to access the Premises twenty-four (24) hours per day, seven (7) days a week throughout the Term, provided Tenant is not in default under this Lease and Tenant pays the costs of any Additional Services, if any, arising from Tenant's access to the Building after Normal Business Hours, including security, Utilities and HVAC, unless otherwise specifically provided in Schedule 4 if applicable. Tenant acknowledges that Landlord may implement, maintain and alter, from time to time, a security card access system for the Building. Tenant further acknowledges that Landlord's estimates of Operating Costs from time to time are based upon ordinary usage of the Premises during Normal Business Hours.

PART 4 - TERM - POSSESSION

- 4.1 **Term** This Lease shall be for the Term set out in section 1.7 unless earlier terminated as provided in this Lease.
- 4.2 **Acceptance of Premises and Fixturing** Tenant accepts the Premises in an as-is condition.
- 4.3 **Effect of Termination** The expiry or termination of this Lease whether by elapse of time or by the exercise of any right of either Landlord or Tenant pursuant to this Lease shall be without prejudice to the right of Landlord to recover arrears of Rent.
- 4.4 **Surrender** Tenant shall surrender possession of the Premises upon termination of this Lease by expiration of the Term or operation of the terms hereof, in good and substantial repair and condition as required by this Lease.
- 4.5 **Overholding** If Tenant remains in possession of the Premises following termination of this Lease by expiration of the Term or operation of the terms hereof, with or without objection by Landlord, and without any written agreement otherwise providing, Tenant shall be deemed to be a monthly tenant upon the same terms and conditions as are contained in this Lease except as to the Term, and except as to Basic Rent which shall be equal to the greater of: (a) 10% more than the Basic Rent payable in the last year of the Term or any renewal term, or (b) the then prevailing rate charged by Landlord in the Premises. This provision shall not authorize Tenant to so overhold where Landlord has objected.

PART 5 - RENT

- 5.1 **Basic Rent** Tenant shall pay Basic Rent in the amount set out in section 1.8, without demand in advance in equal consecutive monthly instalments on the first day of each month commencing on the Commencement Date.
- 5.2 **Additional Rent** From and after the Commencement Date, at the times and in the manner provided herein, Tenant shall pay to Landlord or as Landlord shall direct, Additional Rent. Additional Rent shall include, without limitation, all charges for Utilities payable under Part 6 and Operating Costs and Realty Taxes payable under Part 7, those costs payable pursuant to subsection 8.2 (b) (iv), and all charges for Additional Services.
- 5.3 **Estimated Amounts** On or before the Commencement Date and the commencement of any Fiscal Period during the Term, Landlord shall estimate the Realty Taxes and Operating Costs. Tenant shall pay, upon notification of such estimates, to Landlord in equal monthly instalments in advance on the first day of each month a sum on account of Realty Taxes and Operating Costs based on Landlord's estimates. Landlord may no more than once in each Lease Year re-estimate the amount of estimated Realty Taxes and Operating Costs for the then current Fiscal Period and Tenant shall change its monthly instalments to conform with the revised estimates.
- 5.4 **Statements and Readjustments** Within six (6) months after the end of each Fiscal Period (or such longer period reasonable in the circumstances), Landlord shall determine the actual Realty Taxes and Operating Costs and the difference between such actual determination and the amount already billed to Tenant in instalments. Invoices for the actual determination of Operating Costs and Realty Taxes shall be accompanied by a statement of such Operating Costs and Realty Taxes verified to be correct by Landlord. If the aggregate of Tenant's instalments for the Fiscal Period in question was less than the actual determination, then Tenant shall pay the difference to Landlord within twenty (20) days after demand, or if the aggregate of such instalments was more than the actual determination, Landlord shall credit the difference to Tenant's rental account or, if the Term has expired, pay to Tenant the difference less any amounts then owing by Tenant to Landlord. Tenant may not claim a re-adjustment in respect of Operating Costs or Realty Taxes for a Fiscal Period based upon any error of computation or allocation except by notice delivered to Landlord within three (3) months after the date of delivery of Landlord's statement.
- 5.5 **Payment of Rent - General**
- (a) **General** From and after the Commencement Date, Tenant covenants to pay the Basic Rent and the Additional Rent without deduction, abatement or set-off in legal tender of Canada. All amounts payable by Tenant to Landlord pursuant to this Lease shall be deemed to be Rent and will be payable and recoverable as Rent in the manner herein provided, and Landlord will have all rights against Tenant for default in any such payment as in the case of arrears of Rent. Tenant's obligations to pay Rent will survive the expiration or earlier termination of this Lease.
- (b) **Payment** Tenant shall make payments of all Rent payable pursuant this Lease by way of twelve (12) post-dated cheques to be delivered to the Landlord on or before the Commencement Date and on or before the commencement of each Lease Year.
- (c) **No Delay in Payment of Rent** Except as provided in sections 12.1 and 12.2 nothing contained in this Lease shall suspend or delay the payment of any money by Tenant at the time it becomes due and payable. Tenant agrees that Landlord may, at its option, apply any sums received against any amounts due and payable under this Lease in such manner as Landlord sees fit. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent due hereunder will be deemed to be other than on account of the earliest stipulated Rent, nor will any endorsement or statement on any cheque or any letter accompanying any cheque, or payment as Rent, be deemed an accord and satisfaction, and Landlord may accept such cheque or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy available to Landlord.
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(d) **Interest on Arrears** If any amount of Rent is in arrears it shall bear interest at the Interest Rate from the due date for payment thereof until the same is fully paid and satisfied.

(e) **Partial Periods** If the Commencement Date is any day other than the first day of a calendar month, or if the Term ends on a day other than the last day of a calendar month, then Basic Rent and Additional Rent, as the case may be, will be adjusted for the months affected, pro rata, based on a 365 day year.

5.6 **Deposit** Tenant shall pay to Landlord a deposit in the amount specified in section 1.10 to be held by Landlord as security for Tenant's performance of its covenants under this Lease and, only to the extent specifically provided for in section 1.10. No interest shall accrue or be payable to Tenant in respect of the deposit. If Tenant shall be in default of any such covenant, Landlord may appropriate and apply such portion of the security deposit as Landlord considers necessary to compensate it for rent outstanding or loss or damage suffered by Landlord arising out of or in connection with such default, without prejudice to any other right or remedy available to Landlord. When requested by Landlord following any such appropriation Tenant shall pay to Landlord an amount sufficient to restore the original amount of the security deposit. Tenant shall not assign or encumber its interest in the security deposit, and Landlord shall not be bound by any attempted assignment or encumbrance of the security deposit, except in the case of any permitted Transfer of the Lease, in which case Tenant's interest in the security deposit shall be deemed to have been assigned to such permitted transferee as of the date of such Transfer. So much of the deposit which has not been applied towards Rent in accordance with section 1.10 and which remains unappropriated by Landlord in accordance with this section 5.6 shall be returned to Tenant within thirty (30) days after expiry of the Term so long as Tenant has surrendered the Premises in accordance with all requirements of this Lease.

PART 6 - UTILITIES

6.1 **Suppliers** Landlord shall be entitled to make such arrangements for the supply of electricity and other Utilities to the Premises as Landlord determines, and Tenant agrees to use the existing suppliers to the Premises. Landlord may from time to time negotiate modifications and revisions to such arrangements and enter into new arrangements. Landlord shall be entitled from time to time to require that any electricity and other Utilities be provided only by such suppliers, distributors or retailers who have been designated and approved by Landlord from time to time. Tenant shall not be permitted to make arrangements for the supply of electricity and other Utilities to the Premises directly from any supplier, retailer or distributor unless such arrangements have received Landlord's prior written approval, such approval not to be unreasonably withheld unless Tenant's arrangements are inconsistent with Landlord's then current or planned arrangements.

6.2 **Payment to Suppliers** Tenant shall pay promptly to the applicable approved supplier, retailer or distributor when due all charges related to or associated with the production, generation, transmission, delivery, supply and servicing of Utilities used or consumed in the Premises and which are charged directly to Tenant.

6.3 **Utilities Supplied by Landlord** Tenant shall pay to Landlord, without duplication, monthly in advance, all costs and expenses incurred by Landlord related to or associated with the production, generation, transmission, delivery, supply and servicing of Utilities to the Premises including, without limitation, all demand and consumption charges and surcharges and all costs and charges related to administration, debt, servicing and metering, to the extent not invoiced directly to Tenant by a third party supplier, retailer or distributor or included in Operating Costs, plus any costs incurred for consultants and brokers retained in connection with procurement of Utilities for the Premises. The determination of Utilities cost shall reflect Landlord's reasonable estimates for the quantities and types of Utilities supplied multiplied by the average unit costs to Landlord for each of such types of Utilities.

6.4 **No Overloading** Tenant shall not overload any Utilities, any service, or the roof, floor or other structural components of the Building.

PART 7 - OPERATING COSTS AND TAXES

- 7.1 ***Operating Costs Payable by Tenant*** Tenant shall pay to Landlord, at the times and in the manner provided in section 5.3, Operating Costs, determined in accordance with Schedule 4.
- 7.2 ***Realty Taxes Payable by Landlord*** To the extent that Realty Taxes are levied or imposed directly against Tenant or the Premises, Landlord shall pay all Realty Taxes (and Tenant acknowledges that there may be more than one of such Realty Taxes assessed, charged or imposed upon or in respect of the Premises) in the first instance and Tenant shall pay to Landlord all Realty Taxes and an administration fee of 15% of the Realty Taxes.
- 7.3 ***Contesting Taxes*** Landlord and Tenant will each have the right to contest in good faith the validity or amount of any tax which it is responsible to pay under this Part 7, provided that in the case of Tenant: (a) Tenant has given at least fourteen (14) days prior written notice to Landlord of such contest and provided Landlord with copies of all assessment notices, tax bills and other documents received by Tenant relating to Realty Taxes; (b) no contest by Tenant may involve the possibility of forfeiture, sale or disturbance of Landlord's interest in the Premises; (c) if required by Landlord, Tenant will deliver to Landlord prior to such contest security in such amount as Landlord considers necessary; and (d) upon final determination of such contest, if Tenant has not already done so, Tenant will immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. Tenant will not have the right in the event of any such contest to withhold payment to Landlord of the amounts which are the subject of the contest if such amounts are otherwise payable to Landlord and Landlord remains liable for payment of such amount to the Authority notwithstanding such contest. Tenant will fully indemnify Landlord for all costs and expenses (including legal fees and disbursements) incurred by Landlord as a result of any such contest by Tenant.
- 7.4 ***Business and Other Taxes Payable by Tenant*** Tenant shall pay before delinquency all Business Taxes, and any other taxes, charges, rates, duties and assessments levied, rated, imposed, charged or assessed against or in respect of any use, occupancy or conduct of business at the Premises or in respect of the Leasehold Improvements, Trade Fixtures, Tenant Property, or the business or income of Tenant on or from the Premises or rent payable under this Lease.
- 7.5 ***Alternate Methods of Taxation*** If during the Term the method of taxation shall be altered so that the whole or any part of the Realty Taxes now levied on real estate and improvements are levied wholly or partially as a capital levy or on the rents received or reserved or otherwise, or if any new or other tax, assessment, levy, imposition or charge in lieu thereof, shall be imposed upon Landlord, by any municipality related in any way to the Premises, then all such taxes, assessments, levies, impositions and charges shall be included when determining Realty Taxes. If during the Term the method of taxation shall be altered so that the whole or any part of the Business Taxes payable in respect of any use or occupancy of the Premises which are currently included in Realty Taxes are separately assessed, and become separately payable, Tenant shall pay and be liable to pay same as Additional Rent and Landlord shall have the right to allocate and collect such Business Taxes (as would have formerly been included in Realty Taxes) from Tenant in the manner or on the same basis as would have been employed by the Authority previously levying same.
- 7.6 ***Rental Taxes*** In addition to Rent, Tenant will pay to Landlord Rental Taxes calculated by Landlord in accordance with applicable legislation, which amounts shall be paid by Tenant at the same time as the amounts to which Rental Taxes apply are payable under the terms of this Lease. Rental Taxes will not be considered to be Rent, but Landlord shall have all of the same remedies and rights of recovery with respect to Rental Taxes as it has for non-payment of Rent.

PART 8 - MAINTENANCE, REPAIRS AND ALTERATIONS

8.1 ***Responsibility of Tenant*** Notwithstanding any provision in this Lease, the Landlord acknowledges that the Tenant is leasing the Premises "as is" and the Tenant shall have no obligation to improve the condition of the Premises beyond the condition of the Premises on the Commencement Date. Subject to the foregoing sentence, without notice or demand from Landlord and except to the extent that Landlord is specifically responsible therefor under this Lease or elects from time to time to carry out any such maintenance, repairs and alterations as an Additional Service at Tenant's cost or, at Landlord's sole discretion, as part of Operating Costs, Tenant will maintain and keep in a good state of repair the Premises and the Leasehold Improvements in good order and condition all as a careful owner would do, including without limitation:

- (a) making repairs, replacements and alterations as needed, including those necessary to comply with the requirements of any Authority;
- (b) keeping the Premises and the exterior area surrounding the Premises in a clean and tidy condition, and not permitting wastepaper, garbage, ashes, waste or objectionable material to accumulate thereon or in or about the Building, other than in areas and in a manner designated by Landlord;
- (c) repairing all damage in the Premises resulting from any misuse, excessive use or installation, alteration, or removal of Leasehold Improvements, HVAC Facilities, Trade Fixtures and/or Tenant Property;
- (d) making repairs, maintenance and replacements of the HVAC Facilities serving the Building; and
- (e) landscaping of all grassed and tree/planted areas of all areas in and around the Premises regardless of the Tenant's use of such areas and snow removal of all paved, asphalted entranceways and sidewalks of areas in and around the Premises. Such maintenance must be completed in a timely manner and consistent with the Landlord's standards for the rest of the property. In the event that Tenant does not continuously upkeep the landscaping or remove the snow in the areas specified above to the Landlord's standards, Landlord at its sole discretion may carry out any such maintenance and include all costs in relation to such maintenance as part of Operating Costs.

Tenant will promptly notify Landlord of any material damage to or material defect in any part of the Premises or in any equipment or Utilities serving the Premises of which Tenant becomes aware notwithstanding that Landlord may have no obligation with regard thereto. For greater certainty and without limitation, the Tenant is to notify the Landlord promptly of any material water damage or leaks. If the Landlord elects to carry out any such maintenance, repairs and alterations then subsection 8.4 (f) shall apply thereto unless Landlord elects, in its sole discretion from time to time, to include the costs thereof as part of Operating Costs, provided however the Landlord may only elect to carry out such maintenance, repairs and alterations if the Tenant elects not to carry out such work.

8.2 ***Responsibility of Landlord***

- (a) Landlord shall maintain and keep in a good state of repair having regard to the size, age, type and location of the Premises:
 - (i) the Building's structure, roof, and permanent building walls (except for interior faces facing into the Premises);
 - (ii) systems and equipment installed by Landlord for the supply and distribution of Utilities; and
 - (iii) damage from causes against which Landlord has agreed to insure as primary insurer.
- (b) The following provisions apply to and may limit Landlord's obligations under subsection 8.2 (a):
 - (i) if all or part of such systems, facilities and equipment are destroyed, damaged or impaired, Landlord will have a reasonable time in which to complete the necessary repair

or replacement, and during that time will be required only to maintain such services as are reasonably possible in the circumstances;

- (ii) no reduction or discontinuance of Landlord services will be construed as an eviction of Tenant or release Tenant from any obligation of Tenant under this Lease; and
- (iii) nothing contained in subsection 8.2(a) will derogate from the provisions of Part 12 or from Landlord's right to include in Operating Costs the cost of complying with this Part 8.


8.3 *Inspection, Notice and Entry*

- (a) **Inspection** Tenant will permit Landlord and its authorized agents, employees, consultants and contractors to enter upon the Premises at any time or times upon seventy-two (72) hours prior notice (except in a real or perceived emergency, in which event, no notice will be required) to examine, measure and inspect the Premises, to inspect Tenant's maintenance, repairs and alterations to the Premises, to show the Premises to prospective Mortgagees or Purchasers, to show the Premises to prospective tenants during the last twelve (12) months of the Term only, to provide maintenance services, and to make all repairs, alterations, changes, adjustments, improvements, installations or additions to the Premises or the Building, including the Building systems and facilities, that Landlord considers necessary or desirable, including those matters which are Tenant's responsibilities pursuant to section 8.1 hereof. For the purposes of this section 8.3, Landlord may take materials into the Premises as required therefor and may have access to the Building systems and facilities including the HVAC Facilities. Tenant will not obstruct pipes, conduits, ducts or shafts or other parts of the Building systems so as to prevent access to them by Landlord. Landlord in exercising its rights under this section will make commercially reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. No entry made or work undertaken by or on behalf of Landlord upon the Premises pursuant to this section is a re-entry or a breach of Landlord's covenant for quiet enjoyment.
- (b) **Entry** If Tenant is not present to open and permit any entry into the Premises when for any reason an entry shall be permitted hereunder or necessary in the case of a real or perceived emergency, Landlord or its agents may, using reasonable force, enter the same without rendering Landlord or such agents liable therefor, and without affecting the obligations and covenants of Tenant under this Lease.
- (c) **Limitation** Notwithstanding anything to the contrary, Landlord shall not be required to inspect the Premises, give notice to Tenant or carry out remedies on Tenant's behalf, nor is Landlord under any obligation for the care, maintenance or repair of the Premises, except as specifically provided in this Lease, and Tenant shall not be entitled to any abatement or reduction of Rent as a result of, nor shall Landlord be liable for any loss, expense or damage arising from or relating to, any inspection, entry or work described in this section 8.3.
- (d) **Performance of Tenant's Responsibilities by Landlord** If Tenant has not complied with the provisions of section 8.1 then Landlord may in addition to and without waiving or limiting its rights under section 15.1, enter the Premises and perform Tenant's responsibilities pursuant to section 8.1, and repair or replace any and all equipment or fixtures servicing the Premises at Tenant's cost.

8.4 *Tenant Improvements and Alterations*

- (a) **Landlord's Criteria** All Tenant's work from time to time, including the installation of all Leasehold Improvements and the carrying out of all Alterations shall:
 - (i) be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed unless such work may affect a structural part of the Building or may

materially affect the mechanical, electrical, HVAC or other basic systems of the Building or the capacities thereof, in which case Landlord's approval may be arbitrarily withheld;

- (ii) be performed in a good and workmanlike manner, at the sole risk and expense of Tenant, and in strict accordance with drawings and specifications approved by Landlord and Landlord's design criteria for the Building;
 - (iii) be performed in compliance with the applicable requirements of all Authorities, evidence of which shall be provided to Landlord;
 - (iv) be subject to the supervision and direction of Landlord or its employees, agents, manager or contractors during construction (Tenant hereby acknowledging that such supervision will be for the benefit of Landlord only and that Landlord will not be responsible in any way whatsoever for the quality, design, construction or installation of any such work);
 - (v) equal or exceed the then current standard for the Premises.
- (b) **Plans and Specifications** Tenant shall submit to Landlord details of any proposed Tenant's work, including Leasehold Improvements and Alterations, which details shall include complete working drawings and specifications prepared by qualified designers and conforming to good engineering practice. Tenant shall reimburse Landlord for the cost of technical evaluation of Tenant's plans and specifications and shall revise such plans and specifications as Landlord deems necessary. Tenant shall be solely responsible for the adequacy and sufficiency of Tenant's plans and specifications and Landlord shall have no liability of any kind arising from Landlord's review or approval of such plans and specifications nor shall Landlord's review and approval constitute an acknowledgement or indication of any kind as to the adequacy or sufficiency of Tenant's plans and specifications.
- (c) **Insurance** Tenant and its contractors shall be required to maintain at their cost, throughout the period of Tenant's work, on terms and conditions satisfactory to Landlord acting reasonably, the following insurance:
- (i) comprehensive general liability insurance with respect to the construction in an amount of not less than five million dollars (\$5,000,000.00) for any one occurrence or claim or such higher limit as Landlord or the Mortgagee may require from time to time; and
 - (ii) builders risk insurance covering all work against all risks of physical loss or damage.
- (d) **Supervisory Fees** If Tenant or its contractors perform Tenant's work (including Leasehold Improvements and Alterations), Tenant shall pay to Landlord a fee for coordination and supervision services equal to ten percent (10%) of the total cost of Tenant's work (including Leasehold Improvements and Alterations) carried out from time to time, unless otherwise specifically provided for in Schedule 6 or otherwise agreed to in writing by the parties hereto provided that (i) the Tenant's work is of a structural nature and (ii) the services of an engineer or architect are required for such Tenant's work.
- (e) **Debris** During construction and installation of Leasehold Improvements and Alterations, Tenant shall keep the Premises and the Building clean of any related debris.
- (f) **Landlord's Work at Tenant's Expense** Tenant shall pay to Landlord the cost of any services provided by Landlord relating to Tenant's work, Leasehold Improvements and Alterations, including the cost of any necessary cutting, patching or repairing of any damage to the Building or the Premises, any cost to Landlord of removing refuse, cleaning, hoisting of materials, the cost of any services provided by Landlord pursuant to section 8.1 and any other costs of Landlord which can be reasonably allocated as a direct expense relating to the conduct of such work.
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- (g) **Restrictions** No Leasehold Improvements or Alterations by or on behalf of Tenant shall be permitted which may adversely affect the condition or operation of the Building or any of its systems or diminish the value thereof or restrict or reduce Landlord's coverage for municipal zoning purposes.
 - (h) **Unauthorized Installations** Any Leasehold Improvements or Alterations made by Tenant without the prior written consent of Landlord or which are not substantially in accordance with the drawings and specifications approved by Landlord shall, if requested by Landlord, be promptly removed by Tenant at Tenant's expense, and the Premises shall be restored to their previous condition.
 - (i) **Liens** Tenant shall promptly pay all its contractors and suppliers and shall do all things necessary to prevent a lien attaching to the Lands or Building and should any such lien be made, filed or attach Tenant shall discharge or vacate such lien within five (5) days of receiving notice thereof. If Tenant shall fail to discharge or vacate any lien, then in addition to any other right or remedy of Landlord, Landlord may discharge or vacate the lien by paying into Court the amount required to be paid to obtain a discharge, and the amount so paid by Landlord together with all costs and expenses including solicitor's fees (on a substantial indemnity basis) incurred in connection therewith shall be due and payable by Tenant to Landlord on demand together with interest at the Interest Rate, calculated from the date of payment by Landlord until all of such amounts have been paid by Tenant to Landlord.
 - (j) **Realty Tax/Insurance Increases** Any increase in Realty Taxes or fire or casualty insurance premiums for the Premises attributable to the Tenant's Leasehold Improvements or Alterations will be borne by Tenant and Tenant will pay Landlord for the cost of such increase upon receipt of Landlord's invoice.
- 8.5 **External Changes** Tenant agrees that it shall not erect, affix or attach to any roof, exterior walls or surfaces of the Building or any part of the Premises any antennae, sign, attachment or fixture of any kind, nor shall it make any opening in or alteration to the roof, walls, or structure of the Premises or the Building, or install in the Premises or Building free standing air-conditioning units, without the prior written consent of Landlord which may be arbitrarily withheld.
- 8.6 **Removal of Trade Fixtures and Tenant Property** At the end of the Term, if not in default, Tenant may remove its Trade Fixtures and Tenant Property, and shall, in the case of every installation or removal of Trade Fixtures and Tenant Property, make good any damage caused to the Premises or the Building by such installation or removal. Tenant may, if not in default, during the Term remove Tenant Property at Tenant's sole discretion. Any Trade Fixtures and Tenant Property belonging to Tenant, if not removed at the termination or expiry of this Lease, shall, if Landlord so elects, be deemed abandoned and become the property of Landlord without compensation to Tenant. If Landlord shall not so elect, Landlord may remove such Trade Fixtures and Tenant Property from the Premises and store them at Tenant's risk and expense and Tenant shall save Landlord harmless from all damage to the Premises and the Building caused by such removal, whether by Tenant or by Landlord.
- 8.7 **Removal of Leasehold Improvements and Restoration** The Leasehold Improvements shall immediately upon installation become the property of Landlord without compensation to Tenant. Tenant shall repair and make good any damage to the Premises or to the Building caused either in the installation or removal of Leasehold Improvements.

Unless otherwise agreed to by Landlord, removal of Leasehold Improvements and the restoration required pursuant to this provision and the Lease, must be completed upon the expiration of the Term or earlier termination of this Lease. If the required restoration or removals are not completed by expiration of the Term or earlier termination of this Lease, then Tenant shall be deemed as a monthly tenant until such restoration or removals are completed and Tenant shall additionally be subject to the Overhold provision set out in Section 4.6 of this Lease. Upon expiration of the Term or earlier termination of this Lease, the Tenant shall remove all refuse and debris from the Lands and shall leave the Premises in a broom-swept condition.

PART 9 - ENVIRONMENTAL PROVISIONS

9.1 **Compliance** The Tenant acknowledges that the Landlord is purchasing the Premises on the basis that the Premises are in compliance with all Environmental Law. The Tenant covenants:

- (a) prior to the Commencement Date and thereafter no more than once in each Lease Year within fifteen (15) days of request by Landlord, to complete and sign the Environmental Questionnaire, which shall be certified by a senior officer of Tenant as complete and accurate responses and which are hereby deemed to be representations and warranties of Tenant upon which Landlord is relying;
- (b) to use and occupy the Premises so as not to contravene any present or future Environmental Law, and obtain and comply with the terms of all licenses, certificates of approval, permits and other approvals necessary or appropriate under applicable Environmental Law for the safe and lawful conduct of its business at or from the Premises;
- (c) not to cause or allow any Contaminant to be used, generated, stored, or disposed of on, under or about, or transported to or from any part of the Premises, (collectively the "*Contaminant Activities*") unless previously disclosed to Landlord in the Environmental Questionnaire and consented to in writing by Landlord, and then only in strict compliance, at Tenant's expense, with applicable Environmental Law, using all necessary and appropriate precautions which a cautious and prudent operator would exercise;
- (d) not to permit any Discharge except to the extent consented to by Landlord in writing and in accordance with Environmental Law, and to give immediate notice to Landlord of any Discharge or of any other occurrence which might give rise to a duty in Tenant or Landlord or both under Environmental Law;
- (e) to comply with any investigative, remedial or precautionary measures required under Environmental Law arising from or attributable to any act or omission of Tenant or those for whom Tenant is in law responsible;
- (f) to protect, defend, indemnify and save the Landlord, Manager and their respective directors, officers, employees, agents, shareholders, successors and assigns completely harmless from and against all costs, losses, damages and expenses incurred relating to any Contaminant Activities or Environmental Claim or both, directly or indirectly incurred, sustained or suffered by or asserted against all or any one of them, including without limiting the generality of the foregoing, the cost of satisfying any order, carrying out remedial or precautionary measures, or cleaning up any Discharge, to the extent caused by or attributable to, either directly or indirectly, any act or omission of Tenant and/or any person for whom Tenant is in law responsible and Tenant covenants and agrees to pay to Landlord an administrative fee equal to fifteen percent (15%) of all such amounts.

9.2 **Waste Disposal**

- (a) Tenant shall be responsible for proper disposal of all Contaminants and other materials which require special disposal measures, including oil, kitchen waste and grease. Tenant will store and dispose of all of its waste in a lawful manner. In particular, Tenant will use the garbage collection service provided by Landlord only to dispose of solid waste (which is not Hazardous Waste) which can lawfully be transported to, and dumped at, a landfill site without requiring payment of surcharges or penalties, and will use the sewers only to dispose of liquid waste (which is not Hazardous Waste) which may be lawfully discharged into the municipal sewer. All other wastes will be disposed of by Tenant, at its expense, at least once every month, using a properly licensed waste hauler. Regardless of whether the waste hauler is retained by Landlord or Tenant, Tenant, and not Landlord, shall be deemed to be the generator of Tenant's waste and all costs shall be Tenant's responsibility.



- (b) Where Landlord provides separate waste collection facilities for different types of waste, Tenant will separate its waste and will deliver each waste to the appropriate facility. Tenant will comply with any waste reduction workplan prepared by Landlord from time to time (if any), at Tenant's cost. Tenant will comply with all reasonable requirements imposed by Landlord with respect to the implementation of a system for the storage, disposal, and separation of waste at the Premises as contemplated by this Part 9.

9.3 ***Ownership of Contaminants*** If Tenant shall bring or create upon the Premises any Contaminant or if the conduct of Tenant's business shall cause there to be any Contaminant upon the Premises, then, notwithstanding any rule of law to the contrary, such Contaminant shall be and remain the sole and exclusive property of Tenant and shall not become the property of Landlord notwithstanding the degree of affixation of the Contaminant or the goods containing the Contaminant to the Premises and notwithstanding the expiry or earlier termination of this Lease.

9.4 ***Pesticides*** Tenant will not use pesticides in or on the Premises unless Tenant has first obtained written consent from Landlord to do so and all necessary permits under applicable Environmental Law.

9.5 ***Operations and Maintenance*** Tenant will design, install, operate, repair, replace and maintain, all equipment and property in the Premises, and will train all of its staff, in order to comply with Environmental Law and so as to minimize the risk of spills and other accidents, particularly those which might result in a Discharge. If due to Tenant's acts or omissions or use of the Premises, improvements to the Premises are necessary to comply with Environmental Law or with the requirements of any insurance carriers, Tenant will pay the entire cost thereof. Tenant will conduct regular preventative maintenance of all pollution control equipment, and will keep it in good working order at all times.

9.6 ***Orders and Offences***

- (a) Tenant will fully comply with all orders of an Authority which may be directed to Landlord or Tenant and which relate to the Premises in relation to the Tenant. Should an order or direction of an Authority be issued to Landlord or Tenant, requiring Landlord or Tenant to do anything in relation to an environmental problem caused or contributed to by Tenant, Tenant will, upon receipt of written notice from Landlord, promptly and fully satisfy the requirements of the order or direction at Tenant's expense to the extent it is proportionally caused or contributed to by the Tenant.
- (b) If Tenant fails or refuses to promptly and fully satisfy the requirements of an order or direction referred to in this section, Landlord may elect in writing (but is not obligated) to satisfy the whole or any part of the requirements of the order or direction at Tenant's expense.
- (c) If Tenant fails or refuses to promptly and fully satisfy the requirements of any such order or direction or if Tenant is convicted of an offence contrary to any Environmental Law which relates to the Premises and the course of conduct which gave rise to the order, direction or offence has not ceased or been rectified, or re-occurs, Landlord will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing, and Landlord will not be liable for any losses or damages of any kind however caused arising out of such termination.

9.7 ***Inspection***

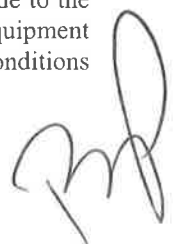
- (a) Landlord may at any time upon seventy-two (72) hours' notice (except in a real or perceived emergency in which event no notice shall be required) inspect the Premises and Tenant's records to determine whether Tenant is fully complying with Environmental Law and its environmental obligations under this Lease and to evaluate the risk of Discharges.
- (b) When Landlord reasonably considers it necessary, the inspection may be performed in whole or in part by experts, and may include sampling, monitoring, and other tests, all performed at Tenant's

expense if arising from or attributable to any act or omission of Tenant or if such inspection discloses that Tenant has not complied with its obligations under this Part 9.

- (c) If Landlord's inspection discloses a breach of an Environmental Law, or a situation which could reasonably be anticipated to result in a breach of an Environmental Law, Landlord will have the right to rectify such breach, or prevent such breach from occurring, as the case may be, at Tenant's sole expense.
 - (d) Tenant authorizes Landlord to make inquiries from time to time of any Authority with respect to Tenant's compliance with Environmental Law, and Tenant will from time to time provide to Landlord such written authorizations as Landlord may require in order to facilitate Landlord obtaining such information.
 - (e) Upon request by Landlord no more than once in each Lease Year, Tenant shall provide to Landlord a certificate executed by a senior officer of Tenant certifying ongoing compliance by the Tenant with Environmental Law, the Environmental Questionnaire and its covenants contained in this Part 9.
 - (f) At any time during the Term following a material Discharge occurring on or about the Premises, Landlord may require Tenant to obtain and deliver to Landlord at Tenant's expense an Environmental Assessment addressed to both Landlord and Tenant concerning such Discharge.
- 9.8 ***Vacant Possession*** Upon the expiration of the Term or other termination of this Lease, Tenant will leave the Premises materially clean of Contaminants and suitable for immediate reuse for any commercial purpose. Tenant will be deemed to be overholding until it has removed from the Premises and lawfully disposed of all waste and other Contaminants caused by or resulting from its occupancy and use of the Premises.
- 9.9 ***No Merger*** The provisions of this Part 9 will survive and continue to apply following the expiry or earlier termination of this lease.

PART 10 - LANDLORD'S SERVICES AND ALTERATIONS

- 10.1 ***Operation of Project*** The Project shall at all times be under the exclusive control and management of Landlord and, subject to participation by Tenant by payment of Operating Costs, Landlord will provide the services set out in section 10.2.
- 10.2 ***Services to Premises***
- (a) ***Electrical Power*** Landlord will supply to the Premises circuits sufficient to deliver electrical power to the Premises to the levels currently existing on the date hereof. If Tenant requires electrical power at a different voltage or at a greater capacity than Landlord's system delivers, then any additional systems required, if available, shall be installed, operated and maintained at Tenant's cost.
 - (b) ***Water and Sewage Connections*** Landlord shall provide to the Premises water and sewer connections to the extent existing on the date hereof. Any connections or special facilities required by Tenant shall be made at Tenant's cost and in accordance with section 8.4.
 - (c) ***Information Technology*** Landlord may provide or arrange with third parties to provide to the Building from time to time access to advanced information technology systems and equipment including fibre optic and other sophisticated telecommunication facilities on terms and conditions satisfactory to Landlord in its sole discretion.



- (d) **Utility Regulations** Landlord's furnishing of Utilities as set out in this section 10.2 or otherwise shall be subject to the rules and regulations of the supplier of such utility or other Authority regulating the business or providing any of these Utilities.
- 10.3 **Interruption or Delay of Services or Utilities** Landlord may slow down, interrupt, delay, or shut down any of the services or Utilities outlined in this Part 10 on account of repairs, maintenance or alterations to any equipment or other parts of the Premises, provided that to the extent reasonably possible under the circumstances Landlord shall provide prior notice and shall schedule such interruptions, delays, slow downs, or stoppage so as to minimize any inconvenience to Tenant, save and except in all instances for real or perceived emergencies and events beyond Landlord's control. No reduction or discontinuance of such services or Utilities will be construed as an eviction of Tenant, nor release Tenant from any obligation of Tenant under this Lease, nor make Landlord liable for any damages arising therefrom.
- 10.4 **Public Policy** Landlord shall be deemed to have observed and performed the terms and conditions to be performed by Landlord under this Lease, including those relating to the provision of Utilities, if in so doing it acts in accordance with a directive, policy or request of an Authority acting in the fields of energy, conservation, waste management and disposal, security, the environment or other area of public interest.
- 10.5 **Easements** Tenant acknowledges that Landlord and any persons authorized by Landlord may install, maintain and repair pipes, wires and other conduits or facilities in the Premises and, provided that same once installed will not materially interfere with Tenant's reasonable use and enjoyment of the Premises. Any such installing, maintaining and repairing shall be done in a manner that will minimize inconvenience to Tenant to the extent reasonably possible in the circumstances.
- 10.6 **Landlord's Alterations** Landlord shall have the right, at any time, to (a) add buildings, additions and parking structures on the Lands or to make additions to, or subtractions from, or to change, rearrange or relocate any part of the Lands and the Building; (b) enclose any open area, and to grant, modify or terminate easements and other agreements pertaining to the use and maintenance of all or any part of the Lands and the Building; and (c) make changes to the parking areas and facilities, access routes and driveways and to make any changes or additions to the systems, pipes, conduits, Utilities or other building services within or serving the Premises, provided that any such actions by the Landlord do not affect the rights granted to the Tenant under this Lease.
- In doing any of the foregoing, Landlord shall have the right to enter the Premises upon seventy-two (72) hours prior notice, and shall make such changes as expeditiously as reasonably possible, using commercially reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. Tenant shall cooperate with Landlord in any of its programmes to improve or make more efficient the operation of the Premises or any part thereof.
- 10.7 **Landlord's Signs** Landlord shall have the right at any time to install general information, directory and direction signs in and about the Premises, and further may place upon the Building a notice of reasonable dimensions, reasonably placed so as not to interfere with Tenant's business, stating that the Premises are for sale, and at any time during the last six (6) months of the Term, that the Premises are for lease. Tenant shall not remove or interfere with such notices or signs.
- 10.8 **Additional Services** Tenant may from time to time be provided with (only to the extent specifically provided for herein) or request Additional Services from Landlord and Tenant shall pay Landlord's charge for such Additional Services (which shall be reasonable having regard to Landlord's standards for the Building and which, where practical, shall be estimated by Landlord in advance) plus fifteen percent (15%) thereof to cover Landlord's cost of administration, payable within ten (10) days of delivery of Landlord's invoice therefor. If a charge for Additional Services is payable by Tenant under this Lease, then to the extent any cost or expense is included in such charge, such cost or expense shall be excluded from Operating Costs.



PART 11 - INSURANCE AND INDEMNIFICATION

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

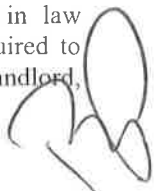
- (a) "All Risks" insurance upon property of every description and kind owned by Tenant, or for which Tenant is legally liable, or which is installed by or on behalf of Tenant, within the Premises or on the Lands, or Building, including, without limitation, stock in trade, furniture, equipment, partitions, Trade Fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time. If there shall be a dispute as to the amount of full replacement cost the decision of Landlord or the Mortgagee, acting reasonably, shall be conclusive;
- (b) commercial general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Premises, which coverage shall include the business operations conducted by Tenant and any other person on the Premises and all those for whom Tenant is responsible including those performing work for or on behalf of Tenant. Such policies shall be written on an occurrence basis with coverage for any one occurrence or claim of not less than five million dollars (\$5,000,000.00) or such higher limits as Landlord or the Mortgagee may require from time to time;
- (c) business interruption insurance including loss of profits;
- (d) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of all Leasehold Improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by Tenant or by others (except for Landlord) on behalf of Tenant in the Premises, or relating to, or serving the Premises; and
- (e) any form of insurance as Tenant, Landlord or the Mortgagee may reasonably require from time to time, including without limitation pollution and remediation legal liability coverage with respect to any Environmental Claim, in amounts and for insurance risks against which a prudent tenant would protect itself.

11.2 ***Policy Requirements*** Each policy of insurance taken out by Tenant in accordance with this Lease shall be taken out with insurers and shall be in such form and on such terms with deductibles as are satisfactory to Landlord, the Mortgagee and the Manager and each such policy shall name Landlord, any Mortgagee and the Manager and any others designated by Landlord (including any beneficial owner or other having an insurable interest) as additional named insureds, as their respective interests may appear, and each of such policies shall contain in form satisfactory to Landlord:

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



- 11.3 ***Proof of Insurance*** Tenant shall provide to Landlord and the Mortgagee at the time of execution of this Lease and thereafter on demand, and no more than once in each Lease Year satisfactory evidence that the policies of insurance required to be maintained by Tenant in accordance with this Lease are in fact being maintained, which evidence shall be in the form of certificates of insurance, or if required by Landlord or the Mortgagee, certified copies of each such insurance policy.
- 11.4 ***Failure to Maintain*** If Tenant fails to take out or keep in force any insurance referred to in this Part 11 or should any such insurance not be approved by either Landlord or the Mortgagee, each acting reasonably, and should Tenant not rectify the situation within forty-eight (48) hours following receipt by Tenant of written notice from Landlord (stating, if Landlord or the Mortgagee do not approve of such insurance, the reasons therefor), Landlord shall have the right, without assuming any obligation in connection therewith, to effect insurance under the Landlord's blanket policy to cover the Landlord's Mortgagee's interests at the sole cost of Tenant and all outlays by Landlord shall be payable by Tenant to Landlord and shall be due on the first day of the next month following said payment by Landlord, without prejudice to any other rights and remedies of Landlord under this Lease.
- 11.5 ***Damage to Leasehold Improvements*** In case of damage to the Leasehold Improvements, or any material part thereof, the proceeds of insurance in respect thereto shall be payable to Landlord, and such proceeds if received by the Landlord shall be released to Tenant (provided that Tenant is not in default hereunder) upon Tenant's written request for progress payments, at stages determined by a certificate of the Architect stating that repairs to each such stage have been satisfactorily completed free of liens by Tenant or by Tenant's contractors. In the event Tenant defaults in making such repairs, Landlord may, but shall not be obliged to, perform the repairs and the proceeds may be applied by Landlord to the cost thereof. If this Lease expires or is terminated at a time when the Premises or Leasehold Improvements are damaged or destroyed as a result of a peril required to be insured against by Tenant, Tenant shall pay or assign to Landlord free of any encumbrance, an amount equal to the proceeds of insurance maintained or, if Tenant is in default of section 11.1, the proceeds of insurance which would have been recoverable under insurance required to be maintained by Tenant with respect to such damage or destruction.
- 11.6 ***Landlord's Insurance*** Landlord agrees to insure the Building and the machinery, boilers and equipment therein owned by Landlord (specifically excluding any property which Tenant is obliged to insure under this Part 11) against "All Risks" of loss in such reasonable amounts as would be carried by a prudent owner of a comparable building in the municipality. Landlord shall also carry commercial general liability insurance covering third party bodily injury and property damage with respect to the operation of the Premises, and may carry rental insurance and environmental insurance and any other forms of insurance as it or the Mortgagee may reasonably determine to be advisable from time to time. Notwithstanding that Tenant shall be contributing to Landlord's costs and premiums respecting such insurance, Tenant shall not have any insurable or other interest in any of Landlord's insurance other than the rights, if any, expressly set forth in this Lease, and in any event, Tenant shall not have any interest in, nor any right to recover any proceeds under any of Landlord's insurance policies.
- 11.7 ***Increase in Insurance Premiums*** Tenant shall not do or permit anything to be done upon the Premises which shall cause the premium rate of insurance on the Building to be increased. If the premium rate of insurance on the Building shall be increased by reason of any act or omission of Tenant or any use made of the Premises, Tenant shall pay to Landlord on demand the amount of such premium increase. In the event of an actual or threatened cancellation of any Landlord's insurance on the Building or any material adverse change thereto by the insurer by reason of the use or occupation of the Premises and if Tenant has failed to remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation or adverse change within seventy-two (72) hours after notice thereof by Landlord, then without prejudice to any other rights which Landlord may have, Landlord may remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation or change, all at the cost of Tenant to be paid forthwith upon demand, and for such purposes Landlord shall have the right to enter upon the Premises without further notice.
- 11.8 ***Release of Landlord*** Tenant hereby releases Landlord and those for whom Landlord is in law responsible from all losses, damages and claims of any kind in respect of which Tenant is required to maintain insurance or is otherwise insured. In addition and without limitation, Tenant agrees that Landlord,



regardless of negligence or alleged negligence on the part of Landlord or those for whom Landlord is in law responsible, or any breach of this Lease by Landlord, shall not be liable for and Tenant hereby releases Landlord from:

- (a) any death or injury arising from or out of any occurrence in, upon, at or relating to the Premises;
- (b) any loss or damage to any property of Tenant or others (whether or not such property has been entrusted to Landlord, its agents, servants or employees) resulting from fire, explosion, steam, water, mould, rain, snow or gas which may leak into or issue or flow from any part of the Premises or from the water, steam or drainage pipes or plumbing works of the Premises, or the effects thereof;
- (c) any loss or damage caused as a result of any damage, destruction, construction, alteration, expansion, expropriation, reduction, repair or reconstruction from time to time of the Building or any parts or components of the Building, or of improvements on adjoining properties;
- (d) any loss or damage caused by or attributable to the condition or arrangement of any electric or other wiring;
- (e) any loss or damage of any kind arising from any failure, interruption, slowdown or stoppage of any Utilities, including without limitation any failure or interruptions of any telecommunications, fibre optic or other information technology facility utilized by Tenant and whether provided by Landlord or any other provider, any HVAC Facility, any service or any other base building system;
- (f) any damage caused by anything done or omitted to be done by any other tenant or occupant of the Building;
- (g) any claim or demand in connection with any injury, loss or damage to Tenant, its agents, invitees or licensees, or to the property of Tenant, its agents, invitees or licensees, where such injury, loss or damage arises out of the security services in force or the lack thereof in the from time to time;
- (h) any loss, damage or injury caused by or attributable to Landlord entering the Premises to carry out inspections, maintenance services, repairs, alterations or improvements; and
- (i) in any event, any indirect or consequential damages suffered by Tenant, including without limitation, loss of profit.

Notwithstanding anything contained in this section 11.8 to the contrary, it is understood and agreed that the Landlord is liable for any such death or injury or such damage to property referred to in this section 11.8 if any such death or injury or any such damage to property is caused, or to the extent contributed to, by the negligence of the Landlord, but only to the extent that that:

- (a) the Tenant is not required to have insurance coverage pursuant to section 11.1 of this Lease; and
- (b) the Landlord is indemnified by its insurers for its liability with respect to any such death or injury or any such damage to property.

11.9 **Release of Tenant** Notwithstanding any other provisions of this Lease, Landlord hereby releases Tenant and any other person for whom Tenant is legally responsible from any liability or claim that may be made by Landlord against Tenant under the provisions of this Lease with respect to such loss to the extent of the lesser of: (a) the amount, if any, by which such loss exceeds the amount of insurance Tenant is required to maintain under the terms of this Lease or actually maintains, whichever is greater; and (b) the proceeds actually paid to Landlord with respect to such loss under the policies of insurance maintained by Landlord pursuant to section 11.6 or which would have been paid if Landlord had maintained the insurance required under this Lease and had diligently processed any claims thereunder.

- 11.10 ***Indemnification of Landlord*** Tenant shall indemnify Landlord and save it harmless from all losses, liabilities, damages, claims, demands and actions of any kind or nature which Landlord shall or may become liable for or suffer by reason of any breach, violation or non-performance by Tenant of any covenant, term or provision of this Lease and, subject to section 11.9, against any and all losses, liabilities, damages, claims, demands, actions and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Premises or arising from the occupancy or use by Tenant of the Premises, the Lands, or the Building by Tenant, its agents, contractors, employees, servants, licensees, concessionaires or invitees (including without limitation, third party claims arising from or related to any failure or interruption of services, Utilities or telecommunications supplied by Landlord), or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, licensees or concessionaires whether on the Premises, the Lands or in the Building. However, the Tenant is not required to indemnify the Landlord and save harmless against any and all losses, liabilities, damages, claims, demands, actions and expenses when they arise directly from the negligence or wilful misconduct of the Landlord and its agents, contractors, employees, servants, licensees, concessionaires or invitees. If Landlord, without actual fault on its part, is made a party to any litigation commenced by or against Tenant, Tenant shall hold Landlord harmless and shall pay all reasonable costs and legal fees incurred or paid by Landlord in respect of such litigation.
- 11.11 ***Extension of Rights and Remedies*** Every right, benefit, exemption from liability, defence, immunity and waiver of whatsoever nature applicable to Landlord under this Lease shall also be available and shall extend to benefit and to protect all other companies owned, operated or controlled by or affiliated with Landlord and the Manager (if any) and to protect their respective officers, directors, managers, consultants and employees and for such purposes Landlord and the Manager (if any) is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such companies and persons.

PART 12 - DAMAGE AND DESTRUCTION

- 12.1 ***Damage to the Premises*** It is understood and agreed that, notwithstanding the other provisions of this Lease, should the Premises at any time be partially or wholly destroyed or damaged by any cause whatsoever or should demolition of the Premises be necessitated thereby or should the Premises become unfit for occupancy by Tenant:
- (a) subject as hereinafter provided in this section 12.1, Landlord shall, to the extent of the insurance proceeds available for reconstruction and actually received by Landlord from its insurers following an election by the Mortgagee to apply all or any portion of such insurance proceeds against the debt owing to the Mortgagee as the case may be, reconstruct the Premises in accordance with Landlord's obligations to repair under the provisions of section 8.2 hereof. Upon substantial completion of Landlord's work, Landlord shall notify Tenant, and Tenant shall forthwith commence and expeditiously complete reconstruction and repair of the Premises, Leasehold Improvements and Trade Fixtures in accordance with Tenant's obligations to repair under the provisions of section 8.1 hereof;
 - (b) Rent shall not abate unless the Premises are rendered wholly or partially unfit for occupancy by such occurrence and in such event Rent, as of the date of such occurrence shall abate proportionately as to the portion of the Premises rendered unfit for occupancy, until ninety (90) days following receipt by Tenant of Landlord's notice given to Tenant as provided in subsection 12.1(a) hereof, at which time Rent shall recommence;
 - (c) if, in the opinion of the Architect, such opinion to be given to Landlord and Tenant within thirty (30) days of the date of such damage, the Premises cannot be repaired and made fit for occupancy within one hundred and eighty (180) days from the date of such damage (employing normal construction methods without overtime or other premium), then: (i) Landlord may by written notice to Tenant, given within thirty (30) days of receipt of such opinion of the Architect, elect to terminate this Lease, and (ii) if such damage occurs during the last Lease Year of the Term, as same may be extended or renewed, Tenant may by written notice to Landlord, given within thirty (30) days of receipt of such opinion of the Architect, elect to terminate this Lease, and in either case Rent shall cease and be adjusted as of the date of such damage and Tenant shall use

commercially reasonable efforts to vacate the Premises as expeditiously as possible and surrender same to Landlord; and

- (d) in no event, including termination of the Lease in accordance with the provisions of subsection 12.1(c) hereof, shall Landlord be liable to reimburse Tenant for damage to, or replacement or repair of any Leasehold Improvements, Trade Fixtures or any of Tenant's Property.

12.2 ***Damage to the Building*** It is understood and agreed that, notwithstanding the other provisions of this Lease, should the Building at any time be partially or wholly destroyed or damaged by any cause whatsoever, or should demolition of the Building, or any part thereof, be necessitated thereby:

- (a) subject as hereinafter provided in this section 12.2, Landlord shall, to the extent of the insurance proceeds available for reconstruction and actually received by Landlord from its insurers following any election by the Mortgagee to apply all or any portion of such insurance proceeds against the debt owing to the Mortgagee as the case may be, expeditiously reconstruct and repair the Building, and to the extent necessary, the Premises, in accordance with Landlord's obligations to repair under the provisions of section 8.2 hereof. Upon substantial completion of Landlord's work as it relates to the Premises Landlord shall notify Tenant, and Tenant shall forthwith commence and use commercially reasonable efforts to expeditiously complete reconstruction and repair of the Premises, Leasehold Improvements and Trade Fixtures to the extent they are so affected, in accordance with Tenant's obligations to repair under the provisions of section 8.1 hereof;
- (b) Rent shall not abate unless the Premises are rendered wholly or partially unfit for occupancy by such occurrence, and in such event, Rent, as of the date of such occurrence shall abate proportionately as to the portion of the Premises rendered unfit for occupancy, until ninety (90) days following receipt by Tenant of Landlord's notice given to Tenant as provided in subsection 12.2 (a) hereof, at which time Rent shall recommence;
- (c) if in the opinion of the Architect, such opinion to be given to Landlord and Tenant within thirty (30) days of the date of such damage, thirty percent (30%) or more of the Total Rentable Area of the Building is at any time destroyed or damaged in whole or in part by any cause whatsoever, or by demolition caused or necessitated thereby, notwithstanding that the Premises may be unaffected by such occurrence, Landlord may, by written notice to Tenant, given within thirty (30) days of receipt of such opinion of the Architect, elect to terminate this Lease, in which case, Rent shall cease and be adjusted as of the termination date specified in such notice, and Tenant shall vacate the Premises and surrender same to Landlord on such termination date;
- (d) in repairing, reconstructing or rebuilding the Building or any part thereof, Landlord may use designs, plans and specifications, other than those used in the original construction of the Building, and Landlord may alter or relocate, or both, any or all buildings, facilities and improvements, including the Premises, provided that the Premises as altered or relocated shall be substantially the same size and shall be in all material respects reasonably comparable to the Premises, as defined herein; and
- (e) in no event, including termination of this Lease in accordance with the provisions of subsection 12.2(c) hereof, shall Landlord be liable to reimburse Tenant for damage to, or replacement or repair of any Leasehold Improvements, Trade Fixtures or of any Tenant Property.

12.3 ***Architect's Certificate*** It is understood and agreed by Tenant that wherever a certificate of the Architect is required or deemed appropriate by Landlord, the certificate of the Architect shall bind the parties hereto as to completion of construction of the Premises and the availability of services, the percentage of the Premises or Building destroyed or damaged and the number of days required to make repairs or reconstruct and the state of tenantability of the Premises, and the state of completion of any work or repair of either Landlord or Tenant.

- 12.4 **Limitation** Except as specifically provided in this Lease, there will be no reduction or abatement of Rent and Landlord will have no liability to Tenant by reason of any injury to or interference with Tenant's business or Tenant Property arising from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom in or to any portion of the Building.

PART 13 - TRANSFERS BY TENANT

- 13.1 **Transfers** Tenant covenants that no Transfer affecting Tenant, this Lease, the Premises or the business of Tenant at the Premises shall be permitted or effective until Landlord's prior written consent to the Transfer is delivered to Tenant, which consent (without limiting Landlord's rights hereunder) will not be unreasonably withheld or delayed, so long as Tenant is not in default hereunder. Requests by Tenant to assign this Lease or sublet all or part of the Premises or to otherwise enter into a Transfer shall be in writing to Landlord accompanied by a copy of the proposed Transfer documents, full particulars of the proposed Transfer, the business and financial responsibility and standing of the proposed transferee, a copy of the Environmental Questionnaire attached hereto as Schedule 5 completed and certified by such proposed transferee, and such other information as Landlord may reasonably require. Prior to any consent being given by Landlord to Tenant's request, Landlord must be satisfied as to, among other things, the following: (a) that the liability of Tenant to fulfil the terms, covenants and conditions of this Lease shall remain; (b) that the financial ability, credit rating, business reputation and standing of the proposed assignee, subtenant or transferee, as the case may be, is satisfactory to Landlord; (c) that Tenant has regularly and duly paid Rent and performed all of the covenants contained in this Lease, (d) that the proposed transferee has, or will enter into an agreement with Landlord agreeing to be bound by all of the terms, covenants and conditions of this Lease; and (e) that the proposed transferee's intended use of the Premises shall not increase the likelihood of a Discharge or other environmental contamination or damage. If Tenant requests Landlord's consent to any Transfer, Landlord may:
- (a) refuse its consent (acting reasonably, provided that it will be reasonable for Landlord to consider, among other things, those factors listed above); or
 - (b) elect to cancel and terminate this Lease if the request is to assign the Lease or to sublet all of the Premises, or if the request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion. If Landlord elects to cancel this Lease and so advises Tenant in writing, Tenant shall then notify Landlord in writing within fifteen (15) days thereafter of Tenant's intention either to refrain from such assigning or subletting or to accept the cancellation of the Lease (in whole, or in part). Failure of Tenant to deliver notice to Landlord within such fifteen (15) day period advising of Tenant's intention to refrain from such assigning or subletting, shall be deemed to be an acceptance by Tenant of Landlord's cancellation of this Lease (in whole, or in part, as the case may be). Any cancellation of this Lease pursuant to this section 13.1 shall be effective on the later of the date originally proposed by Tenant as being the effective date of transfer or the last day of the month which is not less than sixty (60) days following the date of Landlord's notice of cancellation of this Lease; or
 - (c) grant its consent with such conditions, if any, as Landlord elects to impose, acting reasonably, which conditions may include but are not limited to:
 - (i) the requirement that any transferee covenant directly with Landlord in writing to perform and observe such of the covenants, obligations and agreements of Tenant under this Lease as Landlord requires; and
 - (ii) the requirement that any transferee deliver to Landlord the Environmental Questionnaire attached hereto as Schedule 5, certified by a senior officer of such transferee to be complete and accurate, disclosing no increased environmental risk.

Notwithstanding any other provision of this Lease, the Landlord shall consent to a request by the Tenant to a sub-let, assignment or other Transfer when such sub-lessee, assignee or transferee has a credit rating or covenant to pay which is equal to or better than the Tenant and on completion of such sub-let, assignment

or other Transfer in accordance with the provisions of this Lease, the Tenant shall be released by the Landlord from all obligations under this Lease.

13.2 **Additional Requirements** If Landlord agrees to grant its consent to any Transfer under section 13.1:

- (a) Tenant shall not permit or cause such Transfer to be completed except:
 - (i) upon terms consistent with the terms of Tenant's request and information under section 13.1 (except to the extent modified by any conditions imposed by Landlord under section 13.1);
 - (ii) upon conditions imposed by Landlord, if any, under section 13.1; and
 - (iii) upon terms not otherwise inconsistent with the terms of this Lease;
- (b) Tenant shall cause to be executed and delivered by any party to the Transfer (including Tenant) such documentation as may be reasonably required by Landlord in connection with such Transfer;
- (c) if the basic and additional rent (net of reasonable out of pocket costs for commissions and legal fees directly related to such Transfer) to be paid by the transferee under the Transfer exceeds the Basic Rent and Additional Rent payable by Tenant hereunder, the amount of such excess shall be paid by Tenant to Landlord; and if Tenant receives from any transferee, either directly or indirectly, any consideration other than basic rent or additional rent for such Transfer, either in the form of cash, goods or services, Tenant shall immediately pay to Landlord an amount equivalent to such consideration;
- (d) if such Transfer shall not be completed within sixty (60) days after Landlord's consent is given, such consent shall expire and become null and void and Tenant shall not then allow or cause such Transfer to be completed without again complying with all the requirements of this Part 13; and
- (e) such consent shall not be effective unless and until Tenant shall have complied fully with this section 13.2 and section 13.3.

13.3 **Landlord's Costs** Prior to Landlord delivering any requested consent, Tenant shall pay Landlord's reasonable fees and costs incurred in processing each request by Tenant for consent to Transfer including all reasonable legal costs.

13.4 **No Advertising** Tenant shall not advertise that the whole or any part of the Premises are available for a Transfer and shall not permit any broker or other person to do so unless the text and format of such advertisement is approved in writing by Landlord, such approval not to be unreasonably withheld or delayed. No such advertisement shall contain any reference to the rental rate of the Premises.

13.5 **No Release** No Transfer or other disposition by Tenant of this Lease or of any interest under this Lease shall release Tenant from the performance of any of its covenants under this Lease and Tenant shall continue to be bound by this Lease. Tenant's liability under the Lease will continue notwithstanding the bankruptcy, insolvency, dissolution or liquidation of any transferee of this Lease or the termination of this Lease for default or the termination, disclaimer, surrender or repudiation of this Lease pursuant to any statute or rule of law.

PART 14 - SALES AND FINANCINGS BY LANDLORD

14.1 **Dispositions by Landlord** Landlord, at any time and from time to time, may sell, transfer, lease, assign, or otherwise dispose of the whole or any part of its interest in the Premises and, at any time and from time to time, may enter into a Mortgage of the whole or any part of its interest in the Premises. In the event of such a disposition, other than a Mortgage, by Landlord, if the party acquiring Landlord's interest covenants to assume and perform the covenants of Landlord under this Lease, Landlord shall thereupon be released from all of its covenants under this Lease. If required by Landlord in connection with any sale, transfer,

Mortgage or other disposition, Tenant shall, within five (5) business days of request, provide to Landlord, prospective Purchasers and Mortgagees, and their respective agents and consultants, access to the current financial statements of Tenant and any Indemnifiers, provided that if Tenant is listed on a recognized stock exchange in Canada or the United States, Tenant agrees to provide in lieu thereof, copies of Tenant's annual reports, quarterly reports and all other publicly distributed reporting materials.

14.2 ***Subordination and Postponement***

- (a) Subject to subparagraph 14.2(b) immediately below, this Lease and the rights of Tenant in this Lease shall be subject and subordinate to any and all Mortgages and Tenant, on request by and without cost to Landlord, shall, within five (5) business days after such request, execute and deliver any and all instruments required by Landlord to evidence such subordination. Upon request by Tenant at the time of any request for confirmation of subordination, Landlord shall make reasonable commercial efforts to obtain from any Mortgagee, an acknowledgement and assurance in writing addressed to Tenant, whereby such Mortgagee acknowledges that in the event of any such Mortgagee realizing upon the security, it will not disturb Tenant and will permit Tenant to remain in possession under this Lease in accordance with its terms, so long as Tenant is not in default.
- (b) Landlord, as to any Mortgage, and a Mortgagee, as to any Mortgage held by it, may, by notice to Tenant, elect at any time that this Lease and the rights of Tenant hereunder shall have, and shall be deemed to have always had, priority to such Mortgage(s). Tenant, on request by and without cost to Landlord, shall, within five (5) business days after such request, execute and deliver any and all instruments required by Landlord or the Mortgagee, as the case may be, to further evidence priority of this Lease over the Mortgage(s).

14.3 ***Attornment*** At any time after any of the following has occurred:

- (a) a Mortgagee delivers a notice of attornment; or
- (b) a Mortgagee takes possession of the Building or the Premises; or
- (c) the interest of Landlord is transferred to any person (a "Purchaser") by reason of foreclosure or other proceedings for enforcement of any Mortgage or by delivery of a transfer/deed or other conveyance,

Tenant shall at the option of the Mortgagee or the Purchaser, as the case may be, exercisable by notice in writing to Tenant, be deemed to have attorned to the Mortgagee or the Purchaser, as the case may be, upon receipt of such notice. Landlord, the Mortgagee or the Purchaser, as the case may be, may require Tenant to enter into all instruments reasonably required by Landlord, the Mortgagee or the Purchaser, as the case may be, to confirm such attornment. Upon such attornment the obligations of Tenant under this Lease shall continue in full force and effect upon all the same terms, conditions and covenants contained in this Lease.

14.4 ***Reliance*** Notwithstanding that a Mortgagee or a Purchaser is not a party to this Lease, it shall be entitled to rely upon and enforce the provisions of this Lease which are stated to be for its benefit and, without limitation, the Mortgagee shall be entitled to act as agent for Landlord to the extent necessary to enforce any such provisions.

PART 15 - DEFAULT

15.1 ***Landlord May Perform Tenant's Covenants*** If Tenant is in default of any of its covenants, obligations or agreements under this Lease (other than its covenant to pay Rent) and such default shall have continued for a period of thirty (30) consecutive days (or such shorter period set out in this Lease) after notice by Landlord to Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied or, if by reason of the nature thereof, such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such thirty (30) day period (or such shorter period set out in this Lease), if Tenant shall fail to proceed promptly to cure the same or shall thereafter fail to prosecute the curing of such default with due diligence, Landlord, without prejudice to any

other rights which it may have with respect to such default, may remedy such default and the cost thereof to Landlord together with interest at the Interest Rate thereon from the date such cost was incurred by Landlord until repaid by Tenant shall be treated as Additional Rent and added to the Rent due on the next succeeding date on which Basic Rent is payable.

- 15.2 ***Landlord May Follow Chattels*** In case of removal by Tenant of the goods or chattels of Tenant from the Premises, Landlord may follow the same for thirty (30) days in the same manner as is provided for in the Act or any successor legislation or other statute which may hereafter be passed to take the place of the Act or to amend the same.

15.3 ***Re-Entry***

- (a) It is a condition of this Lease that when:
- (i) Tenant fails to pay when due any Rent, whether lawfully demanded or not, and such failure continues for three (3) days;
 - (ii) Tenant is in default of any of its covenants, obligations or agreements under this Lease (other than its covenant to pay Rent) and such default has continued for a period of ten (10) consecutive days (or such shorter period set out in this Lease) after notice by Landlord to Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied, or, if by reason of the nature thereof, such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such ten (10) day period, if Tenant has failed to proceed promptly to cure the same or has thereafter failed to prosecute the curing of such failure with due diligence;
 - (iii) an execution issues against any property located on the Premises of Tenant or any Indemnifier and remains outstanding for more than ten (10) days, or any receiver of any property located on the Premises of Tenant or any Indemnifier is appointed, or Tenant or any Indemnifier becomes insolvent or makes application for relief from creditors under the provisions of any statute now or hereafter in force, or files a notice of intention or a proposal, makes an assignment in bankruptcy, has a receiving order made against it or otherwise becomes bankrupt or insolvent, or any action, steps or proceedings whatever, are taken with a view to the winding up, dissolution or liquidation of Tenant or Indemnifier, or with a view to the restructuring or compromise of any debt or other obligation of Tenant or Indemnifier;
 - (iv) any insurance policy on the Building is actually cancelled or not renewed or threatened to be cancelled or not renewed by any insurer by reason of any particular use or occupation of the Premises and Tenant has failed to remedy the situation, use, condition, occupancy or other factor giving rise to such actual or threatened cancellation within seventy-two (72) hours following receipt by Tenant of written notice from Landlord;
 - (v) the Premises have been or are in the process of being abandoned, or the Premises have been used or occupied by any other person or persons other than Tenant or any person permitted by Part 13 or Schedule 6 hereof;
 - (vi) Tenant has not discharged or vacated any lien referred to in subsection 8.4 (i) within the time period specified therein;
 - (vii) Tenant makes a bulk sale of its goods or moves or commences, attempts or threatens to move its goods, chattels and equipment out of the Premises (other than in the normal course of its business); or
 - (viii) termination of this Lease by Landlord is permitted for cause under any other part of this Lease or in law;

then, and in any of such events, the then current month's Rent together with the Rent for the three (3) months next ensuing shall immediately become due and payable and, at the option of Landlord, the Term shall become forfeited and void, and Landlord without notice or any form of legal process whatever may forthwith re-enter the Premises or any part thereof in the name of the whole and repossess the same as of its former estate, anything contained in any statute or law to

the contrary notwithstanding. Landlord may expel all persons and remove all property from the Premises and such property may be removed and sold or disposed of by Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of Tenant without Landlord being considered guilty of trespass or conversion or becoming liable for any loss or damage which may be occasioned thereby, provided, however, that such forfeiture shall be wholly without prejudice to the right of Landlord to recover arrears of rent and damages for any antecedent default by Tenant of its covenants under this Lease. Should Landlord at any time terminate this Lease by reason of any such event, then, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur as a result of such termination.

- (b) Notwithstanding any termination of this Lease, Landlord shall be entitled to receive Rent and Rental Taxes up to the time of termination plus accelerated rent as herein provided and damages including but not limited to:
 - (i) damages for the loss of Rent suffered by reason of this Lease having been prematurely terminated;
 - (ii) the costs of reclaiming and repairing the Premises; and
 - (iii) solicitor's fees and disbursements on a substantial indemnity basis.
- 15.4 **Acceptance of Rent Non-Waiver** No receipt of monies by Landlord from Tenant after the termination of this Lease shall reinstate, continue or extend the Term, or affect any notice previously given to enforce the payment of Rent then due or thereafter falling due or operate as a waiver of the right of Landlord to recover possession of the Premises by proper action, proceeding or other remedy; it being agreed that, after the service of a notice to cancel or terminate this Lease and after the commencement of any action, proceeding or other remedy, or after a final order or judgment for possession of the Premises, Landlord may demand, receive and collect any monies due, or thereafter falling due without in any manner affecting such notice, action, proceeding, order or judgment; and any and all such monies so collected shall be deemed payments on account of the use and occupation of the Premises or at the election of Landlord on account of Tenant's liability hereunder.
- 15.5 **Rights Cumulative** The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Landlord shall be deemed to be in exclusion of any other rights or remedies provided in this Lease or by law or in equity.
- 15.6 **Landlord Default** If Landlord is in default, Tenant shall not have or exercise any right or remedy with respect thereto unless such default continues for ten (10) days or such longer period as may be reasonably required in the circumstances to cure such default after notice by Tenant to Landlord specifying reasonable details of the default and requiring it to be remedied.
- 15.7 **Rights of Mortgagees** If at any time during the currency of a Mortgage, notice of which has been given to Tenant, Landlord shall be in default under this Lease and such default would give rise to a right in Tenant to terminate this Lease, Tenant, before becoming entitled as against the holder of such Mortgage to exercise any right to terminate this Lease shall give to such Mortgagee notice in writing of such default. Such Mortgagee shall have thirty (30) days after the giving of such notice, within which to remedy such default, and if such default is remedied within such time Tenant shall not by reason thereof terminate this Lease. The rights and privileges granted to any such Mortgagee by virtue of this section shall not be deemed to alter, affect or prejudice any of the rights and remedies available to Tenant as against Landlord. Any notice to be given to such Mortgagee shall be deemed to have been properly given if mailed by registered mail to its most recent address of which Tenant has notice.

PART 16 - NOTICES AND CERTIFICATES

- 16.1 **Notices** Any notice required or contemplated by any provision of this Lease shall be given in writing and shall be signed by the party giving the notice, addressed, in the case of Landlord to it only at the address shown in Part 1; in the case of notice to Tenant to it at the Premises or at the address shown in Part 1; and in the case of notice to the Indemnifier, if applicable, to it at the address shown in Part 1, in each case delivered or sent by facsimile or by registered mail, postage prepaid, return receipt requested. For the purposes of this Lease, electronic messaging and electronic mail shall not be considered notice in writing.



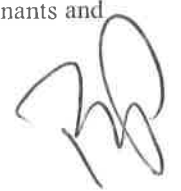
Notice shall be conclusively deemed to have been given and received, if delivered or sent by facsimile, at the time of such delivery or the time of sending by facsimile, in either case, unless received on a non-business day or after 5:00 p.m. on a business day, in either of which events such notice shall be deemed to have been given and received on the next business day, or if delivered or sent by registered mail, on the fifth (5th) day of regular mail service after such mailing. If two or more persons are named as Tenant, any notice given under this Lease to Tenant shall be deemed to have been sufficiently given if delivered, sent by facsimile or mailed in the foregoing manner to any one of such persons. Any party hereto may, by ten (10) days prior notice to the other(s), from time to time designate another address in Canada to which notices thereafter shall be addressed. Any notice to be given by Landlord may be signed and given by Landlord or by the Manager or by Landlord's solicitors.

- 16.2 **Certificates** Landlord and Tenant respectively agree that within ten (10) days after a written request therefor, they shall execute and deliver to the other or to such person as may be identified in the written request a written statement certifying that this Lease is unmodified and is in full force and effect (or if modified stating the modifications and that this Lease is in full force and effect as modified), the amount of the Basic Rent and the date to which it as well as all other charges under this Lease have been paid, whether or not there is any existing default on the part of Landlord or Tenant of which the person signing the certificate has notice and giving as well such further information as the person requesting the certificate shall reasonably require.

PART 17 - ADDITIONAL PROVISIONS

- 17.1 **Registration on Title** Tenant shall not register this Lease on the title to the Lands; however, Tenant after having paid to Landlord the sum of one thousand (\$1,000.00) as an additional deposit which Landlord may use to defer costs incurred in removing such registration at the end of the Term, may register a Notice of Lease on title to the Lands, at its sole cost, provided such Notice of Lease shall describe only the parties, the Premises, the Term and any renewals, and shall authorize and direct the Land Registrar to delete such instrument upon the expiration of the Term, unless notice of renewal is registered by Tenant with Landlord's approval, without further authorization. Such Notice of Lease shall be prepared by Tenant's solicitors, and shall be subject to the prior written approval of Landlord and its solicitors, and shall be registered at Tenant's expense. Upon expiry or termination of this Lease, Tenant shall forthwith remove or discharge from registration any such Notice of Lease and upon receipt by Landlord from Tenant of reasonable evidence of such removal or discharge, Landlord will return such additional deposit to Tenant.
- 17.2 **Name of Building and Project** Landlord will have the right, after thirty (30) days' notice to Tenant, to change the name, number or designation of the Building or any part thereof, during the Term without liability of any kind to Tenant.
- 17.3 **Demolition** Notwithstanding anything contained in this Lease to the contrary, if at any time after the expiry of the second Lease Year, Landlord intends to demolish, renovate, remodel or alter the Building to such an extent that Landlord requires possession of the Premises, then Landlord, upon giving Tenant one hundred and eighty (180) days written notice, shall have the right to terminate this Lease, in which event this Lease shall expire on the expiration of one hundred and eighty (180) days from the date of giving of such notice without compensation of any kind to Tenant except for the payment by Landlord to Tenant of an amount equal to the unamortized portion of the cost to Tenant (less any allowances paid by Landlord or the amount of any rent free period or rent credits granted by Landlord herein) of Tenant's Leasehold Improvements (amortized on a straight line basis over the shorter of the useful life of such Leasehold Improvements or the Term of this Lease remaining at the time of installation thereof, and determined as of the date of termination).
- 17.4 **Expropriation** Landlord and Tenant shall co-operate in respect of any expropriation of all or any part of the Premises so that each party may receive the maximum award to which it is entitled in law. If the whole or any part of the Premises are expropriated, as between the parties hereto, their respective rights and obligations under this Lease shall continue until the day on which the expropriating authority takes possession thereof. If, in the case of partial expropriation of the Premises this Lease is not frustrated by operation of governing law and such expropriation does not render the remaining part of the Premises untenable for the purposes of this Lease, Tenant and Landlord shall restore the part not so taken in accordance with their respective repair obligations under the provisions of Part 8 of this Lease. In this

section the word "expropriation" shall include a sale by Landlord to any authority with powers of expropriation, in lieu of or under threat of expropriation.

- 17.5 **Landlord and Tenant Relationship** No provision of this Lease is intended to nor creates a joint venture or partnership or any other similar relationship between Landlord and Tenant, it being agreed that the only relationship created by this Lease is that of landlord and tenant.
- 17.6 **Joint and Several** If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) sign this Lease as Tenant or as an Indemnifier, the liability of each such individual, corporation, partnership or other business association to pay Rent and to perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if Tenant is a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.
- 17.7 **Limitation of Landlord Liability** Tenant covenants and agrees that notwithstanding any provision to the contrary in this Lease. Any liability of Landlord under this Lease shall be limited to its interest in the Premises from time to time. If Landlord consists of more than one person, the liability of each such person shall be several and be limited to its percentage interest in the Premises.
- 17.8 **Authority** Each of Tenant and Landlord represents and warrants to the other that it is duly formed and in good standing, and has full corporate authority to enter into this Lease, and has taken all corporate action necessary to make this Lease a valid and binding obligation, enforceable in accordance with its terms.
- 17.9 **Lease Entire Agreement** There are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Lease or the Premises save as expressly set out in this Lease and this Lease constitutes the entire agreement between Landlord and Tenant and may not be amended or modified except by instrument in writing of equal formality executed by Landlord and Tenant. The submission of this Lease for examination does not constitute an offer, a reservation of or option for the Premises, and this Lease becomes effective as a lease only upon execution and delivery thereof by both Landlord and Tenant, and if applicable and at Landlord's option, the Indemnifier.
- 17.10 **Severability** If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.
- 17.11 **Survival of Tenant's Covenants** All agreements, covenants and indemnifications in this Lease made by Tenant shall survive the expiration or earlier termination of this Lease, anything to the contrary in this Lease or at law notwithstanding.
- 17.12 **Non Merger** There shall be no merger of this Lease nor of the leasehold estate created hereby with the fee estate in the Lands or any part thereof by reason of the fact that the same person, firm, corporation or entity may acquire or own or hold directly or indirectly: (a) this Lease or the leasehold estate created hereby or any interest in this Lease or any such leasehold estate; and (b) the fee estate in the Lands or any part thereof or any interest in such fee estate. No such merger shall occur unless and until Landlord, Tenant and Landlord's Mortgagees (including a trustee for bondholders) shall join in a written instrument effecting such merger and shall duly record the same.
- 17.13 **No Waiver** No condoning or waiver by either Landlord or Tenant of any default or breach by the other at any time or times in respect of any of the terms, covenants and conditions contained in this Lease to be performed or observed by the other shall be deemed to operate as a waiver of Landlord's or Tenant's rights under this Lease, as the case may be, in respect of any continuing or subsequent default or breach nor so as to defeat or affect in any way the rights or remedies of Landlord or Tenant under this Lease, as the case may be, in respect of any such continuing or subsequent default or breach. Unless expressly waived in writing, the failure of Landlord or Tenant to insist in any case upon the strict performance of any of the terms, covenants or conditions contained in this Lease to be performed or observed by the other shall not be deemed to operate as a waiver of the future strict performance or observance of such terms, covenants and conditions.
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- 17.14 **Governing Law** This Lease shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties attorn to the exclusive jurisdiction of the courts of Ontario to deal with all actions in respect of this Lease. The section headings of this Lease have been inserted for convenience of reference only and they shall not be referred to in the interpretation of this Lease. This Lease shall be read with all changes of gender and number required by the context. Time shall be of the essence of this Lease and each of the provisions hereof.
- 17.15 **Confidentiality, Personal Information** Tenant shall keep confidential all financial information in respect of this Lease, provided that it may disclose such information to its auditors, consultants and professional advisors so long as they have first agreed to respect such confidentiality. Any Tenant or Indemnifier that is an individual person consents to the collection and use of their personal information, as provided directly or collected from third parties, by Landlord for purposes of this Lease.
- 17.16 **Successors and Assigns** This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.
- 17.17 **Tenant's Review of Lease** Tenant acknowledges and agrees that this Lease has been negotiated and approved by each of Landlord and Tenant and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either Landlord or Tenant by reason of the authorship of any provision contained in this Lease.
- 17.18 **Option to Purchase** On or before the Commencement Date the Landlord and the Tenant shall enter into the option to purchase agreement for the Premises attached to this Lease as Schedule 7.
- 17.19 **Counterparts; Electronic Transmission** This Lease may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument. All parties agree that this Lease may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Lease bearing original signatures within a reasonable time after the date of execution.
-



IN WITNESS WHEREOF the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

2565698 ONTARIO INC.

By: 

Name: Benito Di Franco

Title: President

I have authority to bind the corporation

TENANT:

EVELEY INTERNATIONAL CORPORATION

By: _____

Name: Dawn Eveley

Title: President

I have authority to bind the corporation

- 28 -

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

2565698 ONTARIO INC.

By: _____

Name: Benito Di Franco

Title: President

I have authority to bind the corporation

TENANT:

EVELEY INTERNATIONAL CORPORATION

By: _____

Name: Dawn Eveley


Title: President

I have authority to bind the corporation

SCHEDULE 1
LEGAL DESCRIPTION

Part Lots 59 & 60, Plan 669 as in instrument number CD50896 except Part 2 on Plan 62R9856, City of Hamilton.
PIN 17356-0031 L

Initials	
Landlord	Tenant

A handwritten signature in black ink is written over the 'Landlord' column of the table.

SCHEDULE 2

DEFINITIONS

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

"Additional Rent" means all amounts in addition to Basic Rent payable by Tenant to Landlord or any other person pursuant to this Lease, other than Rental Taxes.

"Additional Services" means any additional service, Utilities and/or supervision provided to Tenant by Landlord or by anyone authorized by Landlord and not otherwise expressly provided for as a standard service under this Lease, including without limitation, adjusting and balancing HVAC Facilities, cleaning of carpets, moving furniture, installation or removal of Leasehold Improvements, providing HVAC for periods in excess of Normal Business Hours and access and connection to fibre optics or other enhanced information technology, unless otherwise specifically provided in Schedule 6.

"Alterations" means any alterations, repairs, changes, replacements, additions, installations or improvements to any part of the Premises or Leasehold Improvements implemented or carried out by or on behalf of Tenant.

"Architect" means the architect, surveyor or engineer from time to time appointed by Landlord.

"assignment" means any transaction whereby any rights of Tenant under this Lease are transferred to anyone (whether immediately, conditionally or contingently) and includes an assignment or specific or floating charge whereby the interest of Tenant or the Premises is mortgaged or pledged as security for any indebtedness or other obligation and includes an assignment by operation of law and any change in the identity of the party having the right to possession or actually in possession of the Premises.

"Authority" means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, Landlord, Tenant, or the Premises including the businesses carried on therein;

"Basic Information" means the information set out in Part 1 of this Lease.

"Basic Rent" means the basic rent payable by Tenant pursuant to section 5.1 of this Lease.

"Building" means the building on the lands, together with all fixtures, sprinklers, elevators, escalators, HVAC Facilities and mechanical and electrical equipment and machinery and water, gas, sewage, telephone and other communication facilities and electrical power services and Utilities comprised therein, belonging thereto, connected therewith or used in the operation thereof, and now or hereafter constructed, erected and installed therein and thereon, and all alterations, additions, and replacements thereto, but excludes all Leasehold Improvements made, constructed, erected or installed therein by or on behalf of Tenant and any other tenant or occupant of premises therein.

"Business Taxes" means any business tax or assessment or any other tax, assessment, rate or levy imposed by any Authority having jurisdiction, in respect of, any business carried on, in, from or through the Premises or the whole or any part of the Building or any use, possession or occupancy of any property, premises or space in the Building.

"Capital Tax" means any tax or taxes payable by the Taxpayer to any taxing authority based upon or computed by reference to the value of the Lands and Building or the paid-up capital or place of business of the Taxpayer, including without limitation provincial capital tax. If the system of capital taxation shall be altered such that any new capital tax shall be levied or imposed in substitution or replacement for or in addition to Capital Tax from time to time levied or imposed, then any such new tax or levy shall be deemed to be Capital Tax or included in Capital Tax.

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Landlord	Tenant

"Capital Tax for the Premises" is included in Operating Costs and for any Fiscal Period means the amount calculated by multiplying the aggregate book value to the Landlord of the Lands and Building (and all equipment used in connection therewith) by the applicable Capital Tax rate imposed, from time to time, by the taxing authority having jurisdiction. Aggregate book value shall be net of depreciation and amortization for financial statement purposes and determined as at the end of such Fiscal Period and may be imputed by Landlord (i) as if the Lands and Building was the only property of the Landlord, but with any applicable tax exemption allocated equitably by Landlord amongst all of its properties and/or assets, and (ii) on the basis of the Landlord's determination of the amount of capital attributable to the Lands and Building. The parties acknowledge that Capital Tax for the Lands and Building is an approximation based upon the concept of Capital Tax, and is not necessarily the actual Capital Tax paid or payable by the Landlord in respect of the Lands and Building. If the calculation or basis of Capital Tax changes then Landlord may adjust the calculation or basis of such amount to reasonably reflect such change.

"change in control" means, in the case of any corporation or partnership, the transfer, by sale, assignment, operation of law, transmission on death, mortgage, trust, issuance from treasury, cancellation or redemption, or otherwise, of any shares, voting rights or interest, which will result in a change of the identity of the person exercising, or who might exercise, effective control of such corporation or partnership whether directly or indirectly, unless such change occurs as the result of trading in shares listed upon a recognized stock exchange.

"Closing Date" has the meaning given to such term in the Agreement of Purchase and Sale between the Landlord, as purchaser, and Eveley International Corporation, as vendor, dated as of January 2, 2019.

"Commencement Date" is defined in section 1.7 hereof.

"Contaminant" means any solid, liquid, organic or gaseous substance, any Hazardous Waste, any Toxic Substances, any odour, heat, sound vibration, radiation or combination of any of them the presence or Discharge of which may or that may, if Discharged, have a material adverse effect on the environment or on people, property or the normal conduct of business.

"Contaminant Activities" has the meaning provided in section 9.1(c).

"Discharge" means any spill, release, escape, leak or movement of a Contaminant into the environment, the indoor or outdoor air, into or onto the ground, into the surface water or ground water, into the sewers or any watercourse, or into, onto or from the Premises or the Building that may have a material adverse effect on the environment or on people, property or the normal conduct of business.

"Environmental Assessment" means an inspection and investigation of the Premises by an independent consultant approved by Landlord, together with such tests, surveys and inquiries as Landlord or such consultant deems advisable in the circumstances into the use, transport, storage, disposal, handling, sale, manufacture or Discharge of any Contaminant in, on or about the Premises by Tenant, and/or into the condition or status of the Premises in relation to possible contamination by any Contaminant, and shall include the consultant's written report addressed and delivered to Landlord summarizing the nature and results of all inspections, tests, surveys and inquiries conducted, and the consultant's recommendations for any remedial or precautionary actions that are or may be required under Environmental Law in the circumstance;

"Environmental Claim" means all claims, losses, costs, expenses, fines, penalties, payments and/or damages (including, without limitation, all solicitors' fees on a substantial indemnity basis) relating to, arising out of, resulting from or in any way connected with the presence of any Contaminant at the Premises, including, without limitation, all costs and expenses of any remediation or restoration of the Premises and/or any property adjoining or in the vicinity of the Premises required by Environmental Law;

"Environmental Law" means the statutes, regulations, policies, directives, orders, approvals and other legal requirements of an Authority or of the common law which affect the Premises, and Landlord's or Tenant's business,

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Landlord	Tenant

and which impose any obligations relating to the protection, conservation or restoration of the environment or the Premises.

"Environmental Questionnaire" means the environmental questionnaire attached as Schedule 5 to this Lease.

"Fiscal Period" means the period (not to exceed twelve (12) months) designated as such from time to time by Landlord.

"Gross Revenue" means all Basic Rent, Additional Rent, earned interest, commissions, royalties, bonuses, Operating Cost recoveries, revenue, if any, from any parking facilities, damage recoveries, tax recoveries, insurance proceeds relating to lost revenue and all other amounts, rights and benefits of any kind whatsoever actually received, receivable or derived by the Landlord from the Building, all calculated in accordance with generally accepted accounting principles and practices consistent with the commercial real estate industry in Canada.

"Hazardous Waste" means any hazardous waste, hazardous product, deleterious substance, special waste, liquid industrial waste, bio-medical waste, dangerous goods or substance which is controlled or regulated under Environmental Law. For ease of reference, this includes, but is not limited to, any waste which is composed in whole or in part of substances which are: (i) corrosive, (ii) ignitable, (iii) pathological, (iv) radioactive, (v) reactive, or (vi) toxic; and liquid waste, whether or not from a commercial or industrial process, that cannot lawfully be disposed of through the municipal sewers.

"HVAC" means heating, ventilating or cooling or any combination thereof.

"HVAC Facilities" means facilities and equipment used for or in connection with the provision and supply of HVAC, as from time to time existing.

"Indemnifier" includes each Indemnifier named in this Lease and its respective heirs, executors, administrators, legal personal representatives, successors and assigns, as the case may be.

"Interest Rate" means interest at a rate equivalent to five (5%) per cent per annum in excess of the prime lending rate of a Canadian bank designated by Landlord where the prime lending rate of such bank means the rate of interest (now commonly known as that bank's "prime rate"), expressed as a rate per annum, charged by such bank in Toronto on commercial demand loans made by it in Canadian dollars at such time to its most creditworthy borrowers.

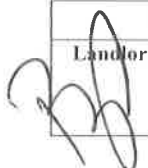
"Landlord" includes Landlord named in this Lease and its respective, successors and assigns, as the case may be.

"Lands" means the lands described in Schedule 1 annexed hereto as supplemented or diminished from time to time by Landlord.

"Lease" means this document as originally signed, sealed and delivered and as amended, in writing, from time to time.

"Lease Year" in the case of the first lease year means the period beginning on the Commencement Date and terminating on the first anniversary of the last day of the month in which the Commencement Date occurs, unless the Commencement Date is the first day of a month, in which event the first lease year terminates on the expiration of the period of twelve (12) months thereafter. Each subsequent lease year commences on the first day following the expiration of the preceding lease year and terminates on the earlier of the expiration of twelve (12) months thereafter or on the expiration or sooner termination of this Lease.

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"Leasehold Improvements" means all items generally considered to be leasehold improvements, including, without limitation, all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of Tenant, whether by Landlord, Tenant or any other party, or by any previous occupant of the Premises, including without limitation, any stairways for the exclusive use of Tenant, all fixed partitions, light fixtures, plumbing fixtures however affixed and whether or not movable, and all wall-to-wall carpeting other than carpeting laid over finished floors and affixed so as to be readily removable without damage, and all water, electrical, gas and sewage facilities, all HVAC Facilities exclusively serving the Premises, all telephone and other communication and information technology wiring and cabling leading from the base building facilities and distribution panel to facilities located in the Premises, all cabinets, cupboards, shelving and all other items which cannot be removed without damage to the Premises; but excluding Trade Fixtures, Tenant Property, unattached or free-standing partitions and equipment not in the nature of fixtures.

"Manager" means Landlord's property manager for the Premises, if any.

"Mortgage" means any mortgage, charge or security instrument (including a deed of trust or mortgage securing bonds) and all extensions, renewals, modifications, consolidations and replacements of any of the foregoing which now or hereafter affect the Premises or any part thereof.

"Mortgagee" means the mortgagee, chargee or other secured party (including a trustee for bondholders), as the case may be, who from time to time holds a Mortgage.

"Normal Business Hours" means the hours from 8:00 a.m. to 6:00 p.m. on Monday to Friday of each week except any statutory holiday or civic holiday in the municipality where the Building is located.

"Operating Costs" has the meaning provided in Schedule 4.

"Operating Standards" means the rules, procedures and requirements as amended and supplemented from time to time, initially as set forth in Schedule 3 to this Lease, governing the manner in which Tenant and others doing business in the Premises shall operate and conduct their businesses and utilize the Premises.

"person" means any individual, corporation, partnership, trust, other legal entity or other business association and includes a government or departmental subdivision or agency thereof.


"Premises" means the Lands and Building and all Leasehold Improvements and Alterations therein. The space demised in the building shall consist of the area specified in section 1.5 and indicated on Schedule 2 and shall be bounded by the unfinished interior surfaces of the perimeter walls and windows, the unfinished surfaces of interior load-bearing walls, the unfinished top of the floor slab and the bottom of the ceiling structure including pipes, wires, ducts, conduits and HVAC Facilities and all mechanical, electrical and utility systems and equipment within the Premises.

"Purchaser" has the meaning provided in section 14.3(c).

"Realty Taxes" means all real estate, municipal or property taxes (including local improvement rates), levies, rates, duties, and assessments whatsoever imposed upon or in respect of any real property from time to time by any Authority, which may be levied or assessed against the Premises or any part thereof, or Landlord due to its ownership thereof, and any and all taxes which may, in the future, be levied on the Premises or any part thereof, or Landlord due to its ownership thereof in lieu of realty taxes or in addition thereto and the cost to Landlord of appealing such levies, rates, duties and assessments.

"Related Corporation" means a holding corporation, subsidiary corporation or affiliate of Tenant, as each of those terms is defined in the *Business Corporations Act* (Ontario).

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"Rent, rent, Rental or rental" means all payments and charges payable by Tenant pursuant to this Lease, including without limitation the Basic Rent and the Additional Rent.

"Rentable Area" shall have the meaning provided in section 1.5.

"Rental Taxes" means use, consumption or value added tax, business transfer tax, retail sales tax, federal sales tax, provincial sales tax, harmonized sales tax, excise taxes or duties, or any tax similar to any of the foregoing.

"sublease" means any transaction other than an assignment whereby any right of use, occupancy or possession (whether exclusive, non-exclusive, permanent or temporary) relating to the whole or any part of the Premises is conferred upon anyone (whether immediately, conditionally or contingently) and includes but is not limited to any sublease, sub-sublease, concession, franchise, licence agreement or any other arrangement (such as but not limited to a management agreement) conferring any such right of use, occupancy or possession and whether or not Tenant is a party thereto.

"Tenant" includes Tenant named in this Lease and its respective heirs, executors, administrators, successors and permitted assigns, as the case may be.

"Tenant Property" means the Tenant's chattels, merchandise and personal effects.

"Term" means the initial term of this Lease as set out in section 1.7 hereof, as same may be extended or renewed.

"Toxic Substances" means any substance which is designated to be toxic or hazardous by an Authority.

"Trade Fixtures" means all items generally considered to be trade fixtures, including, without limitation, equipment or fixtures used by Tenant in its business and which have been installed in the Premises by or on behalf of Tenant, but notwithstanding the foregoing, shall not include any Leasehold Improvements, any part of the electrical, plumbing, mechanical or sprinkler equipment or systems, the HVAC Facilities or any floor coverings, wall coverings or any part of the ceiling, whether or not installed by Tenant or Landlord.

"Transfer" means any assignment, sublease, change in control, or parting with possession, or any other transaction or occurrence (including an expropriation, amalgamation, receivership or seizure by execution or other legal process) which has or might have the effect of changing the identity of Tenant or the person controlling Tenant, or, changing the identity of the person having lawful use, occupancy or possession of the whole or any part of the Premises, whether such change is or might be immediate, deferred, conditional, exclusive, non-exclusive, permanent or temporary provided that any transfer of shares or assets of the Tenant in whole or in part to a person that is a Related Corporation or non-arm's length (as such term is interpreted in accordance with the *Income Tax Act* (Canada)) from the transferor shall not constitute a Transfer.

"Unavoidable Delay" means any prevention, delay, stoppage or interruption in performance due to weather conditions, strikes, lockouts, labour disputes, lack of materials or supplies, legal or regulatory impediment, acts of God, the occurrence of enemy or hostile action, civil commotion, fire or other casualties or conditions, or due to any other causes beyond the reasonable control of the party obligated to perform where the effects of such casualty or contingency are not avoidable by the exercise of reasonable effort or foresight by such party (but does not include insolvency, lack of funds, inability to obtain financing, or other financial contingency).

"Utilities" means water, gas, fuel, electricity, telephone, telecommunications, fibre optics and any other form of information technology systems and equipment, waste disposal and other utilities or services or any combination thereof other than HVAC.


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SCHEDULE 3

OPERATING STANDARDS


1. Tenant shall not perform any acts or carry on any practice which may injure or be a nuisance to any owners or tenants of adjoining land.
2. Tenant shall not burn any trash or garbage in or about the Premises. Garbage or refuse shall be placed in containers of a type approved by Landlord and shall be removed only at such time or times as Landlord shall from time to time advise Tenant.
3. Tenant shall not keep or display any merchandise on, or otherwise obstruct, the exterior facilities or other areas adjacent to the Premises. Tenant shall not allow any garbage or refuse to remain on any loading dock.
4. Tenant shall not overload any floor of the Premises nor shall Tenant bring upon the Premises anything which might damage the Building.
5. Tenant shall at all times keep the Premises in a clean and sanitary condition in accordance with applicable laws, directions, order, rules and regulations of any Authority having jurisdiction and shall keep all doorways, entrances and exits clear at all times to ensure proper exiting in the event of fire or evacuation of the Premises.
6. At the commencement and throughout the Term, Tenant shall at its sole expense supply and install all light bulbs and tubes and maintain all necessary lighting fixtures.
7. Tenant shall not grant any concessions, licences or permission to any third parties to sell or to take orders for merchandise or services in the Premises without the prior written consent of Landlord.
8. Tenant agrees that Tenant will not carry on, or permit to be carried on, any business in the Premises under a name or style other than the name of Tenant, or call or permit the Premises or any business carried on therein, to be called by any name other than the name of Tenant, without the prior written consent of Landlord.
9. Tenant shall not install a security alarm system ("System") in the Premises without the written consent of Landlord. In the event Landlord gives consent for installation of a System in the Premises, Tenant shall remove such System at the expiration or earlier termination of this Lease and shall repair any damage caused by such installation or removal, all at Tenant's sole cost and expense. Landlord shall not be liable for any damages whatsoever either to such System or as a result of such System being activated as a result of Landlord's entry into the Premises pursuant to the provisions of this Lease.
10. All glass, locks and trimmings of the doors and windows in or upon the Premises and in or upon the exterior walls of the Premises shall be kept whole and whenever broken shall be immediately replaced or repaired by and at the sole cost and expense of Tenant, with glass, locks and trimmings of the same quality to the reasonable satisfaction of Landlord. Provided that all repairs to or replacement of any locks shall only be done by a person specified by Landlord, subject to the foregoing provisions with respect to payment for such repairs and replacement. Tenant shall not place any additional lock, or replace any locks upon any door of the Building.
11. No vehicles of any kind shall be parked on the parking lot(s) or driveways overnight except in the normal course of Tenant's business.

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12. The loading and unloading of merchandise, supplies, materials, garbage, refuse and other chattels shall be made only through or by means of such doorways or corridors as Landlord shall designate in writing from time to time.
13. Tenant shall install necessary fire extinguisher and safety equipment as required by local fire department and safety standards and shall maintain such equipment in good working order during the Term.
14. No animals shall be allowed in or about the Premises at any time.
15. For the benefit and welfare of all or any tenants of the Premises as it may exist from time to time, Landlord shall have the right to revoke or amend any rule or regulation or to issue further rules and regulations and any amended or further rules and regulations shall be binding upon Tenant, provided same are not arbitrary and do not conflict with any of the provisions of this Lease.

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SCHEDULE 4
OPERATING COSTS

"Operating Costs" means the total direct and indirect cost and expense, without duplication, incurred or accrued whether by Landlord or by others on behalf of Landlord and allocated or attributed by Landlord for each Fiscal Period designated by Landlord to the discharge of its obligations under this Lease and with respect to the ownership, administration, operation, management, maintenance, improvement, insuring, cleaning, supervision, rebuilding, replacement and repair of the Premises.

A. Inclusions

Without limiting the generality of the foregoing, Operating Costs shall include, if provided by Landlord or by others on behalf of Landlord, without duplication and subject to Parts B (Limitations) and C (Calculations and Adjustments) listed below, all costs in respect of:

- (a) providing and maintaining security, traffic control, landscaping, gardening, snow clearing and salting and refuse removal;
- (b) heating, air conditioning and ventilating the Premises and investigating and remedying air quality issues, if any;
- (c) providing hot and cold or tempered water, electricity (including lighting) and all other Utilities to all parts of the Premises not otherwise paid by tenants;
- (d) window cleaning;
- (e) all insurance which Landlord is obligated or permitted to obtain under this Lease and the cost of any deductible amount paid by the Landlord in connection with a claim under its insurance;
- (f) all rented or leased equipment acquired for the operation or maintenance of the Premises;
- (g) accounting in connection with the Premises including computations required for the imposition of charges to Tenant and audit fees incurred for the determination of any costs hereunder and the reasonable costs of collecting and enforcing payment of such charges;
- (h) all equipment acquired for the operation or maintenance of the Premises;
- (i) any improvement, replacement, repair or alteration whether with respect to buildings, improvements, equipment, fixtures or otherwise and whether on-site or off-site which, in the opinion of the Landlord, acting reasonably, is necessary to reduce or limit increases in Operating Costs or is required by the Landlord's insurance carriers or by any changes in the laws, rules, regulations or orders of any Authority having jurisdiction, including those necessary to comply with energy conservation, pollution and environmental control standards and the costs of any procedures required with respect thereto;
- (j) investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Contaminant which is in or about the Premises or any part thereof or which has entered the environment from the Premises, if the Landlord is required to do so or if, in the Landlord's opinion, it is actually or potentially harmful or hazardous to any person or to the Premises or any part thereof or to the environment not to do so;
- (k) maintenance, repairs and replacements to or in respect of the Premises including without limitation those resulting from normal wear and tear and otherwise and including those necessary with respect to the roof or any parking area or facility;
- (l) maintenance, monitoring, repairs, replacements and improvements to systems in the Premises including, without limitation, the heating, ventilating, air conditioning, fire sprinkler, energy-

Initials	
Landlord	Tenant

- saving, and security systems and devices, the HVAC Facilities, and telecommunications and information technology;
- (m) operating, improving, maintaining and repairing any common holding and receiving areas and truck docks;
 - (n) the amount of all salaries, wages, fringe benefits and other contributions or expenses paid to or for the benefit of or relating to employees and others engaged either full-time or part-time in the operation or maintenance of the Premises, provided that Landlord shall allocate on a reasonable basis the costs of any personnel not engaged full-time in the operation or maintenance of the Premises amongst the Premises and other properties served by them;
 - (o) amounts paid for service contracts with independent contractors;
 - (p) energy audits, conservation studies and other measures taken to conserve energy or reduce costs or liability;
 - (q) renting, operating and maintaining signs and providing directional signage for the Premises;
 - (r) all other expenses of every nature incurred in connection with the maintenance and operation of the Premises;
 - (s) direct supervision attributable to any of the above;
 - (t) Business Taxes, if any;
 - (u) any contest and appeal of Realty Taxes by Landlord and the cost of Realty Taxes not otherwise payable by tenants of the Premises;
 - (v) Rental Taxes payable by Landlord on the purchase of goods and services included in Operating Costs except as excluded under Part B below;
 - (w) Capital Tax for the Premises;
 - (x) all costs related to the furnishing, equipping, staffing and operation of a regional or on-site administrative office serving the Premises, including the fair rental value (having regard to rentals prevailing from time to time for similar space) of space occupied by the employees or contractors of Landlord or an outside contractor for day-to-day management, administrative and supervisory purposes relating to the Premises, and in the case of a regional office, the costs will be apportioned by Landlord amongst the buildings served by it on an equitable basis; and
 - (y) a management fee equal to fifteen (15%) per cent of the foregoing costs.

B. Limitations

In determining Operating Costs, the cost (if any) of the following shall be excluded or deducted, as the case may be:

- (a) major repairs to structural components that are required as a result of defective design or construction of such structural components;
- (b) interest on and retirement of debt under any Mortgage;
- (c) expenses relating to decorating or redecorating or renovating rentable space for a new tenant or occupant of the Premises and costs relating to tenant inducements, allowances or similar expenses;
- (d) all leasing expenses, real estate brokers' fees, leasing commissions and advertising;
- (e) net recoveries by the Landlord in respect of warranties or guarantees and insurance claims to the extent (but only to the extent) that the repair costs in respect of the work covered by such warranties or guarantees or insurance claims have been charged as Operating Costs; and
- (f) the amount of any Rental Taxes paid or payable by Landlord on the purchase of goods and services included in Operating Costs which may be available to be claimed by the Landlord as a

Initials	
Landlord	Tenant

credit in determining Landlord's net liability or refund on account of Rental Taxes but only to the extent the Rental Taxes are included in Operating Costs.

C. **Calculations and Adjustments**

In computing Operating Costs:

- (a) where any amount, cost or expense is to be determined, allocated, apportioned or attributed, Landlord shall act reasonably in determining and applying criteria which are relevant to doing so and Landlord may retain engineering, accounting, legal and other professional consultants to assist and advise in doing so;
- (b) if Landlord does not charge the full amount of any one or more of the foregoing costs and expenses in the Fiscal Period in which it is incurred, then any such uncharged portions may be charged in the immediately following Fiscal Period;
- (c) any Operating Costs which are capital in nature as determined by Landlord in accordance with generally accepted accounting principles, whether incurred before or during the Term and whether or not incurred by the party constituting Landlord at any time or its predecessor in title or interest, shall be amortized or depreciated as the case may be on a reasonable basis determined by Landlord in accordance with generally accepted accounting principles, and the amortized or depreciated, as the case may be, portion of such capital expense, together with interest on the undepreciated or unamortized amount thereof, shall be included in Operating Costs for the Fiscal Period in which it is incurred and the subsequent Fiscal Periods until fully amortized or depreciated;
- (d) indirect and offsite costs attributable to the operation, repair and maintenance of the Premises or incurred to reduce Operating Costs shall be determined and allocated by Landlord to Operating Costs acting reasonably; and
- (e) if by reason of the conduct of Tenant's business or the particular use of the Premises by its employees, agents or persons having business with Tenant, additional costs in the nature of Operating Costs are incurred in excess of the costs which otherwise would have been incurred, Landlord shall have the right to increase Operating Costs to include such excess costs.

D. **Reduction or Control of Operating Costs**

Tenant shall comply with any practices or procedures that Landlord, acting reasonably, may from time to time introduce to reduce or control Operating Costs and shall pay, as Additional Rent, all costs, as determined by Landlord, acting reasonably, that may be incurred by the Landlord as a result of any non-compliance.

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**SCHEDULE 5
ENVIRONMENTAL QUESTIONNAIRE**

TENANT NAME: EVELEY INTERNATIONAL CORPORATION

BUILDING: 665 ARVIN AVENUE, STONEY CREEK, ON L8E 5R2

CONTACT PERSON: DAWN EVELEY

TELEPHONE NOS.:

Residence:

GENERAL INFORMATION

A) Describe the business activities carried on in the Premises.

B) Will the business activities to be carried on in the Premises entail the use of Contaminants or Hazardous Materials? If so, describe them.

C) Indicate the approximate amounts of Contaminants and Hazardous Materials which will be generated and/or handled monthly or annually, in the Premises.

D) How do you intend to store the Contaminants and Hazardous Materials described in C)?

E) How will you dispose of the Contaminants and Hazardous Materials generated in the Premises by your business and who will be the carrier?

Initials	
Landlord	Tenant

[Handwritten signature over Landlord box]

- F) Will the business activities to be carried on in the Premises require that you obtain any certificate of authorization, permit or environmental approval? If so, give details and attach your certificate.

- G) Will the business activities to be carried on in the Premises entail the discharge of Contaminants and Hazardous Material in the water system or in the air?

- H) Will pollution control equipment be required in the Premises to ensure that the discharge of Contaminants or Hazardous Materials in the water system or in the air will comply with the Environmental Legislation? If so, give details and list the standards to be met.

- I) Will the business activities to be carried on in the Premises necessitate the installation of an underground or surface storage tank in the Premises? If so, describe in detail the tank to be installed and material to be stored.

- J) Do you intend to have a prevention training or emergency plan in place to prevent an environmental incident? If so, give details and attach a copy of the plan and training procedure.

Dated this ____ day of January, 2019.

EVELEY INTERNATIONAL CORPORATION

Per: _____

Name: _____

Title: _____

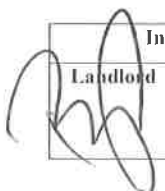
Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation

Initials	
Landlord	Tenant




SCHEDULE 6
SPECIAL PROVISIONS

Trade Fixtures: In addition to the definitions set out in Schedule 2 of this Lease and to provide further clarity, Trade Fixtures shall include all cranes, air compressors, equipment or fixtures used by Tenant in its business and which have been installed in the Premises by or on behalf of Tenant. At all times, the Tenant shall be solely responsible for all costs, fees, charges, leasing fees, maintenance, repairs, and replacements, and at no such time shall any responsibility of such Trade Fixtures become the Landlord's obligation. At all times, the Tenant may deal with the Trade Fixtures entirely at its discretion including, without limitation, the repair, replacement, maintenance and removal of Trade Fixtures from the Premises provided that the Tenant is not in default of its obligations under this Lease.

Landlord's Equipment: The Tenant acknowledges that certain cranes and air compressors in the Premises as identified in a Bill of Sale between the Tenant and the Landlord dated as of the Closing Date are owned by the Landlord, and the Tenant shall be solely responsible for all costs, fees and charges related to the maintenance and repairs of such equipment and the annual certification of such equipment during the Term and at the end of the Term.

Covenants of the Tenant: At all times during the Term or prior to the earlier termination of the Lease, the Tenant covenants and agrees as follows: (i) to provide the Landlord with audited financial statements of the Tenant as soon as such financial statements are available and in any event no later than one hundred and twenty (120) days from the end of the Tenant's fiscal year; (ii) there will be no change of control in the voting shares of the Tenant or a change of control in the Board of Directors of the Tenant without the prior written approval of the Landlord; (iii) that the Tenant will not enter into any additional leases, loans or other debt obligations in excess of \$25,000.00 without the prior written consent of the Landlord; and (iv) that the Tenant will not permit any sale of any of its equipment or inventory out of the ordinary course of business without the prior written consent of the Landlord.

Initials	
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SCHEDULE 7

OPTION TO PURCHASE AGREEMENT

This Option to Purchase Agreement (the "**Option to Purchase Agreement**") is made on the ____ day of January, 2019 between **2565698 ONTARIO INC.** (the "**Seller/Landlord**") and **EVELEY INTERNATIONAL CORPORATION** (the "**Buyer/Tenant**").

WHEREAS Seller/Landlord is the owner of certain real property municipally known as 665 Arvin Avenue, Stoney Creek, Ontario, (the "**Property**");

WHEREAS Seller/Landlord and Buyer/Tenant have executed a lease agreement for the Property as of the date hereof (the "**Lease**");

NOW THEREFORE in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller/Landlord hereby grants to Buyer/Tenant an exclusive option to purchase the Property on the terms and conditions set out herein (the "**Option**") and the parties hereto hereby agree as follows:

1. **OPTION TERM.** Provided that the Buyer/Tenant is not, and has not been, in default of any of its obligations under the Lease, the Option may be exercised on the date that is the fifth anniversary of the Commencement Date (as such term is defined in the Lease) (the "**Option Closing Date**"). If the Option Closing Date is on a Saturday, Sunday or other public holiday, the Option Closing Date shall be on the immediately following business day on which banks are open in the City of Toronto.

2. **NOTICE REQUIRED TO EXERCISE OPTION.** To exercise the Option, the Buyer/Tenant must deliver to the Seller/Landlord written notice of Buyer/Tenant's intent to purchase the Property by exercising the Option at least six months prior to the Option Closing Date.


3. **PURCHASE PRICE.** The total purchase price (the "**Purchase Price**") shall be the fair market value of the Property as at the Option Closing Date provided that in any event the Purchase Price cannot be less than the amount paid by the Seller/Landlord for the Property plus all of the costs of the Seller/Landlord in such transaction including, without limitation, land transfer tax and legal fees and disbursements.

4. **DETERMINATION OF FAIR MARKET VALUE.** If the Seller/Landlord and the Buyer/Tenant cannot mutually agree on the fair market value of the Property, the parties will mutually appoint a qualified real estate appraiser and the determination of the fair market value of the Property by such appraiser shall be binding on the parties, except in the case of egregious error. If the parties cannot mutually agree on a qualified real estate appraiser to determine the fair market value of the Property, the Seller/Landlord and the Buyer/Tenant shall each appoint an appraiser and those two appraisers shall mutually appoint a third appraiser who shall determine the fair market value of the Property and such determination shall be binding on the parties, except in the case of egregious error. All costs related to the determination of the fair market value of the Property shall be for the sole account of the Buyer/Tenant.

5. **EXCLUSIVITY OF OPTION.** This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Buyer/Tenant attempt to assign, convey, delegate, or transfer this Option without the Seller/Landlord's express written permission, any such attempt shall be deemed null and void.

6. **CLOSING AND SETTLEMENT.** Buyer/Tenant agrees that closing costs in their entirety, including all legal fees and disbursements of the Seller/Landlord and any fees and other charges required by the third-party lender, shall be the sole responsibility of Buyer/Tenant.

Initials	
Landlord	Tenant



7. **FINANCING AVAILABILITY.** Seller/Landlord makes no representations or warranties as to the availability of financing regarding this Option. Buyer/Tenant is solely responsible for obtaining financing in order to exercise this Option.

8. **REMEDIES UPON DEFAULT.** If Buyer/Tenant defaults under this Option to Purchase Agreement or the Lease, then in addition to any other remedies available to Seller/Landlord at law or in equity, Seller/Landlord may terminate this Option by giving written notice of the termination. For this Option to Purchase Agreement to be enforceable and effective, the Buyer/Tenant must comply with all terms and conditions of the Lease.

9. **COMMISSION.** No real estate commissions or any other commissions shall be paid in connection with this transaction.

10. **RECORDING OF AGREEMENT.** Buyer/Tenant shall not record this Option to Purchase Agreement on the Public Records of any public office without the express and written consent of Seller/Landlord and such consents may be withheld at the absolute discretion of the Seller/Landlord.

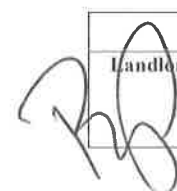
11. **ACKNOWLEDGMENTS.** The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have obtained independent legal advice thereon.

12. **TIMING.** Time is of the essence in this Option to Purchase Agreement.

13. **GOVERNING LAW AND VENUE.** This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the laws of Province of Ontario and the laws of Canada applicable therein. The parties further agree that the venue for any and all disputes related to this Option shall be in the Superior Court of Justice in the City of Toronto, Ontario.

14. **ENTIRE AGREEMENT; MODIFICATION.** This document and the Lease sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of, or amendment to, this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

Initials	
Landlord	Tenant



IN WITNESS WHEREOF the parties have executed this Option to Purchase Agreement as of the date first written above.

LANDLORD

2565698 ONTARIO INC

Per:

Name: Benito Di Franco

Title: President

I have authority to bind the Corporation

TENANT

EVELEY INTERNATIONAL CORPORATION


Per:

Name: Dawn Eveley

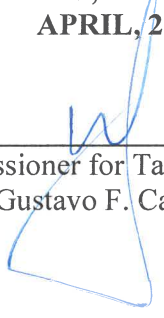
Title: President

I have authority to bind the Corporation

Initials	
Landlord	Tenant



**THIS IS EXHIBIT 9 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

INDEMNITY AGREEMENT

THIS AGREEMENT is dated as of the 2nd day of January, 2019.

B E T W E E N :

2565698 ONTARIO INC., a corporation
incorporated under the laws of the Province of Ontario

(herein referred to as the "**Landlord**")

OF THE FIRST PART

- and -

DAWN EVELEY, a resident of the Province of Ontario

(herein referred to as the "**Indemnifier**")

OF THE SECOND PART

In order to induce the Landlord to enter into the industrial building lease dated the 2nd day of January, 2019 (the "**Lease**") made between the Landlord and Eveley International Corporation (the "**Tenant**") and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Indemnifier hereby makes the following indemnity and agreement (the "**Indemnity**") with and in favour of the Landlord:

1. (a) The Indemnifier hereby agrees with the Landlord that at all times during the Term of the Lease and any extensions or renewals thereof or overholding by the Tenant under the Lease, it will (i) make the due and punctual payment of all Rent, monies, charges and other amounts of any kind whatsoever payable under the Lease by the Tenant whether to the Landlord or otherwise; (ii) effect prompt and complete performance and observance of all and singular the terms, covenants and conditions contained in the Lease on the part of the Tenant to be kept, observed and performed; and (iii) indemnify and save harmless the Landlord from any loss, costs or damages arising out of any failure by the Tenant and the Indemnifier to pay the aforesaid Rent, monies, charges and other amounts of any kind whatsoever payable under the Lease or resulting from any failure by the Tenant and the Indemnifier to observe or perform any of the terms, covenants and conditions contained in the Lease.
- (b) The Indemnifier's covenants and obligations set out in Section 1(a) above will not be affected by any disaffirmation, disclaimer, repudiation, rejection, termination or unenforceability of the Lease or by any other event or occurrence which would have the effect at law of terminating any obligations of the Tenant prior to the termination of the Lease whether pursuant to court proceedings or otherwise and no surrender of the Lease to which the Landlord has not provided its written consent (all of which are referred to collectively and individually in this Agreement as an "**Unexpected Termination**"), and the occurrence of any such Unexpected Termination shall not reduce the period of time in which the Indemnifier's covenants and obligations hereunder apply, which period of time includes, for greater certainty, that part of the

Term of the Lease and any extensions or renewals thereof which would have followed had the Unexpected Termination not occurred.

2. This Indemnity is absolute and unconditional and the obligations of the Indemnifier and the rights of the Landlord under this Indemnity shall not be prejudiced, waived, released, discharged, mitigated, impaired or affected by (a) any extension of time, indulgences or modifications which the Landlord extends to or makes with the Tenant in respect of the performance of any of the obligations of the Tenant (or any other obligated Person) under the Lease; (b) any waiver by or failure of the Landlord to enforce any of the terms, covenants and conditions contained in the Lease; (c) any Transfer of the Lease (as that term is defined in the Lease) by the Tenant or by any trustee, receiver, liquidator or any other Person; (d) any consent which the Landlord gives to any such Transfer; (e) any amendment to the Lease or any waiver by the Tenant of any of its rights under the Lease; (f) the expiration of the Term or (g) any Unexpected Termination (as that term is defined in Section 1(b) above). The obligations of the Indemnifier are as primary obligor and not as a guarantor of the Tenant's obligations.
3. The Indemnifier hereby expressly waives notice of the acceptance of this Indemnity Agreement and all notice of non-performance, non-payment or non-observance on the part of the Tenant of the terms, covenants and conditions in the Lease. Notwithstanding the foregoing but without prejudicing the foregoing, any notice which the Landlord desires to give to the Indemnifier shall be sufficiently given if delivered (which shall include delivery by a third party courier or delivery service) to the Indemnifier, or, if mailed, by prepaid registered mail addressed to the Indemnifier at the Premises and every such notice is deemed to have been given upon the day it was delivered, or if mailed, seventy-two (72) hours after the date it was mailed. The Indemnifier may designate by notice in writing a substitute address for that set forth above and thereafter notice shall be directed to such substitute address. If two or more Persons are named as Indemnifier, such notice given hereunder or under the Lease shall be deemed sufficiently given to all such Persons if delivered or mailed in the foregoing manner to any one of such Persons. Notice may not be given by facsimile transmission, electronic mail or any other electronic communication.
4. If an Event of Default has occurred under the Lease or a default under this Indemnity, the Indemnifier waives any right to require the Landlord to (a) proceed against the Tenant or pursue any rights or remedies against the Tenant with respect to the Lease; (b) proceed against or exhaust any security of the Tenant held by the Landlord; or (c) pursue any other remedy whatsoever in the Landlord's power. The Landlord has the right to enforce this Indemnity regardless of the acceptance of additional security from the Tenant and regardless of any release or discharge of the Tenant by the Landlord or by others or by operation of any law.
5. Without limiting the generality of the foregoing, the liability of the Indemnifier under this Indemnity is not and is not deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or any Unexpected Termination (as that term is defined in Section 1(b) above) and shall continue with respect to the periods prior thereto and thereafter, for and with respect to the Term as if an Unexpected Termination or any receivership, bankruptcy, wind-up or other creditors' proceedings had not occurred, and in furtherance hereof, the Indemnifier agrees, upon any such Unexpected Termination or any receivership, bankruptcy, wind-up or other creditors' proceedings, that the Indemnifier shall, at the option of the Landlord, exercisable at any time after such Unexpected Termination or any receivership, bankruptcy, wind-up or other creditors' proceedings, become the Tenant of

the Landlord upon the same terms and conditions as are contained in the Lease, applied mutatis mutandis. The liability of the Indemnifier shall not be affected by any failure of the Landlord to exercise this option, nor by any repossession of the Premises by the Landlord provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossessing and reletting the Premises shall be credited from time to time by the Landlord against the indebtedness of the Indemnifier hereunder and the Indemnifier shall pay any balance owing to the Landlord from time to time immediately upon demand.

6. No action or proceedings brought or instituted under this Indemnity and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Indemnity by reason of any further default or default hereunder or in the performance and observance of the terms, covenants and conditions contained in the Lease.
7. No modification of this Indemnity shall be effective unless it is in writing and is executed by both the Indemnifier and the Landlord.
8. The Indemnifier shall, without limiting the generality of the foregoing, be bound by this Indemnity in the same manner as though the Indemnifier were the Tenant named in the Lease.
9. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) execute this Indemnity as Indemnifier, the liability of each such individual, corporation, partnership or other business association hereunder is joint and several.
10. All of the terms, covenants and conditions of this Indemnity extend to and are binding upon the Indemnifier, her or its heirs, executors, administrators, successors and assigns, as the case may be, and enure to the benefit of and may be enforced by the Landlord any Mortgagee.
11. The expressions "Event of Default", "Landlord", "Tenant", "Rent", "Term", "Premises" and "Mortgagee" and other capitalized terms or expressions where used in this Indemnity, respectively, have the same meaning as in the Lease.
12. The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to such person or persons or circumstances as the context otherwise permits.
13. The undersigned, as Indemnifier, hereby represents and warrants to and covenants and agrees with the Landlord that:
 - (a) notwithstanding the foregoing or any performance in whole or in part by the Indemnifier of the covenants of this Indemnity, the Indemnifier shall not, except at the option of the Landlord, have any entitlement to occupy the Premises or otherwise enjoy the benefits of the Tenant under this Lease;
 - (b) the Indemnifier has full power and authority to enter into this Agreement and to perform the Indemnifier's obligations contained herein; and
 - (c) this Agreement is valid and binding upon the Indemnifier and enforceable against the Indemnifier in accordance with its terms.

14. If a part of this Agreement or the application of it to any Person hereunder or circumstance is to any extent held or rendered invalid, unenforceable or illegal, that part:
 - (a) is independent of the remainder of this Agreement and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Agreement; and
 - (b) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person hereunder and circumstance, except those as to which it has been held or rendered invalid, unenforceable or illegal.
 15. The Indemnifier agrees to execute such further assurances in connection with this Agreement as the Landlord may reasonably require.
 16. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
 17. This Agreement is the sole agreement between the Landlord and the Indemnifier relating to the Indemnity and there are no other written or verbal agreements or representations relating thereto. This Agreement may not be amended except in writing and signed by the Indemnifier and two authorized representatives of the Landlord.
 18. Wherever in this Indemnity reference is made to either the Landlord or the Tenant, the reference is deemed to apply also to the successors and assigns of the Landlord and the permitted successors, and permitted assigns of the Tenant. Any assignment by the Landlord of any of its interests in the Lease operates automatically as an assignment to such assignee of the benefit of this Indemnity.
 19. The obligations of Dawn Eveley pursuant to the Indemnity shall be collaterally secured by a second mortgage on the property municipally known as 45 Lakegate Drive, Stoney Creek, Ontario and by a first mortgage on the property municipally known as 37 Rose Drive, Kearney, Ontario.
 20. This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument. All parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.
-

IN WITNESS WHEREOF the Landlord and the Indemnifier have executed this Indemnity Agreement as of the date first written above.

2565698 ONTARIO INC.

Per:

Name: Benito Di Franco

Title: President

I have authority to bind the corporation

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness (Signature)

Witness (Name)

Address

DAWN EVELEY

IN WITNESS WHEREOF the Landlord and the Indemnifier have executed this Indemnity Agreement as of the date first written above.

2565698 ONTARIO INC.

Per: _____

Name: Benito Di Franco


Title: President

I have authority to bind the corporation

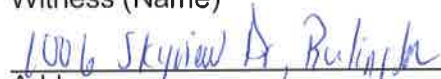
SIGNED, SEALED AND DELIVERED
in the presence of:



Witness (Signature)



Witness (Name)

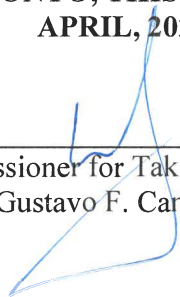


Address



DAWN EVELEY

**THIS IS EXHIBIT 10 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino



City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5
www.hamilton.ca

Date : 2020/03/16

2565698 ONTARIO INC
161 THE WEST MALL
TORONTO ON M9C 4V8

Roll Number
003.120.15050.0000 0
665 ARVIN AVE

Dear Sir or Madam:

NOTICE OF METERED WATER ARREARS ADDED TO TAX ROLL

Alectra Utilities have transferred unpaid Metered Water arrears to your tax account. The amount is listed below. An administration fee of \$35.30 has also been added. All charges are reflected in the ACCOUNT BALANCE below.

PLEASE REMIT PAYMENT IMMEDIATELY. When remitting payment please identify the roll number. Unpaid accounts will be charged interest of 1.25% per month. If you are on one of the City's preauthorized payment plans, your monthly withdrawal amount will not change. Failure to remit payment will result in removal from the preauthorized payment plan.

will result in removal from the preauthorized payment plan

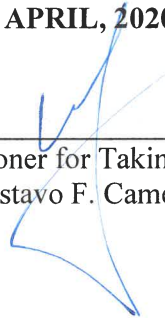
ADJUSTMENT	
Reason: METERED WATER ARREARS	Tax: \$250.01
	Interest: \$0.00
	Other: \$0.00
PERIOD: 2020	

ACCOUNT BALANCE				
Year	Taxes	Interest	Other	Total
2020	\$56,050.51	\$350.62	\$73.70	\$56,474.83
2019	\$83,595.09	\$9,066.78	\$149.00	\$92,810.87
2018	\$0.00	\$0.00	\$0.00	\$0.00
2017+	\$0.00	\$0.00	\$0.00	\$0.00
				\$149,285.70

IF YOU WISH TO DISCUSS THESE CHARGES PLEASE CONTACT
ALECTRA UTILITIES (FORMERLY HORIZON UTILITIES) AT 905 522-9200.

PROPERTY TAX DEPARTMENT

**THIS IS EXHIBIT 11 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

Gustavo Camelino

From: Julian L. Doyle <jdoyle@beardwinter.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Gustavo Camelino
Cc: 'Brendan Bissell (bissell@gsnh.com)'
Subject: RE: Eveley International Corporation - Lease with 256
Attachments: Eveley-2565698 (Tax notice) #2.pdf

Julian L. Doyle | Partner

jdoyle@beardwinter.com

Direct Line: 416.306.1771 | Direct Fax: 416.593.7760



BEARD WINTER LLP

From: Julian L. Doyle
Sent: Monday, April 20, 2020 12:10 PM
To: 'Gustavo Camelino'
Cc: 'Brendan Bissell (bissell@gsnh.com)'
Subject: RE: Eveley International Corporation - Lease with 256

Please see the attachments. The taxes have not been paid by the landlord and the ultimate liability for the payment of property taxes is with the tenant.

Julian

Julian L. Doyle | Partner

jdoyle@beardwinter.com

Direct Line: 416.306.1771 | Direct Fax: 416.593.7760



BEARD WINTER LLP

From: Gustavo Camelino [<mailto:gcamelino@cglegal.ca>]
Sent: Monday, April 20, 2020 11:36 AM
To: Julian L. Doyle
Cc: 'Brendan Bissell (bissell@gsnh.com)'
Subject: RE: Eveley International Corporation - Lease with 256

Thanks Julian,

I am not sure that I understand what happened with the taxes. The lease says that the Landlord will pay the taxes directly to the tax authority and that it would then charge a 15% fee to the tenant.

Is that what happened here? Have the taxes been paid by the landlord? If so, why did it take it so long to do it? If it didn't pay it, on what basis would the 15% fee apply? Is there a different provision that I am missing?

You had indicated that you would provide the documentation "at the appropriate time". With respect, the appropriate time is now. Please provide to me at your earliest opportunity – that should include the original invoices delivered to the landlord by the tax authority for 2019 taxes and any reminder notices.

Gus

Gustavo F. Camelino
416-306-3834

From: Julian L. Doyle <jdoyle@beardwinter.com>
Sent: Monday, April 20, 2020 11:23 AM
To: Gustavo Camelino <gcamelino@clegal.ca>
Cc: 'Brendan Bissell (bissell@gsnh.com)' <bissell@gsnh.com>
Subject: RE: Eveley International Corporation - Lease with 256

Gus,

Please see my below comments.

Regards,

Julian

Julian L. Doyle | Partner

jdoyle@beardwinter.com

Direct Line: 416.306.1771 | Direct Fax: 416.593.7760



BEARD WINTER LLP

BEARD WINTER LLP | LAWYERS

130 Adelaide Street West, 7th Floor

Toronto, Ontario M5H 2K4

Main: 416.593.5555 | Fax: 416.593.7760 | www.beardwinter.com

Confidentiality Notice: This message (including attachments, if any) is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, proprietary, confidential and exempt from disclosure. If you are not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender and erase this e-mail message immediately.

From: Gustavo Camelino [<mailto:gcamelino@clegal.ca>]
Sent: Monday, April 20, 2020 10:58 AM
To: Julian L. Doyle
Cc: 'Brendan Bissell (bissell@gsnh.com)'
Subject: Eveley International Corporation - Lease with 256

Julian:

I have begun my review of the lease-related documents you had provided to me this morning and wonder whether you could clarify a few things related to the claimed tax arrears.

The City of Hamilton invoice indicates that the total property tax owing by your client as at March 16, 2020 was \$149,285.70. That included \$9,417.40 in accrued interest (most of which was for the 2019 tax year).

Two days after the date of the tax invoice, your client emailed a copy of the invoice to my client but indicated that the total tax owing was \$171,678.56 – which is \$22,392.86 higher than what is reflected in the invoice. Your client's demand letter of March 27, 2020 characterizes that \$22,392.86 as a "Administrative Fee on Property Taxes".

A copy of the documents referred to above are attached for your reference.

Here are the clarification questions I have for you:

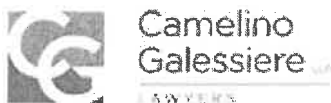
1. **Accrued Interest** – Was my client provided the opportunity to pay the 2019 tax debt prior to the accrual of interest? If so, would you be kind enough to provide me with the original invoice from the City of Hamilton for the 2019 tax debt and a copy of the correspondence sending it to my client and requesting that it be paid? Although the accrued interest for 2020 is much less significant, would you please provide the same documentation with respect to same. [My client sent many e-mails to your client requesting that the taxes be paid and we will be able to provide copies of all of these e-mails at the appropriate time.]
2. **Administrative Fee on Property Taxes** – Was that amount charged to the Landlord by the City? If so, why? Can you please provide me with copies of any documents from the City related to that Administrative Fee, including but not limited to the invoice. If it is not the City's fee, please advise what it is. [Section 7.2 of the lease contemplates that the landlord may charge an administrative fee of 15%.]
3. **Notice of Termination** – Would you kindly provide me with a copy of the Notice of Termination and advise of the date upon which the lease was terminated (and how it was terminated – by notice? By changing the locks?) [The lease was terminated on April 11, 2020 by changing the locks using the services of a bailiff who posted one or more notices at the premises. Your client was also sent an e-mail advising of the termination.]

I look forward to hearing from you with respect to the above.

Kind regards,

Gus

Gustavo F. Camelino
Partner



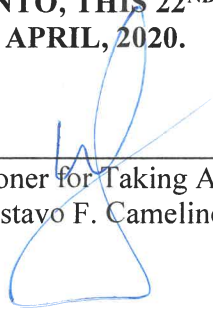
6 Adelaide St. East, Suite 220
Toronto, ON M5C 1H6
Tel: 416.306.3834
Fax: 416.306.3820
gcamelino@clegal.ca
www.clegal.ca

.....
This message is solicitor-client privileged and contains confidential information intended only for the recipient(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error please notify us immediately by e-mail or telephone and destroy the materials received. Thank you.
.....

Note: Occasionally, our spam scanner eliminates legitimate emails from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

Please consider the environment. Please don't print this email unless you really need to.

**THIS IS EXHIBIT 12 TO THE
AFFIDAVIT OF DAWN-MARIE EVELEY
SWORN BEFORE ME AT THE CITY
OF TORONTO, THIS 22ND DAY OF
APRIL, 2020.**



Commissioner for Taking Affidavits
Gustavo F. Camelino

March 27, 2020

Delivered by Fax to 1-905-643-4538

Eveley International Corporation
665 Arvin Avenue
Stoney Creek, ON
L8E 5R2

Attention: Dawn Eveley, President

Dear Ms. Eveley:

Re: Industrial Building Lease between 2565698 Ontario Inc. and Eveley International Corporation dated as of January 2, 2019 (the "Lease")

We represent 2565698 Ontario Inc. (the "**Landlord**") and are contacting you with respect to the Lease. We advise that Eveley International Corporation is in default under the terms of the Lease and we enclose a Notice of Arrears dated March 27, 2020. We demand that the amount of \$235,808.55 be paid to the Landlord on or before Tuesday, March 31, 2020 failing which the Landlord may exercise its remedies under the Lease without further notice to you.

Please govern yourself accordingly.

Yours truly,

BEARD WINTER LLP



Julian L. Doyle

JLD/el

Enc.

BEARD WINTER LLP | LAWYERS

130 Adelaide St. West, 7th Floor, Toronto, Ontario, Canada M5H 2K4 | Main: 416.593.5555 | Fax: 416.593.7760 | www.beardwinter.com

TO: EVELEY INTERNATIONAL CORPORATION

RE: INDUSTRIAL BUILDING LEASE BETWEEN 2565698 ONTARIO INC. AND
EVELEY INTERNATIONAL CORPORATION (the "Tenant") DATED AS OF
JANUARY 2, 2019 (the "Lease")

TAKE NOTICE that the Tenant is in default of its obligation under the Lease as follows:

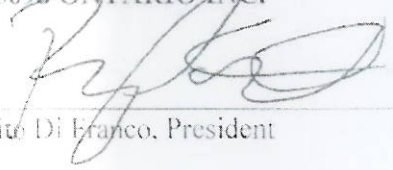
Unpaid Rent, February, 2020	\$ 6,500.00
Unpaid Rent, March, 2020	\$ 56,500.00
Property Taxes*	\$ 149,285.70
Administration Fee on Property Taxes	\$ 22,392.85
Cost of collection to date	<u>\$ 1,130.00</u>
Total	\$235,808.55

We demand that the Tenant shall pay the above-noted amount immediately.

DATED as of the 27th day of March, 2020.

2565698 ONTARIO INC.

Per:


Benito Di Franco, President

*Inclusive of metered water arrears
that have been added to the Tax Roll.

**CANADIAN EQUIPMENT FINANCE &
LEASING INC.**

Applicant

**EVELEY INTERNATIONAL
CORPORATION**

and

Respondent

Court File No: CV-20-00639897-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

AFFIDAVIT OF DAWN-MARIE EVELEY
(SWORN APRIL 22, 2020)

CAMELINO GALESSIERE LLP
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Lawyers for Eveley International Corporation

**CANADIAN EQUIPMENT FINANCE &
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RESPONDING APPLICATION RECORD

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