

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**2580363 ONTARIO INC. AND 2580361 ONTARIO INC.**

Respondents

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**MOTION RECORD  
(Returnable: April 27, 2023)**

**(Volume 1 of 2)**

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April 17, 2023

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# TAB A

Court File No. CV-22-0078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**2580363 ONTARIO INC. AND 2580361 ONTARIO INC.**

Respondents

**NOTICE OF MOTION**

**Msi Spergel inc.** ("**Spergel**"), in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2580363 Ontario Inc. ("**363**") and 2580361 Ontario Inc. ("**361**") (collectively, the "**Debtors**"), will make a motion to a Judge presiding over the Ontario Superior Court of Justice (the "**Court**") on Thursday, April 27, 2023 at 10:00 a.m. (Hamilton time), or as soon after that time as the motion can be heard, by video conference due to the COVID-19 pandemic. Zoom details will be provided by the Court.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

At the following location: [[to be uploaded on Caselines, if applicable](#)]

**THE MOTION IS FOR:**

1. Two Orders, substantially in the form of draft orders attached at Tab "C" and Tab "E" of the Motion Record, *inter alia*:

(a) if necessary, validating the service of this Notice of Motion, the Motion Record and the First Report of the Receiver dated April 12, 2023 (the "**First Report**") so that this Motion is properly returnable April 27, 2023 or as scheduled by the Court, and dispensing with further service thereof;

(b) approving the First Report and the actions and activities of the Receiver as described therein;

(c) approving the sale transaction and vesting all right, title and interest of 361 in the real property owned by 361 and municipally known as 21 Augusta Street, Hamilton, Ontario and legally described as PIN 17170-0018 (LT) (the "**Real Property**") described in the Agreement of Purchase and Sale accepted February 6, 2023, as amended (the "**Purchase Agreement**") entered into between Muse Properties Ltd., as general partner for and on behalf of Muse Properties Limited Partnership (the "**Purchaser**") and the Receiver, free and clear of encumbrances and other charges and security interests as described in the Purchase Agreement (the "**Transaction**");

(d) authorizing the Receiver to complete the Transaction, and thereafter to file the Receiver's Certificate with the Court, certifying, among other things, the completion of the Transaction;

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(e) approving the Receiver's Statement of Receipts and Disbursements included in the First Report;

(f) approving the fees and disbursements of the Receiver (the "**Receiver's Fees**") to date, as detailed in the First Report and authorizing the payment of the Receiver's Fees;

(g) approving the fees and disbursements of counsel to the Receiver, Fogler, Rubinoff LLP ("**Counsel's Fees**"), to date, as detailed in the First Report and authorizing payment of Counsel's Fees;

(h) approving the sealing of the Confidential Appendices to the First Report until completion of the Transaction, or further order of this Court;

(i) approving the Fee Accrual set out in the First Report;

(j) declaring that the Funds identified in the First Report are "Property" that fall under this receivership;

(k) authorizing and directing the Receiver to make the distributions proposed in the First Report;

(l) discharging the Receiver and releasing it from any liability in its capacity as Receiver, except for wilful misconduct or gross negligence, to be effective upon the filing of a certificate by the Receiver certifying that all outstanding matters in the receivership, as referenced in the First Report, have been completed to the satisfaction of the Receiver; and

2. Such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to the Orders of The Honourable Justice MacNeil each dated June 2, 2022 and The Honourable Justice Parayeski dated October 4, 2022 (together, the "**Appointment Order**"), Spergel was appointed as Receiver, effective as of September 1, 2022, over all of the assets, undertakings and properties of the Debtors (collectively, the "**Property**"), including the Real Property;
- (b) the Appointment Order was obtained on the application of The Toronto-Dominion Bank ("**TD**"), the Debtors' senior secured creditor, upon the Debtors' default or breach of their obligations to TD under the applicable credit facilities made available by TD to the Debtors;
- (c) as of April 3, 2023, the Debtors were indebted to TD in the approximate amount of \$1.5 million;
- (d) 361 is the registered owner of the Real Property;

**TENANCY ARRANGEMENT**

- (e) as noted already, the Property under this receivership includes the Real Property, which is owned by 361. The related debtor, 363, operated as a restaurant known as "Aout'n About" from the premises or Real Property;

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- (f) TD holds, among other things, a first priority mortgage/charge registered against title of the Real Property, in the principal amount of approximately \$1.2 million;
- (g) upon its appointment, the Receiver became aware that a portion of the Real Property or premises was being leased pursuant to an informal occupancy arrangement or unwritten lease between 361 as landlord, and Stephanie Waller as tenant or occupant (the "**Tenant**"). On September 6, 2022, Receiver's counsel provided written notice to the Tenant to, among other things, vacate the Real Property or premises within 60 days and by no later than November 7, 2022. On or about October 3, 2022, the Receiver and Tenant entered into an Agreement To Vacate The Premises whereby, among other things, the Receiver agreed to pay the Tenant the amount of \$5,000 upon the premises being vacated by November 30, 2022 and to waive any further rent from the Tenant on condition that the Tenant vacate the premises by November 30, 2022. The Tenant vacated the premises by November 30, 2022 and the Receiver paid the Tenant \$5,000 in accordance with the said Agreement. In the Receiver's opinion, it would have been much more costly, timely and uncertain, if the parties had not reached an agreement to vacate the premises and if the Receiver had been required to commence legal action to evict the Tenant in order to market and sell the Real Property and provide vacant possession;

## **MARKETING PROCESS**

- (h) pursuant to the terms of the Appointment Order, the Receiver was empowered and authorized to market any or all of the Property, including advertising and

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soliciting offers, on such terms and conditions of sale as the Receiver deems appropriate (the "**Marketing Process**");

- (i) upon its appointment, the Receiver engaged Antec Appraisal Group Inc. ("**Antec**") and Colliers International Realty Advisors Inc. ("**Colliers**"), appraisers to value the Real Property;
- (j) before initiating the Marketing Process, the Receiver contacted and obtained, from CBRE & M Commercial Realty ("**CBRE**") and Avison Young Commercial Real Estate Services LP ("**Avison Young**"), realtors with experience in selling real property similar to this Real Property, listing proposals for the marketing and solicitation of offers for the sale of the Real Property;
- (k) the Real Property has been listed for sale with Avison Young, an independent commercial real estate broker;
- (l) on January 27, 2023, the Receiver and Purchaser entered into the Purchase Agreement. The Purchase Agreement became binding or "firm" on February 6, 2023;

#### **PURCHASE AGREEMENT**

- (m) the sale of the Real Property pursuant to the Purchase Agreement is on an "as is, where is" basis, and is subject to an approval and vesting order being issued by the Court;



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- (n) TD supports the completion of the Transaction and the Receiver recommends that the Court approve the Transaction;

### **RECEIVER'S FEES**

- (o) the Receiver's Fees from September 1, 2022 to March 31, 2023 are in the amount of \$85,836.11, inclusive of disbursements and HST;

### **COUNSEL'S FEES**

- (p) Counsel's Fees from April 7, 2022 to March 23, 2023 are in the total amount of \$39,648.70, inclusive of disbursements and HST. The Receiver is of the view that Counsel's Fees are fair and reasonable in the circumstances;

### **FEE ACCRUAL**

- (q) the Receiver estimates that the Fee Accrual, covering the additional fees and disbursements for itself and its lawyer, Fogler, Rubinoff LLP, necessary to complete the Transaction and the administration of the receivership to the discharge of the Receiver, will respectively be \$30,000 and \$25,000 (not including HST and disbursements);

### **SEALING CONFIDENTIAL APPENDICES**

- (r) the requested sealing of the Confidential Appendices in the First Report is for a temporary period only, until the Transaction closes or further Order of this Court. To release these documents or make them public now would be prejudicial to the stakeholders if the Transaction did not close and the Receiver had to resume or

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commence a new sales process. In those circumstances, the integrity of the new sales process would be undermined if the bidders or offerors knew beforehand the confidential information contained in the Confidential Appendices;

## **RECEIVER'S STATEMENTS OF RECEIPTS AND DISBURSEMENTS**

- (s) The Receiver is also requesting this Court's approval of its Statement of Receipts and Disbursements as set out in its First Report;

## **CANADA REVENUE AGENCY**

- (t) As described in the First Report, the Receiver received from the Canada Revenue Agency (the "**CRA**"), on October 6, 2022 and October 31, 2022 respectively, a deemed trust claim on account of the HST owed by 361 and 363. The 361 deemed trust claim is in the approximate amount of \$22,000 ("**CRA's 361 Deemed Trust Claim**") and the 363 deemed trust claim is in the approximate amount of \$356,000 ("**CRA's 363 Deemed Trust Claim**"). TD's mortgage on the Real Property of 361 appears to have been registered against title before 361 failed to remit the HST, which gave rise to CRA's 361 Deemed Trust Claim.

## **THE FUNDS**

- (u) "Property" is broadly defined under the Appointment Order. It covers all of the assets, undertakings and properties of the Debtors. The Receiver was appointed over the Property, and pursuant to the Appointment Order, its powers include "possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property"; and "receive,

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preserve and protect the Property". After the appointment of the Receiver, two deposits were made in 361's account held at TD in the approximate amount of \$254,000 (the "**Funds**"). The Funds fall within the definition of "Property" and are therefore "Property" of this receivership;

### **RECEIVER'S BORROWINGS**

- (v) The Receiver borrowed the principal amount of \$65,000 from TD to fund the administration of the receivership. Pursuant to the Appointment Order, the Receiver issued a Receiver's Certificate, giving rise to a charge on the Property in favour of TD (the "**Receiver's Borrowings Charge**") as security for the repayment of the borrowed money;

### **TD AND THE PROPOSED DISTRIBUTION**

- (w) As the Debtors' senior secured creditor, TD has been kept informed by the Receiver of developments in the receivership including of the Marketing Process and the proposed sale of the Real Property to the Purchaser. TD is not opposed to the relief being sought in this motion;
- (x) The Receiver expects that the net proceeds from the sale of the Real Property that are distributed to TD will reduce or pay down the Debtors' indebtedness to TD. The Receiver also obtained an opinion from its counsel confirming the validity and enforceability of TD's security over the property of the Debtors, including the first mortgage over 361's Real Property. After the completion of the Transaction and payment or holdback of the Receiver's Fees and Counsel's Fees, the

- 10 -

Receiver's borrowings secured by the Receiver's Borrowings Charge, any property tax arrears in respect of the Real Property and the Fee Accrual, the Receiver will pay the net proceeds to TD in accordance with the proposed distribution in the First Report. Given that there are no realizations for the estate of 363, there are no funds available for payment of CRA's 363 Deemed Trust Claim. If the Funds of 361 are "Property" pursuant to the Appointment Order, then these funds or part of these funds are available for payment of CRA's 361 Deemed Trust Claim. The main asset or Property being realized by the Receiver is the Real Property. The Real Property is owned by 361. As noted above, the registration of TD's first mortgage on title of the Real Property occurred BEFORE 361 failed to remit the HST, which gave rise to CRA's 361 Deemed Trust Claim. The Receiver expects that there will be insufficient funds from the net sale proceeds to fully pay 361's debt to TD. Similarly, 363's debt to TD will continue to be outstanding. That is, TD will suffer a shortfall or deficiency under its credit facilities with the Debtors, together with any other stakeholders, notwithstanding the Receiver's proposed distribution of the net proceeds to TD. Consequently, there will be no surplus funds from the sale of the Real Property for stakeholders;

#### **RECEIVER'S DISCHARGE**

- (y) Following this motion and if the requested relief is granted by the Court, the Receiver proposes to attend to the following: (i) complete the Transaction; (ii) pay the Receiver's Fees; (iii) pay Counsel's Fees; (iv) pay the Receiver's borrowings secured by the Receiver's Borrowings Charge; (v) retain the Fee Accrual to pay the fees and disbursements of the Receiver and its counsel to complete the

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Transaction and for additional services to the date of the Receiver's discharge; (vi) pay TD in accordance with the proposed distribution in the First Report; and (vii) other residual and administrative matters regarding the appointment and discharge of the Receiver;

#### **GENERAL AND SUMMARY**

- (z) the closing of the Transaction under the Purchase Agreement is subject to the Receiver seeking and obtaining an approval and vesting order from the Court;
- (aa) the Receiver's activities have been reasonable and responsible in accordance with the Receiver's mandate as provided by the Appointment Order;
- (bb) the other grounds set out in the First Report;
- (cc) the inherent and equitable jurisdiction of this Honourable Court;
- (dd) the terms of the Appointment Order including, without limitation, paragraph 3 (l) authorizing and empowering the Receiver "to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property";
- (ee) Sections 100 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;

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- (ff) Sections 222(4) and 222(1) of the *Excise Tax Act*, R.S.C. 1985, c. E-15 and *Security Interest (GST/HST) Regulations* (SOR (Statutory Orders and Regulations) 2011-55 ("Prescribed Security Interest");
- (gg) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (hh) such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the First Report, filed herewith; and
- (b) such further and other material as counsel may submit and this Court may permit.

April 17, 2023

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**THE TORONTO-DOMINION BANK**  
Applicant

-and- **2580363 ONTARIO INC. and 2580361 ONTARIO INC.**  
Respondents

Court File No. CV-22-0078521-0000

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

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**NOTICE OF MOTION**

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the Receiver

# **TAB B**

Court File No. CV-22-000078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**2580363 ONTARIO INC. AND 2580361 ONTARIO INC.**

Respondents

**FIRST REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS THE RECEIVER OF  
2580363 ONTARIO INC. AND 2580361 ONTARIO INC.**

**April 12, 2023**

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6. Unredacted copy of MUSE Properties Ltd. offer to purchase 21 Augusta Street, Hamilton, Ontario



## I. APPOINTMENT AND BACKGROUND

1. This first report ("**First Report**") is filed by msi Spergel Inc. ("**Spergel**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the following companies (collectively, the "**Debtors**" or "**Companies**"):
  - a) 2580363 Ontario Inc. ("**363**"); and,
  - b) 2580361 Ontario Inc. ("**361**");
2. 2580363 Ontario Inc. is a private corporation incorporated pursuant to the laws of the Province of Ontario. 363 operated as a restaurant known as "Aout 'n About" from the premises located at 21 Augusta Street, Hamilton, ON which is owned by 2580361 Ontario Inc.
3. 2580361 Ontario Inc. is a private corporation incorporated pursuant to the laws of the Province of Ontario. 361 is a holding company that owns the real property municipally known as 21 Augusta Street, Hamilton, Ontario and legally described as PIN 17170-0018 (LT) (the "**Real Property**").
4. The principal of the Companies is John Mercante who is the sole officer and director of the Companies. The Companies' head office is located in Brantford, Ontario.
5. Spergel was appointed as the Receiver of all of the assets, undertakings and properties of the Debtors, including the Real Property (collectively, the "**Property**") by the Orders:
  - a) of the Honourable Madam Justice MacNeil of the Ontario Superior Court of Justice (the "**Court**") dated June 2, 2022 appointing the Receiver (the "**Receivership Order**");
  - b) of the Honourable Madam Justice MacNeil of the Court dated June 2, 2022 (the "**Ancillary Order**") ordering, among other things, that in the event that the Debtors fail to pay the indebtedness due to The Toronto-Dominion Bank ("**TD**"), including all interest and costs, on or before August 31, 2022, or in the event that the Debtors otherwise default under the terms of the Forbearance

Agreement (a "**Default**"), then the Receivership Order shall be effective as of September 1, 2022 or the date of such Default, whichever comes first, and TD shall speak to this matter in September, 2022, or earlier if a Default does take place, to advise the Court of same; and

- c) of the Honourable Justice Parayeski of the Court dated October 4, 2022 (the "**October 4<sup>th</sup> Order**") and together with the Receivership Order and the Ancillary Order, the "**Appointment Orders**") ordering, among other things, that the Receivership Order be and is effective as against the Debtors as at September 1, 2022.

The Appointment Orders were made upon the application of the Debtors' general secured creditor, TD. Attached as **Appendices "1", "2" and "3"** are copies of the Receivership Order, the Ancillary Order and the October 4<sup>th</sup> Order.

6. The Receiver retained Fogler, Rubinoff LLP (the "**Receiver's Counsel**") as its independent legal counsel.

## **II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER**

7. The purpose of this First Report is to report to the Court regarding the Receiver's activities and conduct since the Receiver's appointment dated September 1, 2022, and to seek Orders from this Court:
- a) approving the First Report and the actions and activities of the Receiver described therein;
- b) approving the sale transaction contemplated by the agreement of purchase and sale dated February 6, 2023 entered into between MUSE Properties Ltd. (the "**Purchaser**" or "**Muse Properties**") and the Receiver, as vendor, (the "**Purchase Agreement**") with respect to the Real Property and authorizing the Receiver to complete the transaction contemplated thereby (the "**Transaction**");

- c) vesting in the Purchaser, 361's right, title and interest in and to the Real Property free and clear of any claims and encumbrances save and except for "Permitted Encumbrances";
  - d) sealing the Confidential Appendices (as defined herein) to this First Report until the earlier of the completion of the Transactions or further Order of this Court;
  - e) approving the Receiver's statements of receipts and disbursements as at April 12, 2023 for the receivership;
  - f) approving the fees and disbursements of the Receiver (the "**Receiver's Fees**") for the period to and including March 31, 2023;
  - g) approving the fees and disbursements of Receiver's Counsel to and including March 23, 2023;
  - h) approving the Fee Accrual (as defined herein);
  - i) declaring that the Funds (as defined herein) comprises Property;
  - j) authorizing and directing the Receiver to make the distributions proposed in this First Report;
  - k) effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, discharging Spergel as the Receiver and granting certain ancillary relief in relation thereto;
  - l) such further and other relief as Receiver's Counsel may advise and the Court may permit.
8. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction or use of this First Report for any other purpose.
9. In preparing this First Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed

an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.

10. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

### III. ACTIONS OF THE RECEIVER

11. Immediately upon its appointment, the Receiver directly or through the Receiver's Counsel attended to the following:
  - i. secured possession of the Real Property and attended to all necessary repairs where applicable, including heating issues and winterization;
  - ii. attended at the Real Property at least 3 times a week;
  - iii. arranged utility accounts under the receivership;
  - iv. notified the 3<sup>rd</sup> floor tenant of the receivership, issued an eviction notice and negotiated a tenancy arrangement with the 3<sup>rd</sup> floor tenant;
  - v. arranged for the registration of the Receiver's interest on the title to Real Property, where applicable;
  - vi. arranged for insurance in the name of the Receiver;
  - vii. opened dedicated trust accounts for each of the receivership entities and dealt with existing accounts;
  - viii. notified the office of the Superintendent of Bankruptcy of its appointment as Receiver;
  - ix. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act* (the "**BIA**"); and
  - x. communicated with the Canada Revenue Agency ("**CRA**") with respect to each of the Debtors.

12. As indicated above, 363 operated as a restaurant known as “Aout ‘n About” from the Real Property and owns certain assets. The Receiver engaged Canam-Appraiz Inc. (“**Canam**”) to commission an appraisal of the assets owned by 363. The gross liquidation value of the assets owned by 363 was estimated to at a nominal amount by Canam. Accordingly, the Receiver concluded that it will not be commercially reasonable for the Receiver to sell these assets as the potential realizations wouldn’t be sufficient to cover the cost of realization and professional fees associated with same.

#### **IV. TENANCY ARRANGEMENT**

13. Upon its appointment, the Receiver became aware that a portion of the Real Property was being leased pursuant to an informal occupancy arrangement or unwritten lease between 361 as landlord, and Stephanie Waller as 3<sup>rd</sup> floor tenant or occupant (the "**Tenant**"). On September 6, 2022, Receiver's Counsel provided written notice to the Tenant to, among other things, vacate the Real Property within 60 days and by no later than November 7, 2022. On or about October 3, 2022, the Receiver and the Tenant entered into an agreement to vacate the premises whereby, among other things, the Receiver agreed to pay the Tenant the amount of \$5,000 upon the premises being vacated by November 30, 2022 and to waive any further rent from the Tenant on condition that the Tenant vacates the premises by November 30, 2022. The Tenant vacated the premises by November 30, 2022 and the Receiver paid the Tenant \$5,000 in accordance with the said Agreement. In the Receiver's opinion, the agreement to vacate was commercially reasonable as it would have been much more costly, timely and uncertain, if the parties did not reach an agreement and the Receiver was forced to commence legal action to evict the Tenant in order to market and sell the Real Property and provide vacant possession upon successful sale of the Real Property.

#### **V. THE SALES PROCESS WITH RESPECT TO THE REAL PROPERTY**

14. Pursuant to the terms of the Appointment Orders, the Receiver was empowered and authorized to, among other things, market any or all of the Debtors’ assets, including advertising and soliciting offers in respect of the assets and negotiating

such terms and conditions of sale as the Receiver, in its discretion, deemed appropriate.

15. Upon appointment, the Receiver engaged the services of Antec Appraisal Group Inc. (“**Antec**”) and Colliers International Realty Advisors Inc. (“**Colliers**”) to attend at and conduct a full narrative appraisal of the Real Property. The Receiver obtained appraisals in relation to the Real Property from Antec on October 25, 2022 and from Colliers on October 17, 2022. Attached hereto as **Confidential Appendix “1”** are copies of the appraisals obtained by the Receiver together with a summary of the values attributed by the appraisers to the Real Property.
16. In addition to the above noted appraisals, the Receiver requested sales and marketing proposals from two GTA commercial real estate brokers, CBRE & M Commercial Realty (“**CBRE**”) and Avison Young Commercial Real Estate Services LP (“**Avison Young**”). Copies of the sales and marketing proposals with valuations redacted are attached to this First Report as **Appendix “4”**. Unredacted copies of the sales and marketing proposals are attached to this First Report as **Confidential Appendix “2”**.
17. The Receiver entered into an MLS Listing Agreement with Avison Young dated November 22, 2022 at a list price of \$1,995,000 (the “**Listing Agreement**”). A copy of the Listing Agreement is attached to this First Report as **Appendix “5”**.
18. Avison Young widely marketed the Real Property to garner maximum interest and multiple offers to purchase. This included listing the Real Property on MLS as of December 9, 2022, placing advertisements in the Globe and Mail on January 10<sup>th</sup> and 12<sup>th</sup> respectively and reaching out to over 1900 contacts. This resulted in 17 interested parties executing a Confidential Agreement, 12 people accessing the data room for the property and 6 interested parties touring the Real Property. A copy of the Final Progress Report issued by Avison Young dated February 21, 2023 is attached to this First Report as **Confidential Appendix “3”**.
19. The bid deadline was set for January 19, 2023 and 3 offers were received by Avison Young with respect to the Real Property at that time. Attached hereto as **Confidential Appendix “4”** is the initial comparative summary of Offers received.

20. By direction of the Receiver, Avison Young reached out to the initial submissions to resubmit and put forth their best offer. The deadline for resubmission was set for January 24<sup>th</sup> and 3 offers were resubmitted. Attached hereto as **Confidential Appendix “5”** is the final submission comparative analysis.
21. Efforts were expended by the Receiver to negotiate certain of the offers, which negotiations resulted in the Receiver accepting the offer submitted by MUSE Properties Ltd. (the “**MUSE Offer**”). The MUSE Offer is conditional upon the approval of this Honourable Court and accordingly is the subject matter, *inter alia*, of this motion brought by the Receiver. A redacted copy of the MUSE Offer/ Purchase Agreement is attached to this First Report as **Appendix “6”** and the unredacted copy is attached as **Confidential Appendix “6”** (collectively with **Confidential Appendices “1”, “2”, “3”, “4” and “5”**, the “**Confidential Appendices**”).
22. The Receiver is of the view that the sale process was conducted in a commercially reasonable manner and that the market was extensively canvassed pursuant to Avison Young’s professional, and industry standard marketing efforts detailed above and contained in the Avison Young’s Listing Proposal. Further, the Receiver is of the opinion that the efforts of Avison Young through the listing of the Real Property on MLS and Avison Young’s internal and external network have provided sufficient exposure of the Real Property to the market.
23. It is the opinion of the Receiver that the terms and conditions contained within the Purchase Agreement are commercially reasonable in all respects and that the purchase price in the Purchase Agreement is at market value for the Real Property and is the best outcome to the estate in the circumstances.
24. TD has been consulted with respect to the Transaction and supports the completion of same and the relief sought by the Receiver within this motion.
25. The Receiver recommends that the Court approve the Transaction.
26. If the closing of the Transaction is approved, same will close on ten business days after the date that the Approval and Vesting is granted by the Court.

27. Accordingly, the Receiver is seeking, among other things, an order from this Honourable Court approving the Transaction.

**VI. REQUEST FOR A SEALING ORDER**

28. The Receiver is also seeking a sealing order in respect of the Confidential Appendices as they each contain commercially sensitive information, the release of which prior to the completion of the Transaction would be prejudicial to the stakeholders of the Debtors' estates in the event the Transaction does not close. The requested sealing of the Confidential Appendices is for a temporary period, until the earlier of the completion of the Transaction or further Order of this Court.

**VII. FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL**

29. Attached to this First Report as **Appendix "7"** is the Affidavit of Trevor Pringle, sworn April 12, 2023, (the "**Pringle Affidavit**") which incorporates, by reference a copy of the time dockets pertaining to the receivership of the Debtors for the period to and including March 31, 2023. The total fees and disbursements of the Receiver of \$84,470.98 (inclusive of HST and disbursements) for the estate of 361 were charged by Spergel as detailed in the Pringle Affidavit. This represents a total of 204.15 hours at an effective rate of \$366.13 per hour. The total fees and disbursements of the Receiver of \$1,365.13 (inclusive of HST and disbursements) for the estate of 363 were charged by Spergel as detailed in the Pringle Affidavit. This represents a total of 4 hours at an effective rate of \$300.25 per hour.
30. The Receiver's Counsel's fees to and including March 23, 2023 are in the total amount of \$39,648.70, inclusive of disbursements and HST. Attached to this First Report as **Appendix "8"** is the Affidavit of Scott Venton sworn March 27, 2023. The Receiver has reviewed the Receiver's Counsel's accounts and given the Receiver's involvement in this matter, the Receiver is of the view that all the work set out in Receiver's Counsel's accounts was carried out and was necessary. The hourly rates of the lawyers who worked on this matter were reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience.



## VIII. FEE ACCRUAL

31. Provided there is no opposition to the relief sought in this First Report and that such relief is granted, the Receiver estimates that the additional fees and disbursements for itself and the Receiver's Counsel necessary to complete the proceedings will be \$30,000 and \$25,000 (not including HST and disbursements), respectively (collectively the "**Fee Accrual**").

## IX. RECEIVER'S STATEMENTS OF RECEIPTS AND DISBURSEMENTS

32. Attached to this First Report as **Appendix "9"** is a copy of the Receiver's Statement of Receipts and Disbursements as of April 12, 2023.

## X. CANADA REVENUE AGENCY

33. On October 6, 2022 and October 31, 2022 respectively, the Receiver received CRA's deemed trust claim on account of the HST owed by 361 and 363. 361 deemed trust claim amounts to \$21,840.00 (the "**361 HST Claim**") and 363 deemed trust claim amounts to \$355,760.63 (the "**363 HST Claim**"). Attached as **Appendices "10" and "11"** is a copy of the CRA's deemed trust claims. Given there are no realizations for the estate of 363, there are no funds available for payment of the 363 HST Claim.

## XI. THE FUNDS

34. After the appointment of the Receiver, two deposits were made in 361's account held at TD in the approximate amount of \$254,000 (the "**Funds**"). On January 12, 2023 the principal of 361, John Mercante ("**Mr. Mercante**"), advised the Receiver that the Funds did not belong to 361. On February 17, 2023, the Receiver's Counsel sent a letter to Mr. Mercante advising, among other things, that any funds available in the bank accounts of 361 falls within the definition of Property unless evidence to the contrary is provided and asked that Mr. Mercante provide the evidence, on or before February 23, 2023, including proof of origination of the Funds, the books and records of 361 and any other information to assist the Receiver in determining the beneficiary of the Funds. On February 23, 2023, the Receiver's Counsel sent a letter to Mr. Mercante's counsel and asked that the

requested information with respect to the Funds be provided by no later than March 2, 2023.

35. On March 7, 2023, the Receiver's Counsel again sent a letter to Mr. Mercante's counsel advising that the requested information with respect to the Funds be provided on or before March 10, 2023, failing which it is the intention of the Receiver in its next motion before the Court, to be seeking an order, among other things, that the Funds comprises Property under the receivership. Copies of letters sent to Mr. Mercante and his counsel are attached to this First Report as **Appendix "12"**. As at the date of this First Report, the Receiver is yet to receive a response from Mr. Mercante or his counsel. Accordingly, the Receiver is seeking, among other things, an order from this Honourable Court, declaring that the Funds are, or comprise of, Property of the receivership.

## **XII. PROPOSED DISTRIBUTION**

### *Receiver's Certificate*

36. Pursuant to paragraph 21 of the Receivership Order, the Receiver borrowed monies from TD in the principal amount of \$65,000 (the "**Borrowings**") to fund its activities in these proceedings. Attached as **Appendix "13"** to this First Report is a copy of the Receiver Certificate dated September 19, 2022 certifying the Borrowings.
37. Pursuant to paragraphs 21 and 23 of the Receivership Order, the issuance of the Receiver's Certificate has the effect of creating a charge on the Property, by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the repayment of the monies borrowed, together with interest and charges thereon, in priority to all statutory interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order), but subordinate to the Receiver's Charge, and the charges set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

TD

38. The title search conducted with respect to the Real Property, on December 21, 2021, has indicated, among other things, the following registrations on title in order of priority:
- a) A first mortgage in the principal amount of \$1,205,000 held by TD which comprises an initial charge registered on August 22, 2019 (the “**First Mortgage**”). TD also holds a General Assignment of Rents and Leases registered on August 22, 2019 which is collateral security to the aforesaid First Mortgage. Attached as **Appendix “14”** is a copy of correspondence from TD dated April 3, 2023 confirming the amount owing in respect of the First Mortgage was \$1,241,076.63 (including legal fees) as at April 3, 2023 and amount owing with respect to the 363 indebtedness was \$316,197.52, respectively.
  - b) A second mortgage in the principal amount of \$246,000 held by Olympia Trust Company which comprised an initial charge registered on July 12, 2021 is subject to a Postponement from Olympia Trust Company in favour of Comfort Capital Inc. or the third mortgage below.
  - c) A third mortgage in the principal amount of \$225,000 held by Comfort Capital Inc. which comprised an initial charge registered on September 7, 2021.
  - d) A fourth mortgage in the principal amount of \$135,000 held by Alex Magis which comprised an initial charge registered on October 29, 2021.
39. Attached hereto as **Appendix “15”** is a copy of the title searches conducted on December 21, 2021. Attached hereto as **Appendix “16”** is the Fogler, Rubinoff LLP or Receiver's Counsel's security opinion dated October 19, 2022 providing its opinion that the First Mortgage and other security regarding the Debtors held by TD are good and enforceable in accordance with their terms.
40. The City of Hamilton has a priority charge to the First Mortgage in respect of property tax arrears that have accrued in respect of the Real Property. Attached hereto as **Appendix “17”** is a copy of the tax arrears statement issued by the City

on February 9, 2023 which indicate that the property taxes are outstanding in the amount of \$27,954.66.

41. Accordingly, the Receiver is proposing to make a distribution (after payment of the fees and disbursements of the Receiver and the Receiver's Counsel, including the holdback of the Fee Accrual, outlined in this First Report) as follows:
- a) To the City of Hamilton in the amount of \$27,954.66 or such other amount accrued at the closing of the Transaction for outstanding reality tax arrears;
  - b) To TD for repayment of the Receiver's Borrowings Charge in the amount of \$65,000 plus interest thereon in accordance with the Receiver Certificate;
  - c) To CRA for payment of the 361 HST Trust Claim in the amount of \$21,840 provided the Funds are declared Property by this Honourable Court;
  - d) Balance of any and all funds available in the Debtors' estates to TD, on account of the Debtors' secured indebtedness to TD. It is anticipated that TD will suffer a shortfall, and accordingly there will be no funds available for distribution for subsequent mortgage holders and any other stakeholders.

### **XIII. DISCHARGE OF THE RECEIVER**

42. Subsequent to the date of this First Report, and prior to the Receiver's discharge, the Receiver proposes to attend to the following:
- a) closing the Transaction;
  - b) the payment of distributions as identified above;
  - c) other residual and/or administrative matters in connection with Spergel's appointment as Receiver; and
  - d) filing of the final Receiver's certificate of discharge.

### **XIV. RECOMMENDATION**

43. For the reasons outlined in this First Report, the Receiver respectfully requests that the Court grant the relief specified at Paragraph 7 of this First Report.

Dated at Toronto this 12<sup>th</sup> day of April, 2023.

**msi Spergel Inc.**

solely in its capacity as the Court-appointed  
Receiver of the Debtors and not in its personal  
or corporate capacity.

Per:

A handwritten signature in black ink, appearing to read "Mukul", written over a horizontal line.

---

Mukul Manchanda, CPA, CIRP, LIT

# **APPENDIX "1"**

Court File No. CV-22-000078521-0000



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

THURSDAY, THE

JUSTICE MacNEIL

)

2<sup>nd</sup> DAY OF JUNE, 2022

)

**THE TORONTO-DOMINION BANK**

Applicant

-and-

**2580363 ONTARIO INC. AND 2580361 ONTARIO INC.**

Respondents

**ORDER**  
**(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2580363 Ontario Inc. and 2580361 Ontario Inc. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including the real property described at Schedule "A" hereto and owned by 2580361 Ontario Inc. (the "Real Property"), was heard this day by judicial videoconference via Zoom at 45 Main Street East, Hamilton, Ontario.

ON READING the affidavit of Jill Lamothe sworn April 7, 2022 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Respondents as duly served

as appears from the affidavit of service of Lindsay Ferguson sworn April 13, 2022 and on reading that msi Spergel inc. has consented to act as the Receiver.

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including the Real Property, and also including all proceeds thereof (collectively, the "Property").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary



course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property, or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating

such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

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

4. THIS COURT ORDERS that (i) the Debtors (ii) all of the Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this

paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

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

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

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

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

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

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

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

### **RECEIVER TO HOLD FUNDS**

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

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to

their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under

sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

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

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged



by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://www.spergelcorporate.ca/engagements>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other

materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

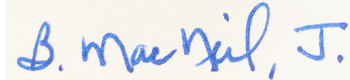
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid

by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink, reading "B. MacNeil, J.", is placed on a light beige rectangular background. The signature is written in a cursive style.

---

Justice, Ontario Superior Court of Justice

Electronically Issued and Entered

**SCHEDULE "A"****REAL PROPERTY**

PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON (PIN 17170-0018 LT)

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel inc., the receiver (the "Receiver") of the assets, undertakings and properties of 2580363 Ontario Inc. and 2580361 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtors, including the Real Property (as defined in the Appointment Order), and including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

msi Spergel inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

THE TORONTO-DOMINION BANK

v.

2580363 ONTARIO INC. and 2580361 ONTARIO INC.

Applicant

Respondents

Court File No. CV-22-00078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT HAMILTON

**APPOINTING ORDER**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario N6A 5J6

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: thogan@harrisonpensa.com  
rdanter@harrisonpensa.com

Solicitors for the Applicant,  
The Toronto-Dominion Bank

# **APPENDIX "2"**





Court File No. CV-22-00078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE MacNEIL

)  
)  
)

THURSDAY, THE 2<sup>nd</sup>  
DAY OF JUNE, 2022

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

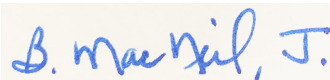
Respondents

**ANCILLARY ORDER**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. ("Spergel") as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2580363 Ontario Inc. and 2580361 Ontario Inc. (collectively, the "Debtors") acquired for, or used in relation to the business carried on by the Debtors, including the real property described at Schedule "A" to the Appointment Order, as defined below, and owned by 2580361 Ontario Inc. (the "Real Property"), was heard this day by Judicial teleconference via Zoom at 45 Main Street East, Hamilton, Ontario.

ON READING the affidavit of Jill Lamothe sworn April 7, 2022 and the Exhibits thereto (the "Lamothe Affidavit"), and on hearing the submissions of counsel for the Applicant, and counsel for the Respondents, no one appearing for any other party on the service list although duly served as appears from the affidavit of service of Lindsay Ferguson sworn April 13, 2022 and the affidavits of service of Darlene Ashurst sworn April 19, 2022.

1. **THIS COURT ORDERS** that the Order appointing Spergel as Receiver of the Property of the Debtors dated June 2, 2022 (the "Appointment Order"), in the herein Application shall be effective on September 1, 2022, subject to the following:
  - a. THIS COURT ORDERS that this Application is adjourned to a date to be set in September 2022 to be spoken to. This Court further Orders that, should the Debtors fulfill all terms of the Agreement between the Debtors and the Applicant dated May 26, 2022 (the "Forbearance Agreement") on or before August 31, 2022, including payment of the indebtedness due to the Applicant and all interest and costs, then the Appointment Order will not be effective. In such case, the herein Application shall be withdrawn on a without-costs basis, and the Applicant shall speak to this matter on a date to be set in September 2022 to advise the Court of same;
  - b. THIS COURT ORDERS that in the event that the Debtors fail to pay the indebtedness due to the Applicant, including all interest and costs, on or before August 31, 2022, or in the event that the Debtors otherwise default under the terms of the Forbearance Agreement (a "Default"), then the Appointment Order shall be effective as of September 1, 2022 or the date of such Default, whichever comes first, and the Applicant shall speak to this matter in September, 2022, or earlier if a Default does take place, to advise the Court of same.
2. **THIS COURT ORDERS** that the Applicant shall have the right to return the application on an earlier date, on four (4) days' notice to the service list, should the Applicant's security and the assets encumbered thereunder (as detailed in the Lamothe Affidavit) be determined by the Applicant to be at risk.



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Justice, Ontario Superior Court of Justice

THE TORONTO-DOMINION BANK

v.

2580363 ONTARIO INC. and 2580361 ONTARIO INC.

Applicant

Respondents

Court File No. CV-22-00078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT HAMILTON

**ANCILLARY ORDER**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
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**Timothy C. Hogan (LSO #36553S)**  
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Solicitors for the Applicant,  
The Toronto-Dominion Bank

# **APPENDIX "3"**

Court File No. CV-22-00078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	TUESDAY, THE 4TH
	)	
JUSTICE PARAYESKI	)	DAY OF OCTOBER, 2022

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

**ORDER**

THIS MOTION made by the Applicant, the Toronto-Dominion Bank, for an order:

1. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;
2. An Order that the Appointment Order of the Honourable Madame Justice MacNeil issued June 2, 2022, appointing msi Spergel inc. as Receiver, over all property of the Respondents, 2580363 Ontario Inc. and 2580361 Ontario Inc. (collectively, the “**Debtors**”) (the “**Appointment Order**”) be and is effective as against the Debtors as at September 1, 2022; and,
3. The costs of this motion;

was heard this day by Judicial teleconference via Zoom at 45 Main Street East, Hamilton, Ontario.

ON READING the affidavit of Jill Lamothe sworn September 9, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, and counsel for the

Respondents, no one appearing for any other party on the service list although duly served as appears from the affidavit of service of Lindsay Ferguson sworn September 14, 2022.

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.
2. **THIS COURT ORDERS** that the Appointment Order in the herein Application be and is effective as of September 1, 2022.
3. **THIS COURT ORDERS** that the Respondents pay costs of this motion to the Applicant in the amount of \$2,500.00.

“Parayeski J.”

---

*(Signature of Judge)*

THE TORONTO-DOMINION BANK

v.

2580363 ONTARIO INC. and 2580361 ONTARIO INC.

Applicant

Respondents

Court File No. CV-22-00078521-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT HAMILTON

**ORDER**

**HARRISON PENZA LLP**

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

**Robert Danter (LSO #698060)**

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[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Applicant,  
The Toronto-Dominion Bank

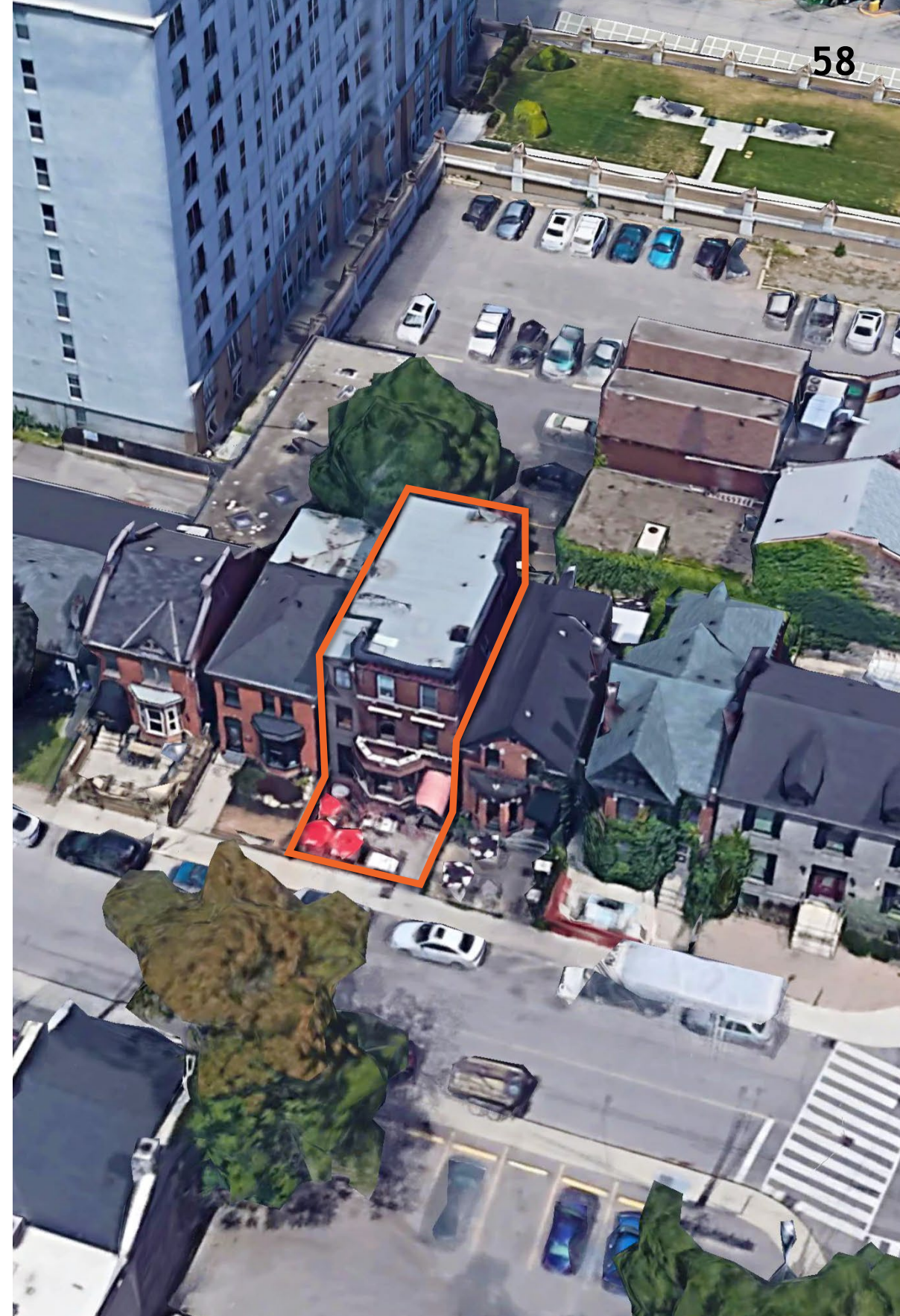
# **APPENDIX "4"**



AVISON  
YOUNG

Professional Listing  
Services Proposal

21 Augusta Street  
Hamilton, Ontario



Presented to:

Trevor Pringle, CFE, CIRP, LIT / Partner &  
Evan McCullagh / Senior Real Estate Manager  
Corporate Restructuring and Insolvency



SPERGEL



Platinum member

# Points of discussion

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# Executive summary

We are pleased to provide msi Spergel Inc. with our Disposition & Marketing Proposal for the retail/residential building located at 21 Augusta Street, Hamilton, Ontario (the "Property").

Our recommendation is to list the Property with a guidance price of [REDACTED] and review offers upon a set bid date. The Advisory Team will run a 4–6-week marketing program (if court timing permits) prior to the bid date.

## Advisory Team

The Advisory Team will be led by Kelly Avison, a Principal and senior investment and distressed asset expert within the organization, along with Graeme White, an investment expert within the Capital Markets team. They are supported by Stephanie Chochian, Client Services Coordinator, Michael Kostka, Marketing Coordinator, Steven Preston, Research manager, and Ankit Jindal, Senior Investment Associate. The Advisory Team have a great deal of experience and a solid track record of success completing distressed asset dispositions across the Golden Horseshoe region and understand the added importance of accountability, oversight, and due process required throughout the sales process.

## Market Context

After an historically slow 2020, investors set a record in 2021 with over \$25.5B spent across the GTA in the commercial real estate sector; up 92% year-over-year, and up 33% from the previous record set in 2019. The average GTA-wide cap rate fell 20 basis points during 2021, to the end the year at approximately 4.0%. As we finish the last quarter of 2022, uncertainty and volatility have returned to the marketplace for a number of reasons, including: Russia's continued invasion into Ukraine, which has sent ripple effects into the global marketplace; high inflation; fluctuating stock markets; and the Bank of Canada's recent decision to raise its key lending rate by 50 bps- its sixth increase this year.

## Marketing Initiatives & Sale Process

Based on experience, the smoothest disposition processes, which results in the highest sale price is achieved by performing as much due diligence and collection of information at the outset ahead of going to market. Buyers are willing to offer the highest price when they have been presented with the most accurate and complete property information which typically lessens their due diligence review.

## Proposed remuneration & reporting

We propose the following fee structure for the Property:

5.0% of purchase price. Avison Young to pay co-operating/MLS broker out of the total fee. Avison Young to cover all marketing fees.

The Advisory Team fully understands the increased importance for diligent and comprehensive reporting as a part of a process that has multiple stakeholders. MSI Spergel Inc, will be provided with formal activity reports on a bi-weekly basis detailing all inquiries, tour activity, market feedback, and pending offers (or on an alternate schedule as needed).

We believe our proposal outlines a clear strategy that will result in a timely sale and maximized sale price for this asset. Thank you for your consideration of this proposal and we thank you for the opportunity to work with the MSI Spergel Team again!



Kelly Avison, AACI  
Principal- Capital Markets Group  
Team Leader- Distressed Asset Group



Graeme White  
Associate- Capital Markets Group

In this case, we recommend performing the following, or seeking out the following information, with the assistance of the Advisory Team:

- i. Download, or have web-links, to relevant zoning information via City of Hamilton website
- ii. Gather any outstanding/required property-related documents (e.g. surveys, existing leases (if any), building and/or environmental reports, etc.)
- iii. Work with the Receiver's legal team on a standardized APS document. The Advisory Team and Avison Young will undertake the following marketing initiatives if selected as the listing team:
  1. Create a Data Room for buyers to access following execution of a CA that includes:
    - a) Any of the information collected as mentioned above; and
    - b) A standardized APS drafted by the Seller's lawyers with input from the Advisory Team;
  2. Upload the offering to: MLS, Loopnet, Costar, Realtor.ca, a dedicated page on the AY website, and all other Internet platforms at our disposal;
  3. Run two advertisements in the Globe & Mail's real estate section;
  4. Bi-weekly email marketing blasts sent to Avison Young's database of active buyers and investors across Ontario & Canada;
  5. Create a marketing brochure for the Property, and
  6. Direct calling of active investors/buyers of within the Greater Golden Horseshoe Region.



# Advisory Team & Relevant Experience

# Advisory team



**Kelly Avison\*\***, AACI, Principal

Kelly Avison has been in the commercial real estate business since 1990- all with Avison Young- and is a Principal of the organization. A designated AACI, Kelly brings exceptional valuation knowledge and sales expertise to bear on all assignments. Over the course of his career, Kelly has advised upon and completed transactions totalling several billions of dollars. In addition to his investment sales expertise, Kelly has extensive experience in marketing and advising upon Distressed Assets (Receivership, Power of Sale, etc.) and leads Avison Young's Distressed assets team in Ontario and Nationally. His area of expertise is the acquisition and disposition of investment properties, commercial and industrial (including portfolio) properties and development sites.

**Direct** 416.673.4030  
**Email** kelly.avison@avisonyoung.com

\*\*Broker



**Graeme White\***, Associate

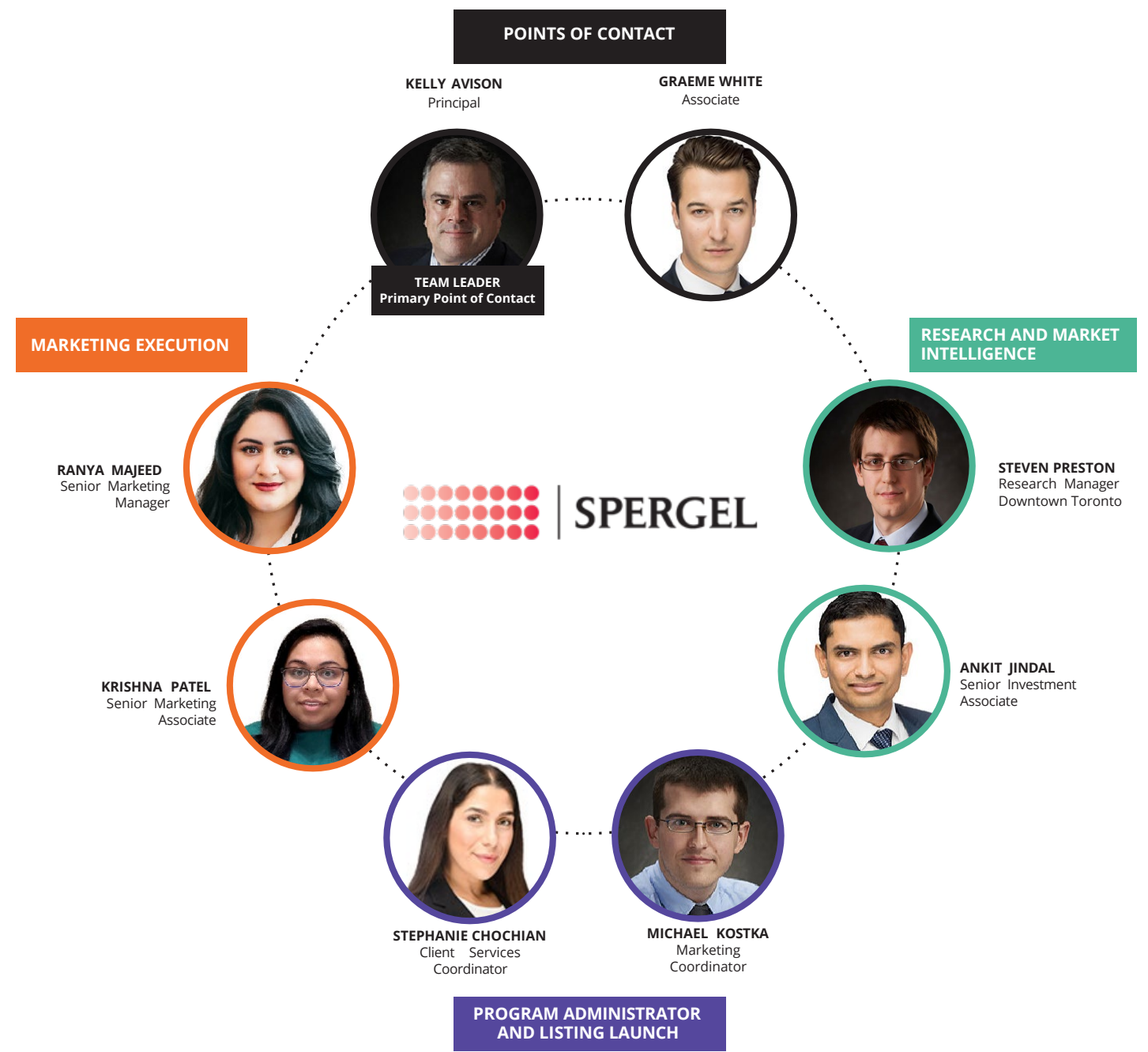
Graeme joined Avison Young's Capital Markets Group as an Associate in October 2020 and works in the areas of investment sales and advisory services. His role includes market research, asset/investment analysis, client development and helping in the transaction process.

Graeme holds a Bachelor of Business Management degree from Dalhousie University and majored in entrepreneurship and innovation.

**Direct** 647.598.2318  
**Email** Graeme.white@avisonyoung.com

\*Sales Representative

# Dedicated resources at your service



# Roles for Advisory Team



**TEAM LEADER**  
Primary Point of Contact

**Kelly Avison, AACI**  
Principal

## Experience

- 32+ years experience
- Extensive experience in commercial leasing and providing appraisal and consulting advice on commercial, investment and development properties
- Advised and transacted on properties totalling in the billions of dollars
- Leads Avison Young's Distressed Assets Group

## Role in this assignment

- Primary point of contact
- Team lead and lead negotiator
- Prospecting purchasers through client base actively looking to acquire properties
- Arranging distanced in-person or virtual meetings and property tours with interested parties
- Assisting potential purchasers with underwriting



**Graeme White**  
Associate

## Experience

- RECO Licensed sales representative with Avison Young
- Assists the Capital Markets Group with research, preparation and presentation of marketing material
- Graduated from Dalhousie University with a Bachelor of Management and majored in Entrepreneurship & Innovation

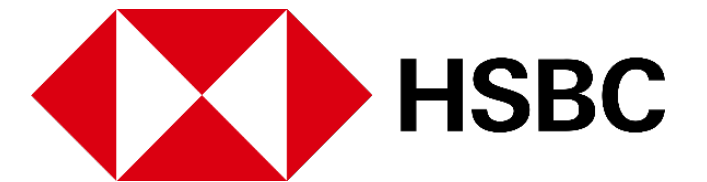
## Role in this assignment

- Manage team's execution and service delivery
- Plan, define and execute marketing and sale strategy
- Personally contacting prospects
- Focusing on connecting with tracked buyer list to get buyers excited and ready to transact
- Assisting potential purchasers with underwriting



# Relevant team experience

The Advisory Team have been involved in over 20 distressed asset sales and court appointed receivership proceedings over the past 24 months totaling over \$100 million in asset value. Their experience in the insolvency space is unmatched by their competition. These assignments have been across a range of asset classes and geographies. Despite each assignment being unique, the Advisory Team thoroughly understand the process and have experience providing the level of service, reporting, and oversight required to successfully navigate a court appointed sale. The below list of companies is a sample of the power of sale and/or insolvency and restructuring professionals. The Team has worked with, all of whom are available to attest to the professionalism, strength, efficacy of the service the team will provide to msi Spergel.



Extensive experience with Court-Appointed & Distressed Assets Sale Process.

The Avison Young Team has sold **\$3B+** in the past 24 months



Our team is committed to ensuring a successful closing without 'surprises' for msi Spergel Inc.







# City of Hamilton overview

# City of Hamilton Overview

The City of Hamilton was established in 1846 and is part of the Greater Golden Horseshoe (“GGH”), one of the fastest growing regions in North America. Hamilton sits at the southwest corner of Lake Ontario and is less than a 50-minute drive to Downtown Toronto.

### Rising Tech City

Home to McMaster University and Mohawk College, Hamilton has been named one of North America’s top tech cities and had seen a 52% total tech growth from 2014-2019. Hamilton has seen numerous tech-related investments recently including L3 Wescam – a 330,000 sf Canadian head office, Stryker – a 127,000 sf Canadian head office, Pipeline Studios – leading Canadian animation firm that works with the likes of Disney and Nickelodeon, and IBM Canada.

### Vibrant Neighbourhood

Hamilton is home to two of the nation’s top universities, McMaster and Mohawk College. They are two of the most research-intensive institutions with over 45,000 students. McMaster University’s specializations in biosciences and technology has driven an influx of tech businesses into the region. McMaster Innovation Park is an award-winning research park located 2.5 km west of the Property. The Park plays an important part of the innovative ecosystem in Hamilton by supporting start-ups, business, and research. McMaster Innovation Park plans to expand the campus to offer an additional 1.7 million sf of office, research, and amenity space for an additional 3000 occupants. Hamilton is also home to Liburdi Engineering, Pipeline Studios and Nelvana. IBM Canada, also located in Hamilton, has begun partnering with hospitals in the region in order to develop the next generation of e-health products.

**52%**  
Tech industry growth from 2014-2019

**65%**  
With a Postsecondary Degree (2016)

**94.2%**  
Employment Rate



## City of Hamilton Demographics

<b>Population (2021)</b>	804,204
<b>Population (2026 Projected)</b>	846,178
<b>Median Age (2021)</b>	41.6
<b>Median Age (2026 Projected)</b>	41.5
<b>Average Household Income (2021)</b>	\$110,615
<b>Average Household Income (2026 Projected)</b>	\$126,164
<b>Owned Dwellings (2021)</b>	219,693
<b>Projected Owned Dwellings (2026 Projected)</b>	231,403



# Site overview

# Site overview

21 Augusta Street  
Hamilton, Ontario

**Total Lot Size** 1,658 sf (25 ft FR x 66.2 ft Depth )

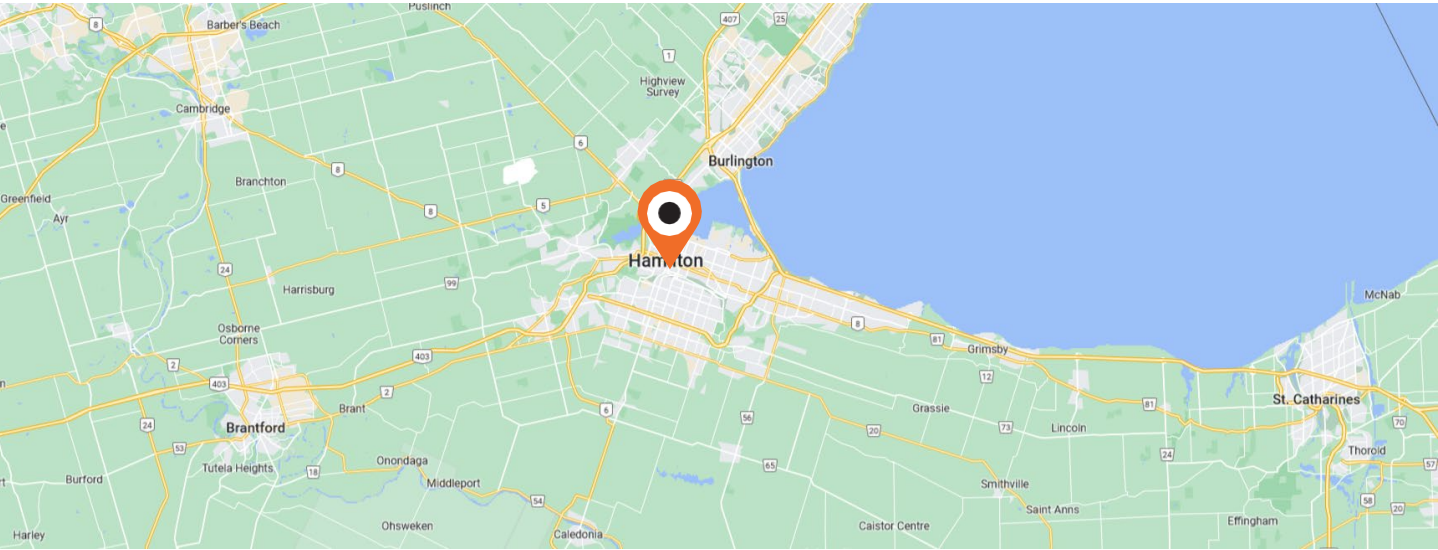
**Building NRA** 3,003 sf – Above Grade (+1,023 sf basement)

**Current Use** Restaurant on floors 1 and 2, residential unit on floor 3 \*  
(\* plus two offices for restaurant)

**Zoning** C5 - Mixed Use Medium Density

**Official Plan** Mixed Use - Medium Density

- Comments**
- 3-storey mixed-use building located on periphery of downtown Hamilton
  - Previously used as a restaurant (basement and floors 1-2); one-bedroom apartment reportedly on the top floor (not yet inspected), along with two offices for the restaurant unit
  - Located close to James Street, and new mid-rise condominium developments
  - Vacant possession to be provided



# Site overview

21 Augusta Street  
Hamilton, Ontario

## Strengths

- ▲ Built-out ("turnkey") restaurant operation (Confirm if equipment remains)
- ▲ Downtown location near major attractions
- ▲ Located in a gentrifying area
- ▲ Attractive street exposure

## Weaknesses/Concerns

- ▼ Internal improvements are a bit "dated"
- ▼ No on-site parking
- ▼ Third floor apartment only accessible via rear, exterior fire escape (Legal status to be confirmed)
- ▼ Two upper offices for restaurant unit are somewhat dysfunctional- possible conversion/addition to existing apartment unit?

## Suggested Listing Price

Based upon our review of recent trades and/or listings in the Hamilton area, we would suggest an asking price in the range of ██████████ (subject to confirming condition and legal status of upper level apartment, and status of on-site restaurant equipment) .



# Land Use

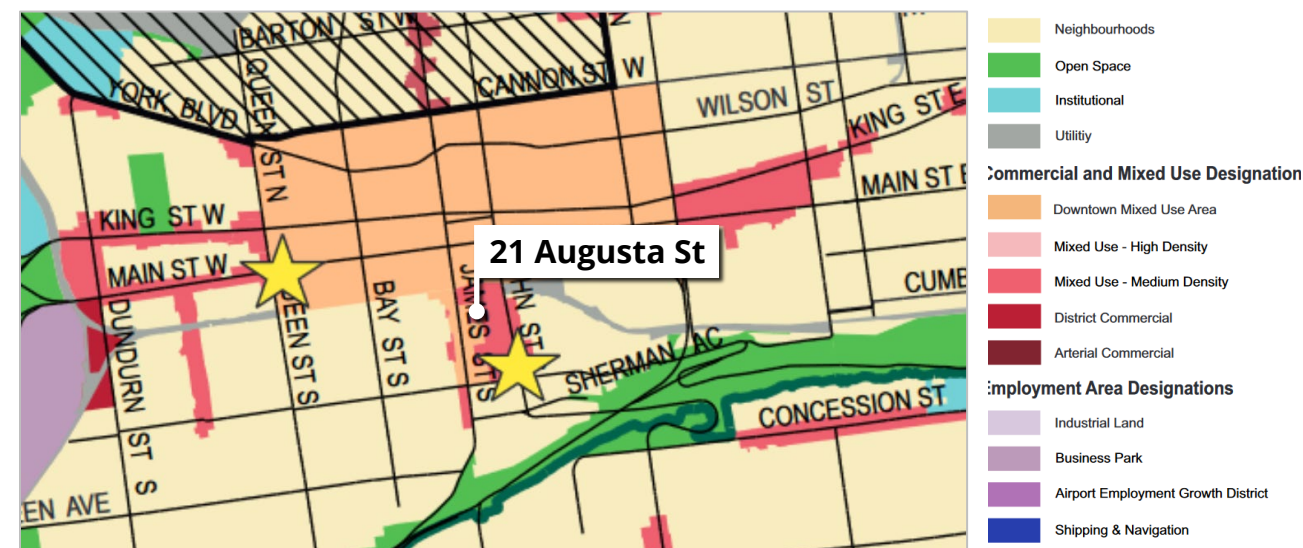
## Official Plan

### Mixed Use - Medium Density

The Mixed Use – Medium Density designation is found within the Community Nodes, Urban Corridors, and Neighbourhood elements of the Urban Structure. The intent of the Mixed Use – Medium Density designation is to permit a full range of retail, service commercial, entertainment, and residential accommodation at a moderate scale and to increase the proportion of multiple storey, mixed use buildings that have retail and service commercial uses at grade. The designation recognizes the traditional mixed use main streets in the City (outside of the Downtown Mixed Use area), as well as other large commercial areas which serve the surrounding community or a series of neighbourhoods and which are intended to evolve and intensify into mixed use, pedestrian oriented areas. Increasing the number of people who work and live within the area designated Mixed Use – Medium Density will also contribute to the planned function of the area as a people place. (OPA 142)

### Permitted Uses:

- Commercial uses such as retail stores, auto and home centres, home improvement supply stores, offices, medical clinics, personal services, financial establishments, live-work units, artist studios, restaurants, gas bars, and drive-through facilities; (OPA 64)
- Notwithstanding Policy E.4.6.5 a), drive-through facilities on pedestrian focus
- Streets shall only be permitted in accordance with Section E.4.6.29 and all other applicable policies of this Plan.
- Institutional uses such as hospitals, places of worship, and schools;
- Arts, cultural, entertainment, and recreational uses;
- Hotels; Multiple dwellings; and,
- Accessory uses.



## Zoning

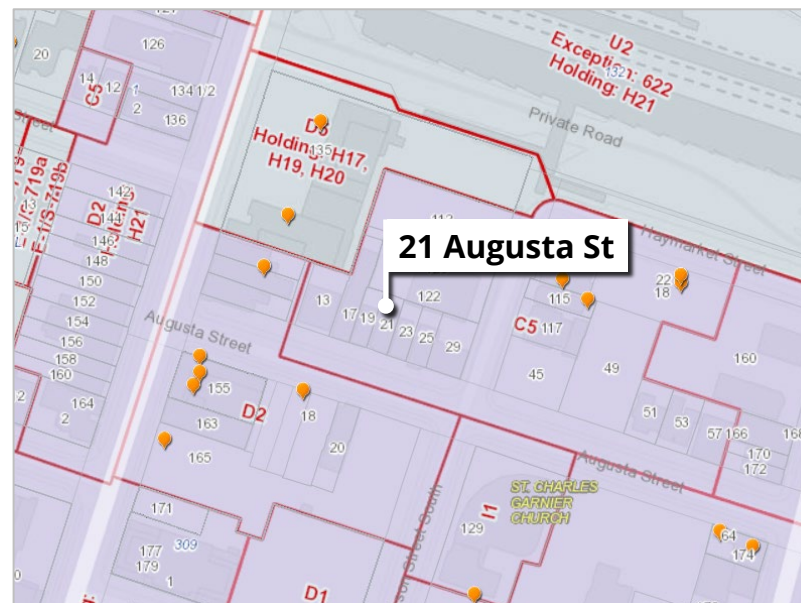
### C5 – Mixed Use Medium Density

#### Permitted Uses (extract):

Artist Studio, Catering Service, Commercial Entertainment, Commercial Recreation, Commercial School, Day nursery, Dwelling Unit(s), Emergency Shelter, Financial Establishment, Funeral Home, Hotel, Laboratory, Lodging House, Medical Clinic, Microbrewery, Multiple Dwelling, Office, Personal Services, Performing Arts Theatre, Place of Worship, Restaurant, Retail, Veterinary Service

#### Height:

Min 7.5m (2 storeys), Max 22m (approx. 7 storeys)



a) Downtown Classification Zones	Zone Symbol	e) Rural Classification Zones
D1	D1	Agriculture
D2	D2	Rural
D3	D3	Settlement Residential
D5	D5	Settlement Commercial
D6	D6	Settlement Institutional
		Existing Rural Commercial
		Existing Rural Industrial
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		E2
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# Disposition strategy & timeline

# Disposition strategy

	Price	No Price	Bid Date	No Bid Date	Max Exposure	Min Exposure
PROS	<ul style="list-style-type: none"> <li>- Prospects appreciate pricing guidelines</li> <li>- Potential to generate more offers</li> </ul>	<ul style="list-style-type: none"> <li>- Eliminates risk of setting price ceiling</li> <li>- Ensures full market value is attained</li> <li>- Encourages all prospects to call and ask for the price guidance</li> </ul>	<ul style="list-style-type: none"> <li>- Creates a competitive environment which encourages purchasers to stretch to gain control of the asset(s)</li> </ul>	<ul style="list-style-type: none"> <li>- Purchasers appreciate no Bid Date since it tends to reduce a competitive offering environment</li> </ul>	<ul style="list-style-type: none"> <li>- Ensures all qualified prospects are aware of the offering</li> <li>- Higher level of interest and prospective offers</li> </ul>	<ul style="list-style-type: none"> <li>- Targeted approach to only qualified prospects</li> <li>- Creates an environment of exclusivity, which prospects appreciate</li> </ul>
CONS	<ul style="list-style-type: none"> <li>- Risk setting price ceiling</li> <li>- Risk of not having purchasers submit if the price is beyond what they can pay</li> </ul>	<ul style="list-style-type: none"> <li>- Some purchasers are becoming frustrated with no pricing</li> <li>- Purchasers have no target/ guidance</li> </ul>	<ul style="list-style-type: none"> <li>- Some purchasers are becoming deterred by bid dates</li> <li>- Risk of not receiving as much interest</li> </ul>	<ul style="list-style-type: none"> <li>- The vendor could lose out on the benefits of the competitive offering process</li> </ul>	<ul style="list-style-type: none"> <li>- Doesn't provide a discreet environment to sell as the majority of the market will be aware that the property is for sale</li> </ul>	<ul style="list-style-type: none"> <li>- May miss one off buyer who is willing to pay the highest amount</li> <li>- Lower probability of creating a competitive offering process</li> </ul>



## Recommended strategy

Upon reviewing the pros and cons of the marketing strategies listed above, and considering that the Property will attract a variety of interest from different buyer pools, we would recommend implementing the following Marketing Strategy:

- 1. Pricing** - We recommend going to the market with a guidance price of [REDACTED]
- 2. Offers** - Offers to be reviewed upon a set bid date
- 3. Max Exposure** - List on MLS (inter-board on Hamilton MLS system) to cast the widest net to ensure all qualified buyers are aware of the offering
- 4. Timeline** - run a 4-6 week marketing program (if court timing permits) prior to the bid date. Buyers will need time to fully review on-line data room documents, any available financial statements, any available property reports, and confirm status of apartment unit, etc.



## Pre-marketing due diligence

Prior to marketing the property, with AY's assistance, we would advise that the following actions be undertaken:

- Prepare a Confidentiality Agreement
- Prepare Vendor's form of APS
- Download, or have web-links, to relevant documents
- Gather any outstanding/required property-related documents (e.g. surveys, any existing leases, equipment list, etc.)



## Create marketing materials

With the pre-marketing due diligence resources, the Team will assemble the following:

- Detailed Marketing Brochure for the Property
- E-mail Template
- Marketing Postcard
- Prepare all social media and related marketing materials
- Due Diligence Materials uploaded into a Secure Password Protected Data Room



## Avoiding a potential price adjustment

While prospective purchasers are encouraged to 'stretch' in order to gain control of the Property and carry out their due diligence, Avison Young is experienced in ensuring that candidates do not simply offer a high price in order to gain control of a property, and subsequently return with a price adjustment following their own due diligence.

Avison Young's knowledge of the Property ensures a high level of due diligence prior to the sale process commencing. The accuracy of information presented in the Property's detailed package is essential to the formulation of a supportable bid by prospective purchasers.



# Disposition timeline

Our strategy is to thoroughly understand the Property, assemble due diligence materials, prepare quality marketing materials and disseminate the information to as wide an audience as possible in order to maximize proceeds and minimize deal risk. We will accomplish this through a methodical sale process, the key components of which are outlined below.



## 2-3 Weeks | Pre-Marketing

### Pre-Marketing Due Diligence

Review of available documents, including:

- Environmental and/or Building Condition Reports
- Site Survey
- Property Tax Bill
- Inspection of Third Floor Apartment Unit (confirm legal status)
- Confirm Zoning and Land Use Guidelines, and Historical Status (if applicable)
- Vendor Form of Agreement of Purchase and Sale
- Title Review
- Other Sub-Consultant Reports (to be determined)

### Preliminary Discussions

- Pre-market conversation with targeted purchasers

### Finalize Marketing Material

- Detailed Investment Summary
- Online Data Room
- Finalization of Due Diligence Documentation



## 4-6 Weeks | Marketing

### Proven 3- Staged Marketing Process

- Stage 1: Personal Introduction to target prospects
- Stage 2: Mass Marketing introduction, including MLS
- Stage 3: Detailed information to qualified prospects
- Proven Process
- Confidentiality Agreement
- Access to online data room
- AY Team to meet with buyers and brokers to discuss the offering

### Bid-Date

- Creates competitive bidding environment
- Bids to be received and summarized at same time
- Keeps market focused on the opportunity
- Ensures Buyers feel process is fair, open and transparent



## 7-8 Weeks | Negotiation/Closing

### Negotiating / Due Diligence [if any] (2-4 weeks)

- Review and Summarize all offers
- Determine Short List of Proponents (if applicable)
- Set final negotiation strategy, which may include second round bids
- Assist Buyers through due diligence process (if any)

### Court Approval & Closing (~5 weeks)

- Transaction management
- Assist/guide Buyer through Closing process (e.g., Court approval, Vesting Order, and Closing)
- Ensure a successful closing





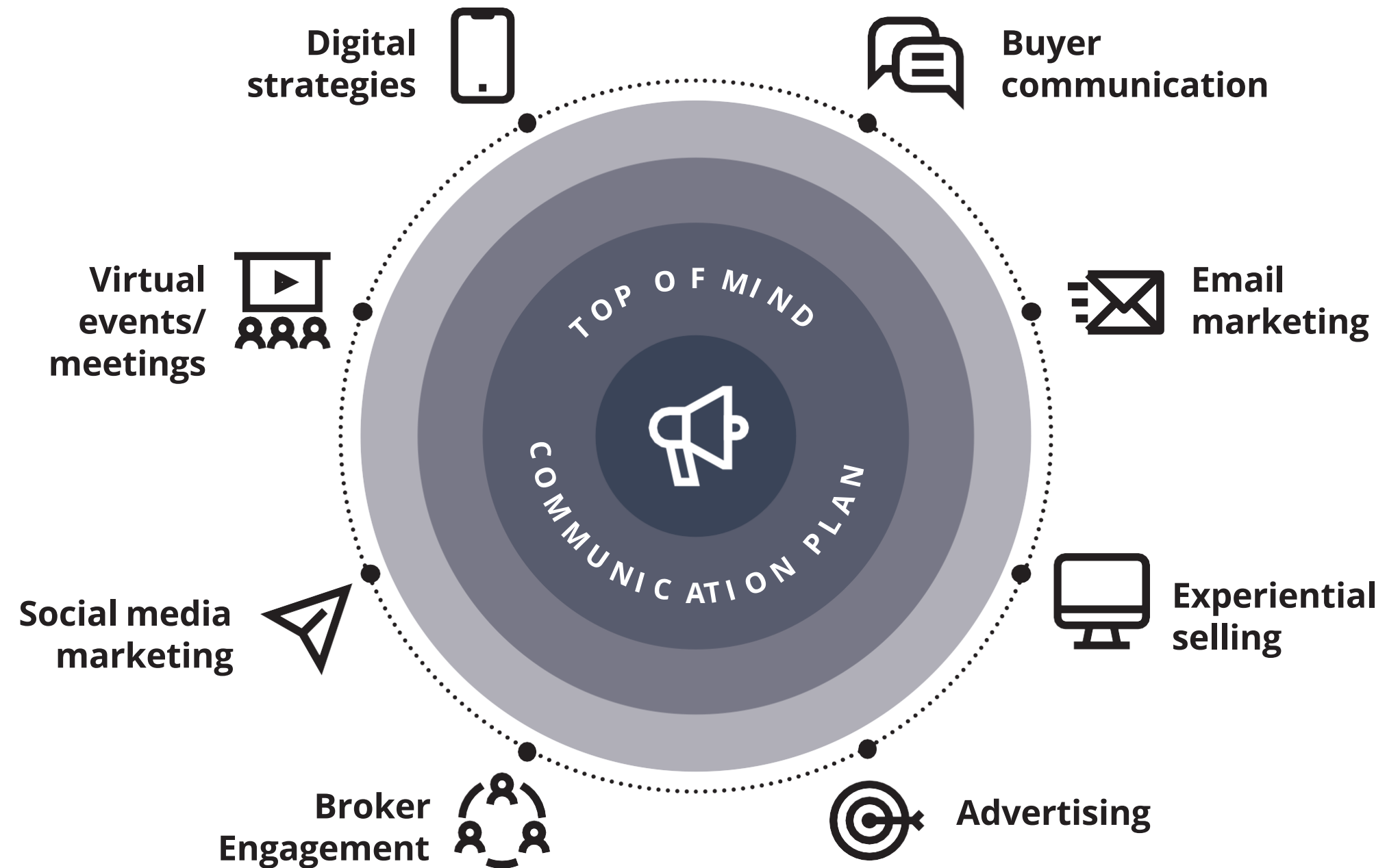
# Marketing strategy & key deliverables

# Knowing our audience and delivering the right messaging

Our goal is to design and articulate a strategy which both maximizes the existing and potential value of the asset while mitigating additional risk or market exposure for the Receiver-Vendor, thereby establishing certainty with respect to monetization of the Property.

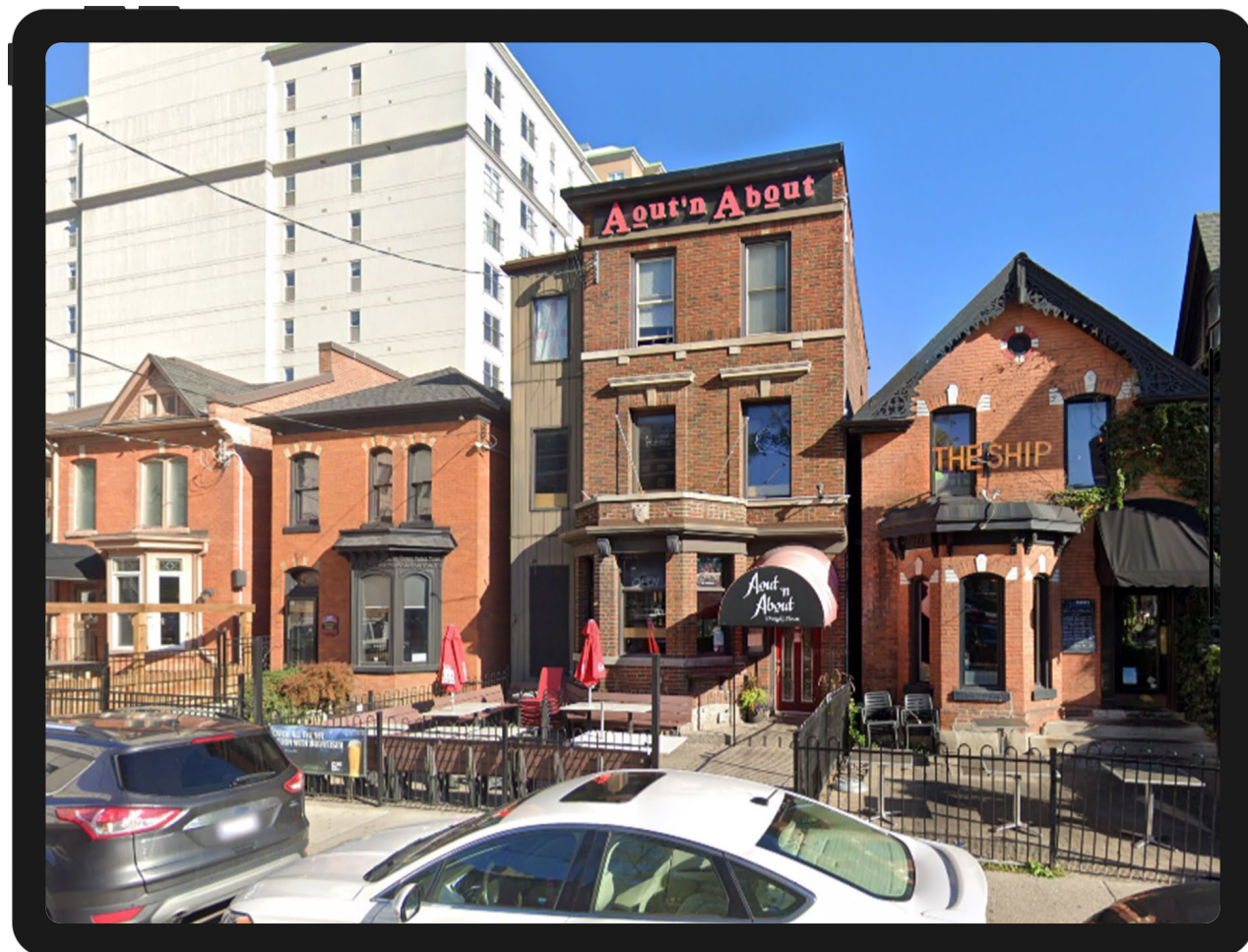
In order to achieve the highest possible value, our emphasis in marketing the asset will focus on:

1. How to best position the asset in order to maximize sale proceeds
2. Identify the target market
3. Create a competitive environment
4. Ensure transparency throughout the process



# Print & Digital Marketing Tools

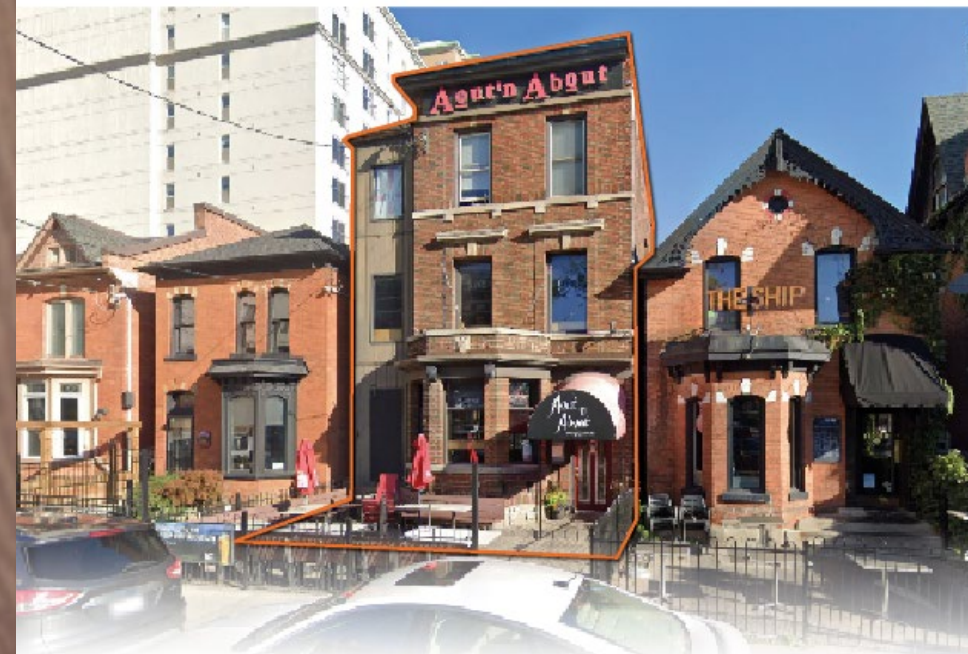
## Virtual Tour



## Brochure

**21**  
**Augusta Street**  
Hamilton, ON

3,000 SF RESTAURANT  
WITH RESIDENTIAL  
UNIT IN DOWNTOWN  
HAMILTON  
**FOR SALE**



For more information, please contact:

Kelly Avison, AACI  
Principal & Broker  
T 416 999 3583  
E [kelly.avison@avisonyoung.com](mailto:kelly.avison@avisonyoung.com)

Graeme White  
Associate & Sales Representative  
T 647 598 2318  
E [graemewhite@avisonyoung.com](mailto:graemewhite@avisonyoung.com)

**AVISON  
YOUNG**

21 AUGUSTA STREET, HAMILTON, ONTARIO

(1,023 sf basement)  
(2, residential unit on floor 3 +  
restaurant)



# Offering memorandum & data room

## Confidential & Secured Data Room

## Offering Memorandum

**AVISON YOUNG**

Dashboard

Personal Folders >

21 Augusta Street, Hamilton

Items in this Folder

Name	Size	Uploaded	Creator
Offering Memorandum	6 MB	6/23/21	E. Kaczynska
Leases	1 MB	6/23/21	E. Kaczynska
Enviro Report	33 MB	6/23/21	E. Kaczynska
Argus	22 KB	6/23/21	E. Kaczynska
Tax Bill	1 MB	6/23/21	E. Kaczynska
Plans	1 MB	6/23/21	E. Kaczynska

Email me when a file is:  Downloaded from this folder  Uploaded to this folder

**ShareFile®**



## Confidentiality Agreement

**AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO) INC. BROKERAGE**  
 77 City Centre Drive, Suite 301  
 Mississauga, ON L5B 1M5, Ontario, Canada  
 Main Tel: (905) 732-2100  
 Email: [kelly.avison@avisonyoung.com](mailto:kelly.avison@avisonyoung.com), [grame.white@avisonyoung.com](mailto:grame.white@avisonyoung.com)

Attention: Kelly Avison and Graeme White

I/We \_\_\_\_\_  
 (hereinafter referred to as the "Buyer")

request that Avison Young Commercial Real Estate Services, LP, Brokerage (hereinafter referred to as "Avison Young") provides the Buyer with confidential information relating to the Property/Properties.

In consideration of Avison Young agreeing to provide the Buyer with such information, the Buyer agrees with \_\_\_\_\_ (the "Seller"), and Avison Young as follows:

- To treat confidentially, such information and any other information that Avison Young or the Seller or any of their advisors furnishes to the undersigned, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered by inspection, and regardless of whether specifically identified as "confidential" (collectively, the "Evaluation Material").
- Not to use any of the Evaluation Material for any purpose other than the exclusive purpose of evaluating the possibility of a purchase and sale transaction relating to the Property/Properties. The Buyer agrees that the Evaluation Material will not be used in any way detrimental to the Property/Properties, the Seller, or Avison Young and that such information will be kept confidential by the undersigned, its directors, officers, employees and representatives and these people shall be informed by the undersigned of the confidential nature of such information and shall be directed to treat such information confidentially.

- That if at any time, the undersigned considers a transaction which would involve a third party either purchasing the Property/Properties or any interest therein or evaluating the possibility of a purchase and sale transaction relating to the Property/Properties, the Buyer must receive the approval by Avison Young and the Seller of such third party as a Buyer, which approval may be unreasonably withheld, furthermore the undersigned agrees to obtain from said third party a confidentiality agreement in a form satisfactory to Avison Young or the Seller prior to disclosure to such party of any Evaluation Material relevant to this transaction. The undersigned and its directors, officers, employees and representatives will not, without the prior written consent of Avison Young and the Seller, disclose to any persons either the fact that discussions or negotiations are taking place concerning a possible transaction between the Seller and the undersigned, nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company partnership or individual or any combination of one or more of the foregoing.
- Not to have any contact with any tenant or tenants, nor enter into any discussion with any tenant or tenants, at the Property/Properties without the express written permission of the Seller, as such contact may cause irreparable harm to the Seller.
- That any time, at the request of Avison Young or the Seller, the undersigned agrees to promptly return all Evaluation Material without retaining any copies thereof or any notes relating thereto. The undersigned will certify as to the return of all Evaluation Material and related notes.
- That in the event the undersigned is required or requested by legal process to disclose any of the Evaluation Material, the undersigned will provide Avison Young or the Seller with prompt notice of such requirement or request so that Avison Young and the Seller may take appropriate actions.
- That the undersigned agrees that neither Avison Young nor the Seller make any representations or warranties as to the accuracy or completeness of the Evaluation Material. The undersigned further agrees that neither Avison Young nor the Seller, nor any other author of or person providing Evaluation Material shall have any liability to the undersigned or any of its representatives arising from the use of the Evaluation Material by the undersigned or its representatives.
- The Buyer represents and warrants that it shall be responsible for any costs associated with its review and possible purchase of the Property/Properties, including any fees owed to consultants and/or real estate agents retained by, or acting on behalf of, the Buyer. Any consultants, real estate agents/brokers, and/or advisors retained by the Buyer shall be required to execute, and be bound by, this Confidentiality Agreement and Agency Disclosure Form.
- The Buyer hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the Personal Information Protection and Electronic Documents Act (Canada) with respect to personal information which may be contained in the Evaluation Material.
- This Agreement shall be governed by the laws of the Province of Ontario and those of Canada applicable therein.
- This Agreement shall ensure to the benefit of Avison Young and the Seller, their respective successors and assigns and shall be binding upon the undersigned and its heirs, executors, administrators, and their successors and assigns.

(13) **Representation and Customer Service:** The Code of Ethics for the Real Estate Council of Ontario requires Commercial Realtors (e.g., Sales Representatives, Agents, Brokers) to disclose in writing the nature of their relationship and services they are providing. The Buyer acknowledges that Avison Young has provided the Buyer with written information explaining agency relationships (attached hereto as Schedule "A" - Working with a Commercial Realtor). The Buyer acknowledges that Avison Young will be providing Customer Service to the Buyer, and possibly other potential buyers, and will not be representing the interests of the Buyer in this transaction. Avison Young is the agent, and represents the interests of the Seller and has a fiduciary and primary duty to protect and promote the interests of the Seller-Client. Avison Young's duties to the Buyer include: to deal fairly, honestly and with integrity; to exercise due care in answering questions and providing information; and to avoid misrepresentation.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
 ("Buyer")

Corporate Name (Please Print) \_\_\_\_\_

By (Authorized Signing Officer's Signature) \_\_\_\_\_

\_\_\_\_\_  
 (Officer's Name)

(Buyer's Address) \_\_\_\_\_

(Telephone Number) \_\_\_\_\_

(Email Address - Please e-mail the detailed particulars of sale \_\_\_\_\_

Please advise of any additional party who require data room access:

Name \_\_\_\_\_ Email Address \_\_\_\_\_

Name \_\_\_\_\_ Email Address \_\_\_\_\_

Name \_\_\_\_\_ Email Address \_\_\_\_\_

**21 Augusta Street**  
 For Sale

© 2022 Avison Young Commercial Real Estate Services, LP, Brokerage  
 All rights reserved.  
 Information contained herein was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions thereon.

**BEST MANAGED COMPANIES**  
 Platinum member

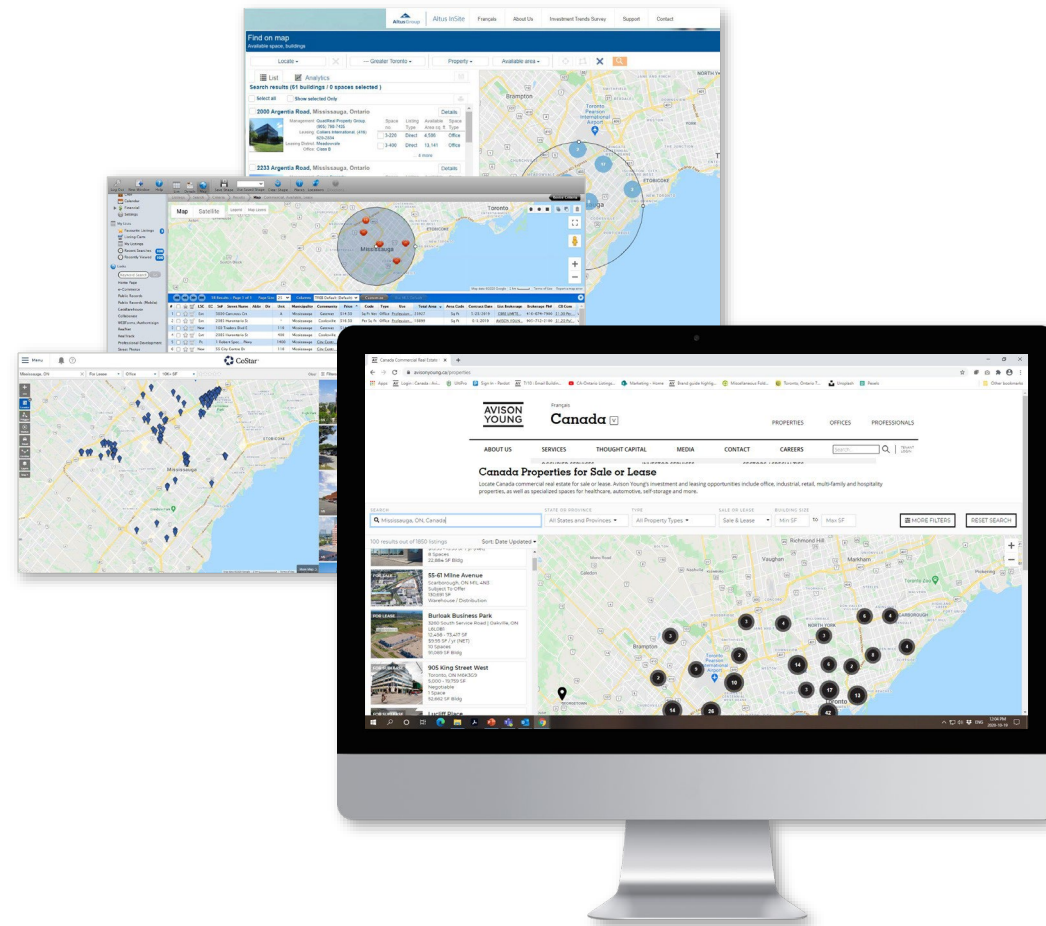
**AVISON YOUNG**

# Database, Social Media, Email & Advertising

## Listing databases

Online exposure on listing database platforms

- Property featured on multiple digital platforms (MLS, CoStar, LoopNet, Realtor.ca)
- Online listings on Avison Young website and central Buildout Listing Platform

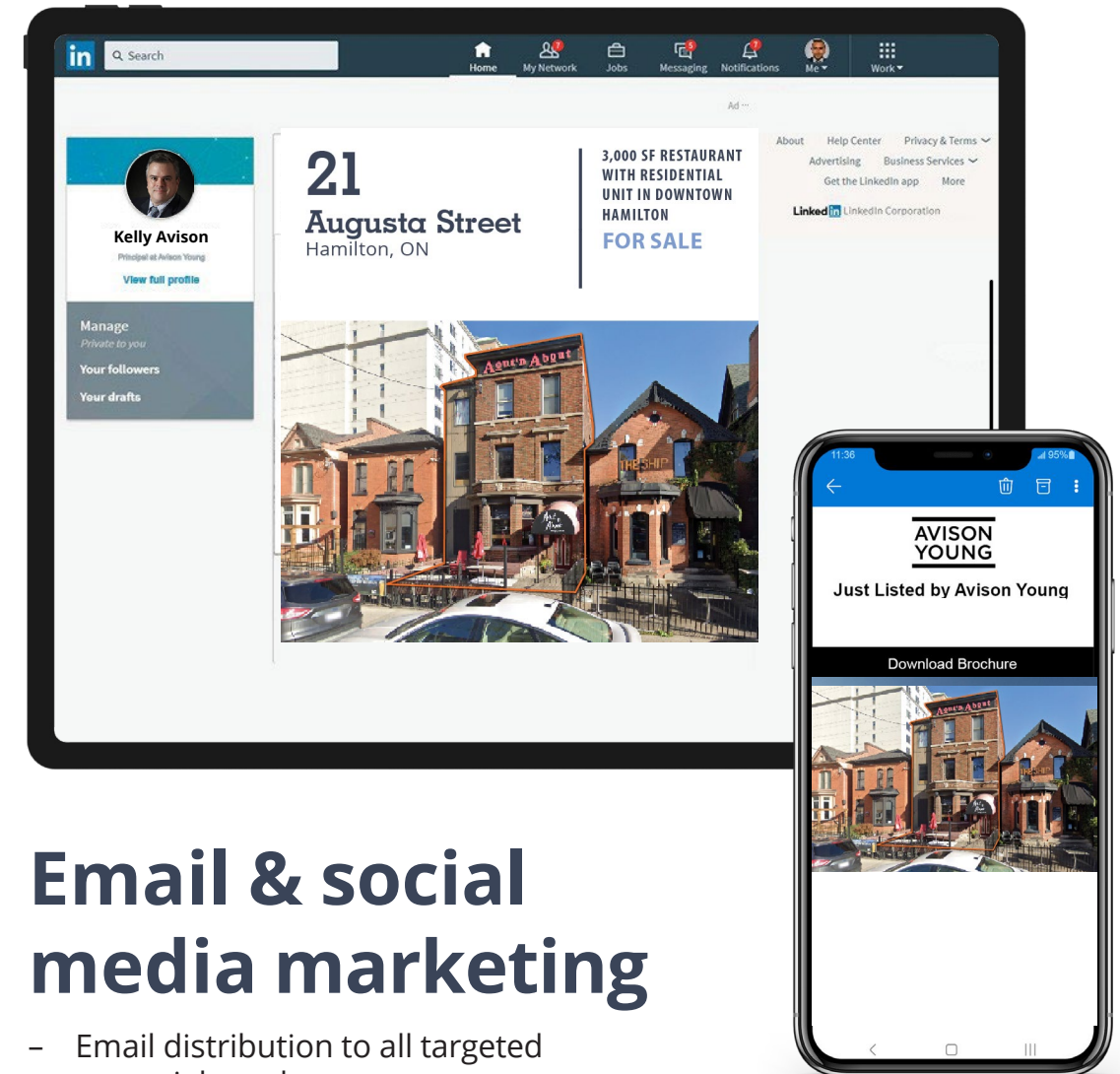


## Digital & print advertising

- Online promotion across all Tier 1 markets in Canada with Global & Mail website
- Exposure across national portfolio and regional webpages
- Online promotion in Business in Toronto webpages



**38,000**  
page views per month



## Email & social media marketing

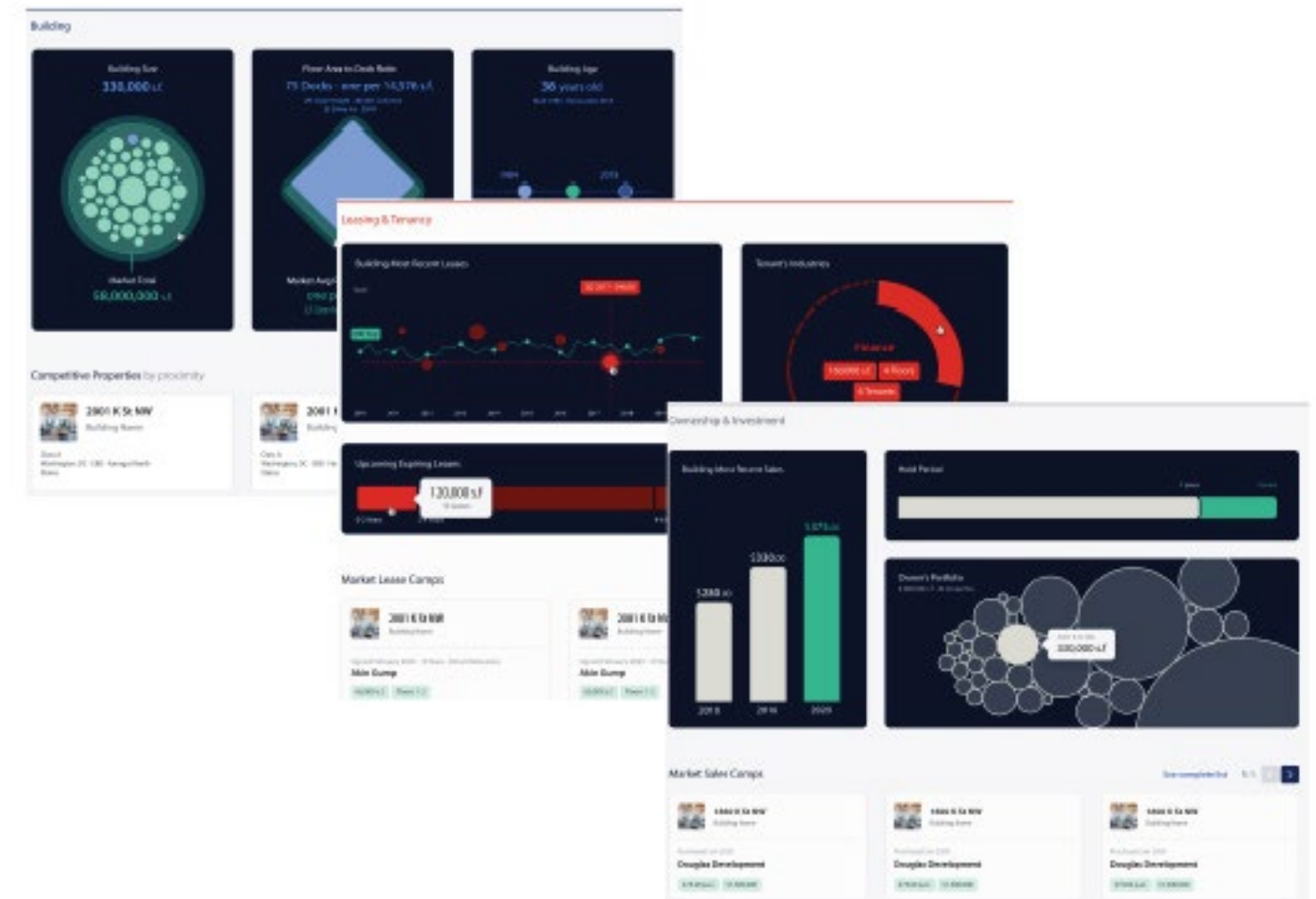
- Email distribution to all targeted potential purchasers
- Exposure on all Avison Young regional and broker social media channels



# Demographic data & visualization

## Avant by Avison Young

This entails using Avison Young's data Warehouse tool AVANT in order to target buyers. A data analytics program which will differentiate the opportunity and visually display key metrics Custom data engagement package tailored for interested prospects.





# Potential purchasers



# Potential purchasers

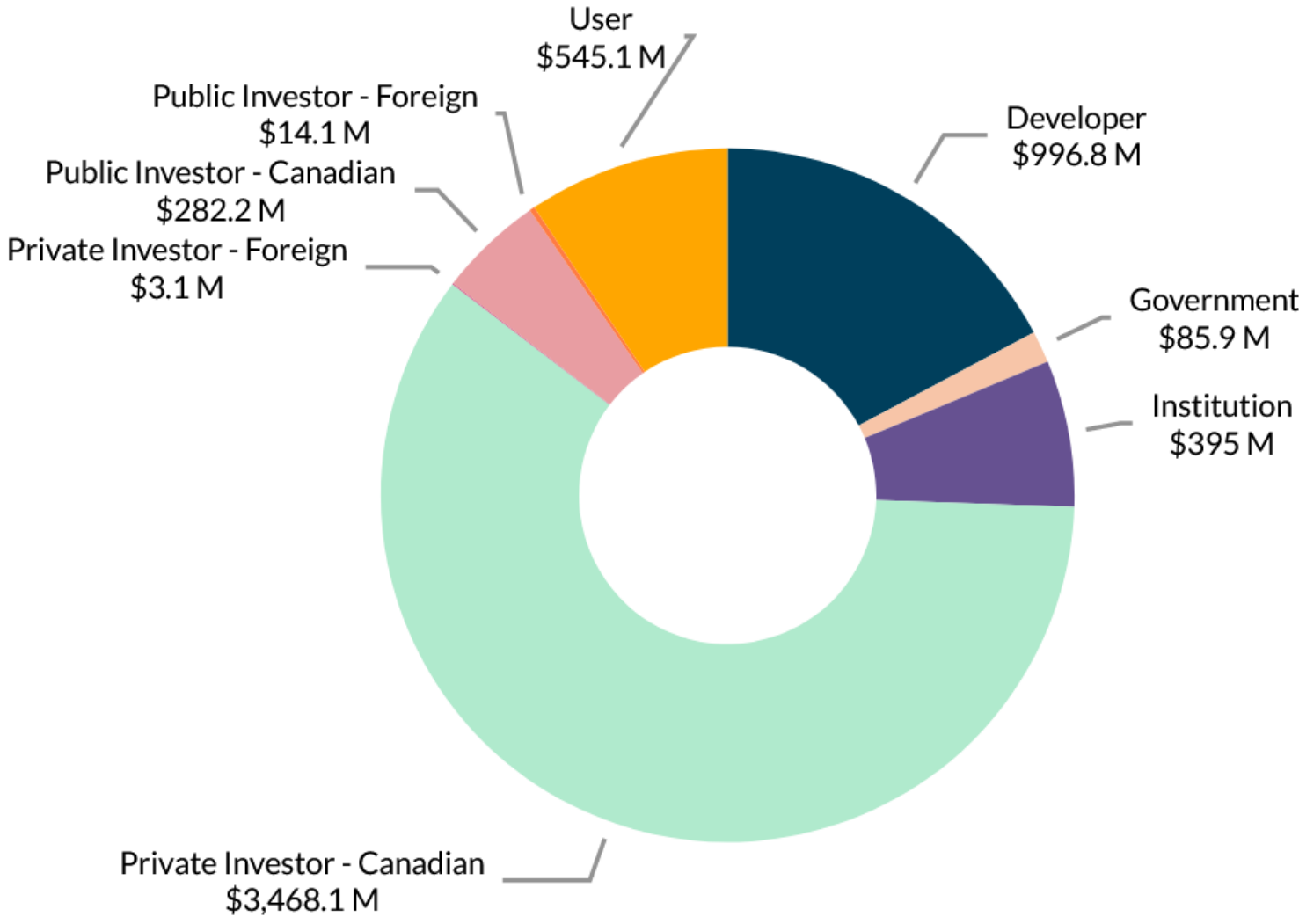
## Sample Purchasers

The Avison Young Team have been involved in over 20 Distressed Asset Sale transactions (e.g., court-appointed receivership, power of sale, etc.) over the last 24 months. In addition, we have recent experience and success in selling assets within the Hamilton area. In addition to targeting local users that may be actively looking for assets similar to 21 Augusta Street, we will also target buyers we have engaged in the past on similar assets. The sample buyer list below represents a cross-section of the groups that we have engaged in discussions with on similar assets, and therefore could be potential buyers for 21 Augusta Street.

- 1000281686 Ontario Inc.
- 2328213 Ontario Inc.
- 2866414 Ontario Inc.
- Avalon Developments Inc
- J. Beume Real Estate
- BJL Properties (Brad Lamb)
- Centurion Acquisition Corp.
- CKD4 Holdings Inc.
- Concore Capital
- Detention Equipment Inc. (Milan Karakas)
- Diamante Family Holdings
- First Rock Properties
- Firm Capital
- Forge & Foster
- Fortino Properties
- Foundation Capital Holdings
- Hanan Inc.
- Henley Group
- Himelfarb Proszanski
- JMF Holdings Ltd.
- LiUNA Local
- Main Street Lawyers LLP
- Matar Holdings Ltd.
- Matheson Asset Mgmt
- Mazlin Investments
- MB Property Solutions
- Mowada Investments Ltd
- McBride Wallace Laurent & Cord LLP
- MZ Investments
- Pathway Financial
- Pinafore Capital
- Pulis Real Estate
- R&B Properties Canada Inc.
- Reitana Mortgage
- Ripple Developments
- RLG Holdings
- Roxborough Developments Inc.
- Sansiveria Investments Limited
- SMV Financial Services Inc.
- Solutex Textiles
- Spire Capital Investments
- Sunray Group
- Surrey Plaza Limited
- TL Properties
- True North Properties
- Woodill Holdings



## Buyer Profile – Hamilton – Last 5 Years





# Strategy & business terms

# Strategy & business terms

## Strategy

The sale of the asset will be maximized by targeting the most active and qualified buyers in the Region. Further, we will work closely with potential buyers, active Realtors and neighboring landowners to ensure maximum exposure. Given the Property's current past use, and active re-development within the area, we will target multiple buyer pools to ensure market saturation and exposure.

We suggest listing the asset at \$ [REDACTED]

An aggressive marketing campaign will be utilized to raise awareness and get groups excited about the offering. Buyers to sign a Confidentiality Agreement to receive access to a secure data room which will include information on the offering, any sensitive information the Receiver wishes bidders to have when reviewing the opportunity. This ensures the buyer is offering on an "eyes wide open" basis which typically reduces, or eliminates the need for, any due diligence period.

The team will run a 4-6-week marketing program prior to an established bid date to ensure potential bidders have enough time to perform any necessary pre-offer due diligence and investigations.



## Listing period

Avison Young is committed to ensuring that the entire market sees the offering through maximum exposure using a 'no stone unturned' approach. The Team will prepare a detailed data room and start contacting purchasers immediately.

The listing will be posted on the Toronto Regional Real Estate Board (TRREB) and Hamilton MLS Board for 5 months and 120 Holdover days.

## Price

Listing Price: [REDACTED]



## Proposed remuneration

**5.00%** of purchase price. Avison Young to pay co-operating/MLS brokers out of the total fee. Avison Young to cover all marketing costs



## Reporting & transparency of process

Avison Young will prepare progress updates including information on our marketing efforts, the number of initial target purchasers, and the level of response, however we are pleased to tailor this to your requirements and preferences.

Bi-weekly written progress reports;

Regular correspondence and in-person meetings to discuss prospective purchasers and market feedback;

Feedback from the prospects who have shown interest in the opportunity and/or who we have met with personally and/or have toured the asset;

Our insights into which prospects are likely to submit an offer;

Summary analysis of offers received; and

Our recommendations on how to proceed.

A close-up photograph of a person's hands typing on a laptop keyboard. The background is blurred, showing another laptop screen and office equipment. The text 'Distressed sales experience' is overlaid in a white box in the center of the image.

# Distressed sales experience

# Distressed sales experience



## 9160 BAYVIEW AVE, RICHMOND HILL \$8,100,000 (2019) & \$10,000,000 (2020)

Vendor: 9160 Bayview Inc.  
Retained by BDO, the Advisory team listed and sold 9160 Bayview Avenue in Richmond Hill twice on behalf of the seller. The team found the buyer and had a conditional deal in place within two weeks of listing the property. The medical plaza was leased to 6 different tenants over 3 storeys with some vacant space in the lower level.



## SUN PAC BLVD LAND, BRAMPTON \$6,025,000

Vendor: Msi SPERGEL Inc., as Court appointed Receiver  
Avison Young was retained by Msi SPERGEL Inc. (Court-appointed Receiver) to market and sell the land on Sun Pac Boulevard in Brampton. The property is a 3 acre piece of undeveloped commercial land. The marketing process resulted in 4 offers and a sale price above asking.



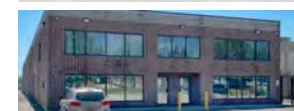
## 168 OLD KENNEDY ROAD, MARKHAM \$7,550,000

Vendor: RSM Canada, as Court appointed Receiver  
Avison Young was retained by RSM Canada as Court appointed Receiver to market and sell the land at 168 Old Kennedy Road in Markham. The property is a 1.5 acre piece of undeveloped, mixed use land. The marketing process resulted in 7 offers and the successful sale of the property.



## 237A & 237B ADVANCE BOULEVARD, BRAMPTON \$5,100,000 & \$6,888,888

Vendor: A. Farber & Partners Inc. as Court appointed Receiver  
Avison Young was retained by A. Farber & Partners Inc. as Court appointed Receiver to market and sell 237A 237B Advance Boulevard in Brampton, Ontario. The properties are a 21,000 sf industrial building on 1.1 acre site and a 18,000 sf industrial building on a 0.85 acre site.



## 581 WELLINGTON STREET WEST, TORONTO \$5,800,000

Avison Young was retained by RSM Canada Limited to market and sell a 6,994 sf mixed-use property under partial renovation. Property garnered much interest and several offers were received, culminating in a fully unconditional offer being negotiated in a final round of bidding. Transaction closed in late 2019.



## 92 DAVIDSON STREET, BARRIE \$3,275,000

Vendor: Superior Court of Justice  
Avison Young was retained by A. Farber & Partners Inc. via its receiver to market and sell 92 Davidson Street, located in Barrie, Ontario. The free standing industrial building and surplus land. Avison Young received multiple offers for the property, and successfully sold the property five months after going to market.



## 1450 GERRARD STREET EAST, TORONTO \$2,305,000

Vendor: RBC (Power of Sale)  
Avison Young was retained by RBC (under power of sale) to market and sell 1450 Gerrard Street East in Toronto, Ontario. Multiple offers were generated by our marketing efforts, and an unconditional offer above our asking price was completed.



## 38 METROPOLITAN ROAD, TORONTO \$7,200,000

Vendor: RBC (Power of Sale)  
Avison Young was retained by RBC (under power of sale) to market and sell 38 Metropolitan Rd in Toronto, Ontario. This was an extremely challenging assignment given part of the building was previously used as a commercial marijuana grow-op that caused extensive damage to the building. Our extensive experience and multifaceted marketing approach produced exceptional results including 17 offers.



## 25 LASKAY MILLS DRIVE \$5,350,000

Vendor: KSV Advisory Inc. (Court-appointed Receiver)  
Avison Young was retained by KSV (Receiver) to market and sell 25 Laskay Mills Drive, a 75 acre site in King City, Ontario - a long-term potential redevelopment site that also contained a large, custom-designed 1970's vintage home, old farm house, and barns. The buyer intended to develop their own private family compound on the site. Our marketing process resulted in multiple offers, including the successful, unconditional offer.

# Distressed sales experience



## 57 MATTHEW STREET, MARMORA \$1,400,000

Vendor: msi SPERGEL Inc., as Court appointed Receiver  
Avison Young was retained by Msi SPERGEL Inc. via its receiver to market and sell 57 Matthew Street in Marmora, Ontario. The property is a 2,300 sf gas station and convenience store on a 1.35 acre site. The marketing process resulted in 4 offers and the successful sale of the property.



## 2454 BAYVIEW AVENUE, TORONTO \$7,900,000

Vendor: Superior Court of Justice  
Members of the Avison Young Capital Markets Team were retained by the Superior Court of Justice as a receiver to market and sell 2454 Bayview Avenue. The school was marketed unpriced with a specific bid date scheduled 4 weeks after taking the property to market. Avison Young received multiple offers and had a second round of bids. The property was successfully sold within the price expectations.



## 1491 WILSON AVENUE, 143-145 ARLINGTON AVENUE & 26 GULLIVER ROAD, TORONTO \$20,378,000 (Total Price)

Vendor: Private Family/Receiver  
Members of the Avison Young Capital Markets Team retained by a receiver on behalf of a private family to market and sell three low rise apartment buildings. The properties were marketed unpriced as a portfolio and individually. The properties were marketed for 4 weeks with a set bid date. The three properties were sold to individual buyers within the pricing expectations.



## 6 MARCONI COURT, VAUGHAN \$2,990,000

Vendor: Bank of Montreal (Power of Sale)  
Avison Young was retained by Rosen Goldberg Inc. as a receiver to market and sell 6 Marconi Court located in Caledon Ontario. The free standing industrial property was marketed priced with no specific bid date. 6 Marconi Court received multiple bids and was sold (firm) less than five months after going to market.



## BLUE MOUNTAIN DEVELOPMENT LANDS, TOWN OF BLUE MOUNTAINS \$2,200,000

Vendor: HSBC (Power of Sale)  
Avison Young was retained by HSBC via its receiver to market and sell 23 acres of land located in The Blue Mountains Ontario. The residential development land was originally part of "The Ridge Estates" subdivision and was comprised of 29 single lots. Avison Young received multiple offers for the property, and successfully sold the property to a local development company.

## RSM PORTFOLIO

Members of the Avison Young Capital Markets Team were retained by the RSM Canada (court-appointed receiver) to market and sell five gas stations and/or car wash facilities around Ontario. The properties were marketed as a portfolio and individually. The properties were marketed for at least 4-5 weeks with a set bid date. All five of the properties were eventually sold to individual buyers, including some being unconditional offers.



**SOLD & CLOSED \$3,700,000**  
5462 Dundas Street West, Toronto  
Vendor: Superior Court of Justice  
Single storey car wash facility.



**SOLD & CLOSED \$2,500,000**  
5223 Dundas Street, Burlington  
Vendor: Superior Court of Justice  
Single storey car wash facility in state of partial construction.



**SOLD & CLOSED \$2,500,000**  
591 & 595 Goderich Street, & 618 Gustavus Street, Port Elgin  
Vendor: Superior Court of Justice  
Vacant former Ultramar gas station, freestanding Tim Hortons pad, and 2-storey building (including 3-bedroom apartment).

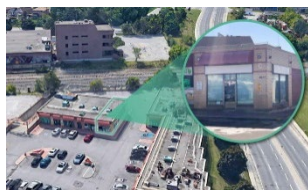


**SOLD & CLOSED \$850,000**  
633 Main Street West, Port Colborne  
Vendor: Superior Court of Justice  
Single storey car wash facility



**SOLD & CLOSED \$1,300,000**  
274 Bayfield Road, Goderich  
Vendor: Superior Court of Justice  
Vacant former Ultramar gas station and automated car wash facility.

# Distressed sales experience



## **4231 SHEPPARD AVENUE EAST, UNIT C-1, TORONTO** **\$250,000**

Vendor: msi SPERGEL Inc., as Court appointed Receiver  
Avison Young was retained by msi SPERGEL Inc., as court-appointed receiver to market and sell 4231 Sheppard Avenue East, Unit C-1, a 960 sf commercial condo unit. The marketing process resulted in 5 offers and the successful sale of the property.



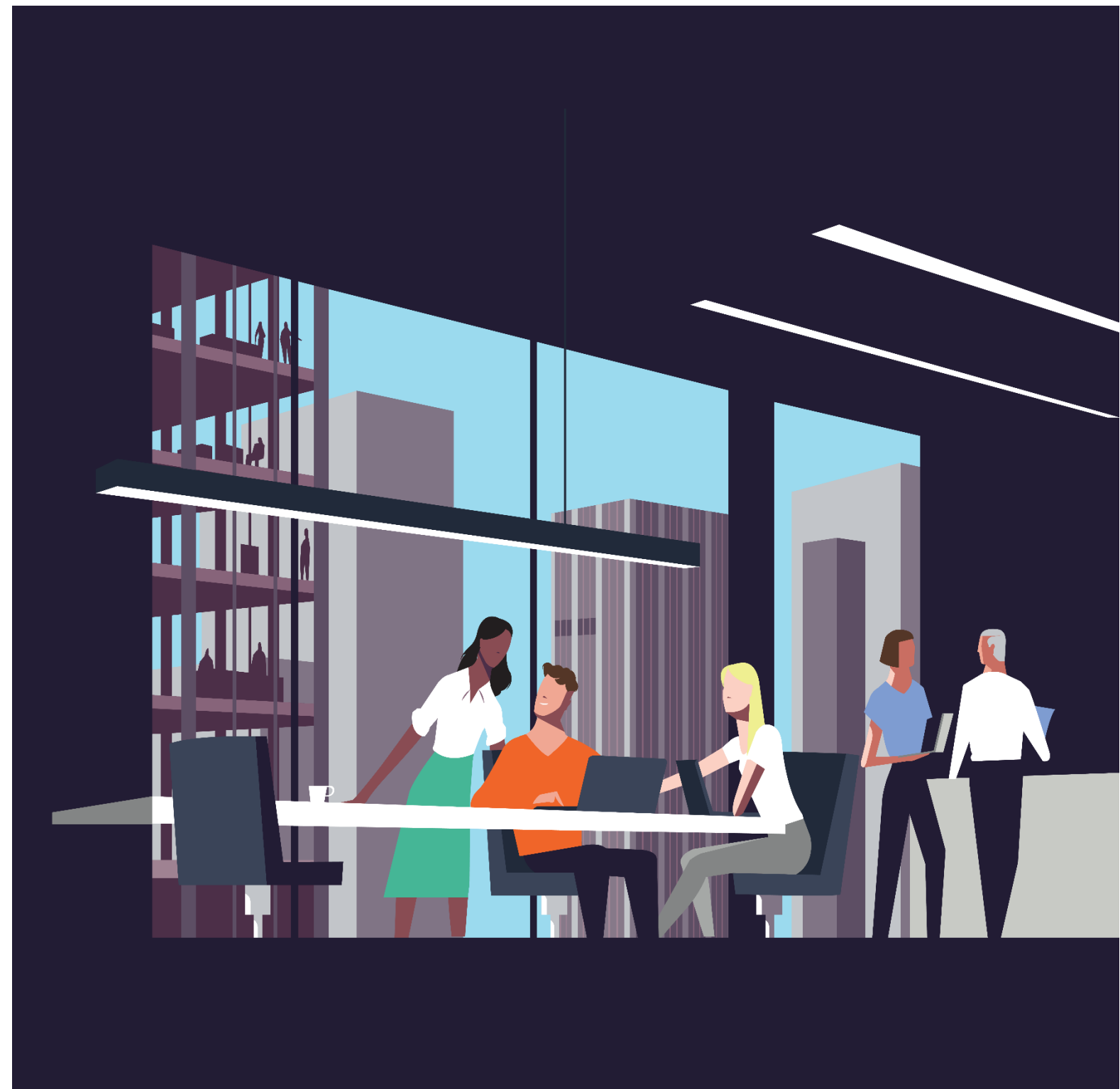
## **664, 674, 692 ESSA ROAD & 320, 366 MAPLEVIEW DRIVE WEST, BARRIE** **\$29,100,000**

Vendor: MNP Ltd., as Court appointed Receiver  
Kelly Avison and Ben Sykes were retained by MNP Ltd. as a receiver to market and sell a 25.4 acre development site, situated at the prominent northeast corner of Essa Road and Mapleview Drive West in Barrie. Avison Young received multiple offers and had a second round of bids. The property received 41 signed CAs and multiple bids, which included an unconditional offers – one of which was accepted. The property sold above the price expectations.



## **8604 & 8612 HWY 25 NORTH, MILTON** **(Sale process cancelled by Court)**

Vendor: msi Spergel Inc., as Court appointed Receiver  
Avison Young was retained by msi Spergel Inc., as Court-appointed receiver, of an operating gas station, and abutting residential property, located in Milton. Multiple Offers were generated by the listing team, including final, second-round unconditional bids. Prior to receiving final court approval for the sale, the owner was able to refinance the property at the last minute which terminated the receivership and sale process.





# Hamilton & area sales experience



# Hamilton sales experience



**170 JACKSON STREET EAST, HAMILTON**  
**\$1,400,000**

Vendor: Trans Union of Canada Inc.  
 Retained by Trans Union of Canada Inc., the Advisory team listed and sold 170 Jackson Street, a single-story office property in downtown Hamilton. The property was listed on MLS and sent out through an email marketing campaign. The property was ultimately sold above the initial valuation.



**1 WILSON STREET, HAMILTON**  
**\$9,250,000**

Vendor: J. Beume Real Estate Limited  
 Avison Young was retained by J. Beume Real Estate Limited to market and sell the 0.625 acre site with a 12,493 sf retail plaza. Kelly Avison was the exclusive advisor on the assignment and developed and implemented a targeted marketing program that generated significant interest from qualified buyers. A successful transaction was negotiated and closed with a developer that intends to redevelop the property .



**44 FRID STREET (THE HAMILTON SPECTATOR BUILDING), HAMILTON**  
**\$25,750,000**

Vendor: Torstar  
 Avison Young was retained by Torstar to market and sell 44 Frid Street, the former Hamilton Spectator building. The property is a 258,000 industrial building with office component on a 5.74 acre site. The property was broadly marketed netting 36 CAs and 4 offers. 44 Frid St was sold above the initial valuation to the McMaster (University) Innovation Park.



**177 REBECCA STREET, HAMILTON**  
**\$2,325,000**

Vendor: United Way Halton & Hamilton  
 Avison Young was retained to market and sell 177 Rebecca St, a 7,317 sf office building on 0.37 acres. The property was broadly marketed, including on MLS and ultimately sold to a private investor.



**190 GLOVER ROAD, HAMILTON**  
**\$6,057,600**

Vendor: Mercanti Management Inc.  
 Avison Young was retained to market and sell 190 Glover Road, a 5.05 acre industrial development site. Proposed for the site is a 115,697 sf industrial building with 40 ft clear heights and a 5% office ratio.



**6 TISDALE ST S, & 514 KING ST E, HAMILTON**  
**\$8,200,000**

Vendor: Vendor: 6 Tisdale Inc.  
 Retained by 6 Tisdale Inc., the Avison Young team listed and sold 6 Tisdale St S, & 514 King St E, two four-story apartments totalling 31 units in downtown Hamilton.



**438, 444, 446-450 CONCESSION STREET & 18 EAST 18TH STREET, HAMILTON**  
**\$2,900,000**

Vendor: BDO Canada Limited  
 Avison Young was retained by BDO Canada Limited to market and sell an assembly of 4 properties totalling 14,899 sf on 0.54 acres. The properties include 3 medical office buildings fronting on Concession Street and an adjacent home.



**722 MAIN STREET EAST, HAMILTON**  
**\$330,000**

Vendor: Momentum Credit Union  
 Avison Young was retained to market and sell 722 Main St E, a single-storey retail/office building totalling 1,253 sf. The property has excellent exposure and signage on Main St E in downtown Hamilton.



**698 KING STREET EAST, HAMILTON**  
**\$625,000**

Vendor: Momentum Credit Union  
 Avison Young was retained to market and sell 698 King St E, a two-storey, 3,384 f sf office building on a 0.111 acre site. The property located in downtown Hamilton and enjoys excellent exposure on a major thoroughfare.



**14 AMBITIOUS COURT, HAMILTON**  
**\$11,100,000**

Vendor: Nebo Trails Inc.  
 Avison Young was retained to market and sell 190 Glover Road, a 7.65 acre industrial development site. Proposed for the site is a 174,600 sf, multi-tenant industrial building.



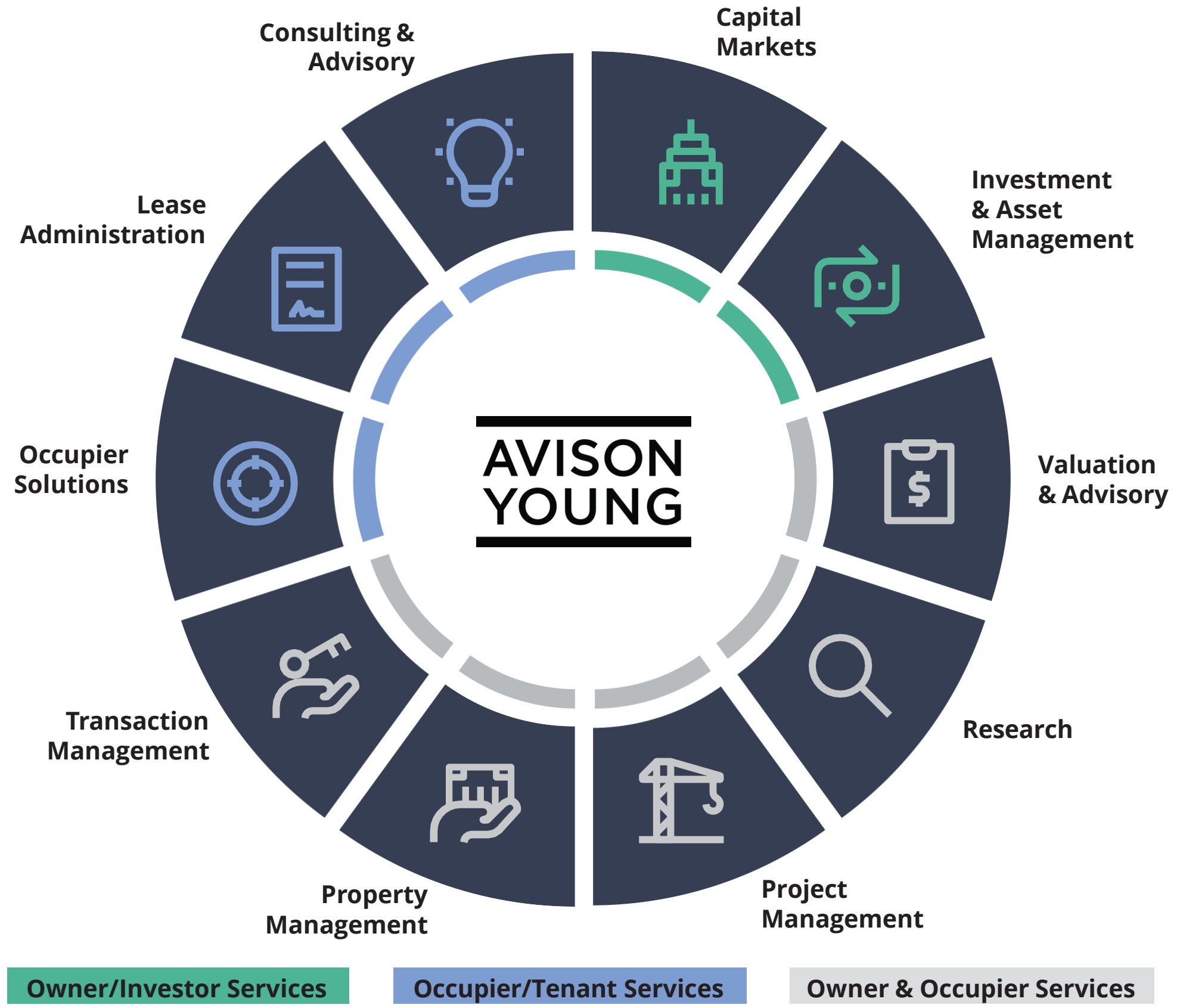
# Appendix

About Avison Young

Our Services

**Avison Young creates real economic, social, and environmental value, powered by people.**

Avison Young is built on the belief that commercial real estate isn't just about the buildings and the square footage and the occupancies. At its best it's about spaces and places that improve lives and help businesses thrive for the employees, citizens and communities that make impact matter.

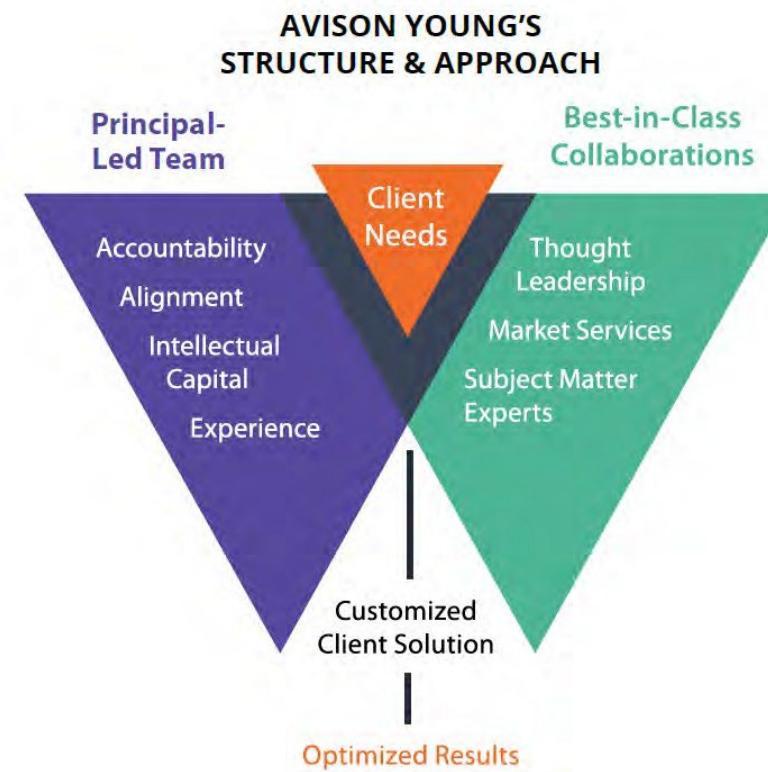


# About Avison Young



## Our partnership, at work for you

As a growing and innovative challenger in global commercial real estate, Avison Young attracts the best talent in our industry. But being the best isn't just about having the best; it's also about how we work together. Our longstanding culture of collaboration, and the fact we're majority owned by a broad base of principals means our clients partner with an empowered owner who is invested in—and driven by—shared success for the long-term. Our unique ownership structure creates intelligent solutions that deliver an enhanced client experience and better results. The below image is a snapshot of how we're structured around our clients.



Founded in  
**1978**

**5,000**  
real estate  
professionals

**100+**  
offices

**16**  
countries

**225 msf**  
under property  
management



# Thank you.



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Graeme White  
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Platinum member

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18 York Street, Suite 400, Mailbox #4, Toronto, ON M5J 2T8 Canada  
**Office** 416 955 0000 **[avisonyoung.ca](http://avisonyoung.ca)**



# 21 Augusta Street

Hamilton, ON

Strategic Advisory Proposal

Submitted by CBRE & M Commercial Realty



# Agenda

- 3 Executive Summary
- 4 Receivership Experience
- 5 Property Assessment
- 7 Valuation
- 10 Marketing & Disposition
- 13 Advisory & References





# Executive Summary



On behalf of CBRE Limited and M Commercial Realty, we are excited to present our strategic advisory proposal to represent msi Spergel inc (the “Receiver”) in the disposition of the property located at 21 Augusta Street, Hamilton, ON. We have extensive experience with court appointed receivership sales and power of sale processes that will assist you in working through this file. We are confident our proposal will help guide you through this process and we welcome a thorough discussion at your convenience.

The following are key considerations to promote your best interests and maximize value of your property:

- CBRE and M Commercial Realty have combined advisory teams to provide msi Spergel inc with extensive streetfront retail sales experience and local market knowledge to deliver the best service and results.
- Execute 6-month MLS listings, with a 21 day marketing period prior to accepting offers that will promote the best price, terms, and conditions.
- Activate a broad-based and transparent marketing campaign targeting a wide range of prospective purchasers including commercial investors and end users. Tailor and articulate the offering to generate the greatest engagement and drive value.
- Note the Bank of Canada’s aggressive interest rate hike announcements have had a significant impact on the market. This has curtailed market activity and thus provides less data points for accurate market analysis. However, there is a significant amount of liquidity in the market.

Thank you for your consideration. Our team of professionals have the experience and expertise with an extensive database to legitimize this process and execute the disposition on your behalf. Our track record with receivership sales means we are best equipped to work with you through this process to complete a successful sale. We look forward to working with you as your advisor to achieve your goals.



Frank Protomanni\*\*  
Senior Vice President  
CBRE



Pat Viele\*  
Executive Vice President  
CBRE



Alex Protomanni\*  
Senior Sales Associate  
CBRE



Joe Merrett\*  
Vice President  
M Commercial Realty



Kimberley Piper\*  
Vice President  
M Commercial Realty

# Receivership Experience

EXTENSIVE EXPERIENCE WITH COURT ORDERED RECEIVERSHIP SALES REPRESENTING:



61-69 Ainslie Street  
Cambridge, ON

400 Maple Street  
Collingwood, ON

790 Elm Tree Road  
Kawartha Lakes, ON

132 Ashbridge Circle  
Vaughan, ON

1 Niagara Street  
Toronto, ON

76 Densley Avenue  
Toronto, ON

28 Nashville Avenue  
Toronto, ON



COURT APPOINTED  
RECEIVERSHIP SALE

COURT APPOINTED  
RECEIVERSHIP SALE

COURT APPOINTED  
RECEIVERSHIP SALE

POWER OF SALE

COURT APPOINTED  
RECEIVERSHIP SALE

COURT APPOINTED  
RECEIVERSHIP SALE

COURT APPOINTED  
RECEIVERSHIP SALE

- Development land
- 1.79 ac. high rise development site
- Multiple offers

- Infill development sale with heritage components
- 1.485 ac. development site with applications submitted

- Trailer park & land investment
- 509 acres set for 300 trailer lots
- Multiple offers

- Industrial investment sale
- 13,000 sq. ft. industrial freestand
- Multiple offers

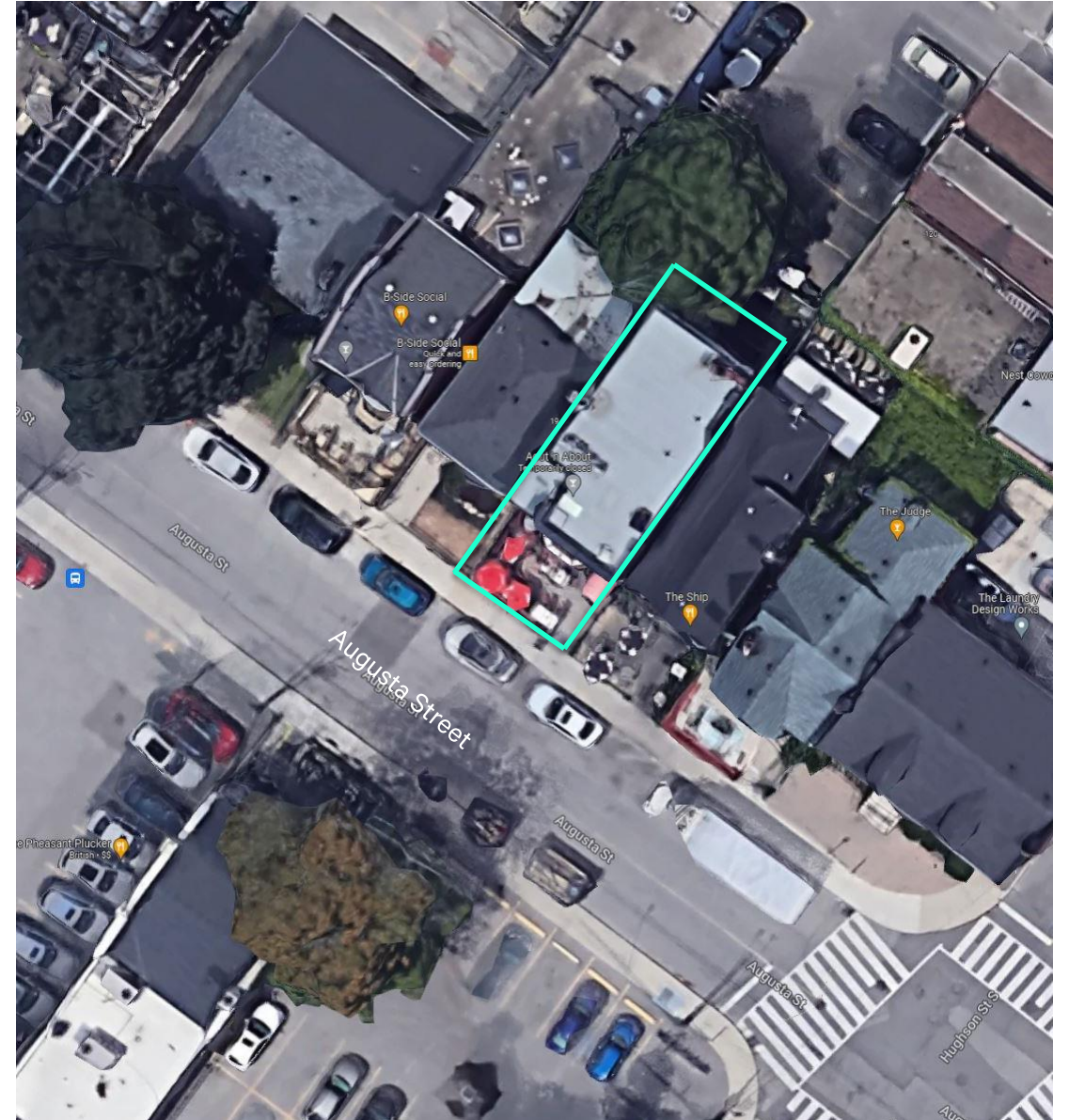
- Former Nygard Head Office
- 25,454 sq. ft. iconic office building in Downtown Toronto
- Listed & Sold during pandemic
- Multiple offers

- 25,000 sq. ft. industrial building designed for food specific uses
- 0.92 ac. lot
- Multiple offers

- Former 4,350 sq. ft. auto garage on 0.27 ac.
- Building required extensive capital improvements
- Multiple offers

# Property Overview

<b>Property Addresses</b>	21 Augusta Street, Hamilton, ON
<b>Main Intersection</b>	Augusta Street & Hughson Street S.
<b>Total Site Area</b>	0.038 ac. (1,657.64 sq. ft.)
<b>Building Area (Above Grade)</b>	3,003 sq. ft.
<b>Hamilton Urban Structure</b>	Neighbourhoods
<b>Hamilton OP Land Use</b>	Mixed Use Medium Density
<b>Zoning</b>	Mixed Use Medium Density (C5) Zone
<b>Current Studies</b>	Hamilton's Municipal Comprehensive Review, GRIDS2
<b>Heritage Designation</b>	Not designed nor non-designated. Located nearby inventoried properties



# Property Overview



## Offering Strengths

- Outstanding user/investor opportunity appealing to a wide range of prospective buyers
- Exceptionally located in Central Hamilton and within walking distance to an abundance of retail amenities
- Located near current and future developments which will bring a larger population to Hamilton
- Proximity to major highways and Hamilton GO Centre
- Existing bar and kitchen will appeal to restaurant and bar owners

## Potential Challenges

- Interest rate hikes causing downward pressure on pricing across all asset classes and increasing market uncertainty
- Vacant building poses higher investment risk and more difficulty financing
- Market fluctuations causing increased uncertainty and decreased urgency
- No parking and two floors of commercial space will limit buyer pool

**SOLD: Streetfront Retail Sales | Jan 2022 - Oct 2022**

Sold Date	Address	Municipality	Land Area (AC)	Building Area (SF)	Sale Price	Sale Price (per sq. ft.)	Notes
June 2022	174 John St. S.	Hamilton	.05	4,088	\$1,500,000	\$367	Former restaurant of 25 years on main level. 3 apartments on upper level. Vacant sale.
June 2022	142 James St. N.	Hamilton	.03	2,750	\$1,150,000	\$418	Fully renovated. Large retail unit on main floor and 2nd floor, 2 bedroom upper apartment. Vacant sale.
January 2022	197 King St. E.	Hamilton	.03	2,520	\$899,900	\$357	Main floor retail and 1 upper floor apartment. Some recent renovations in place. 2 parking spots. Vacant sale.
August 2022	53 Augusta St.	Hamilton	.05	2,475	\$955,000	\$386	Recently renovated. Professional office on main level and 2 bedroom apartment with separate entrance on upper level. Vacant sale.
June 2022	150 James St. N	Hamilton	.02	2,225	\$920,000	\$413	Main floor and 2 <sup>nd</sup> floor retail and upper floor 1 bedroom apartment. 3 hydro meters. Owner occupied.
April 2022	45 Wellington St. N	Hamilton	.04	4,715	\$1,210,000	\$257	Main floor retail unit is empty shell with new windows, roof and HVAC. Office space on 2 <sup>nd</sup> floor and plumbing roughed in for apartments on 3 <sup>rd</sup> floor.
September 2022	13 Hess St. S	Hamilton	.06	1,600	\$735,000	\$459	Located in popular Hess Village (restaurant/nightclub area). Vacant restaurant on 1 <sup>st</sup> floor. Long term Tenant in upper apartment.
<b>Average</b>				<b>3,025</b>	<b>\$1,052,843</b>	<b>\$380</b>	

Comparable sales are based on historical transactions and data.

**FOR SALE: Streetfront Retail Properties**

Days On Market	Address	Municipality	Land Area (AC)	Building Area (SF)	Asking Price	Asking Price (per sq. ft.)	Notes
8	33 Bowen St.	Hamilton	.10	6,800	\$3,300,000	\$485	Former restaurant in a historic building. Beautiful stone building newly renovated and fully fixtured.
49	148 James St. S.	Hamilton	.07	3,471	\$1,999,000	\$576	Significantly renovated. Commercial unit on 1 <sup>st</sup> floor (ideal for restaurant) and 3 apartments on upper floors.
54	40 Forest Ave.	Hamilton	.10	2,839	\$949,000	\$334	Former law office. Original character throughout. Finished usable basement.
54	174 John St. S.	Hamilton	.05	5,079	\$2,399,900	\$473	Main floor commercial space is former restaurant and 4 residential apartments above. Owner willing to operate restaurant and sign a lease if required.
6	21 Augusta St.	Hamilton	.06	2,007	\$1,189,900	\$593	Same owner since 1978. Main floor currently used as a salon. 2 newly renovated apartment units on upper floor. Vacant possession will be provided.
<b>Average</b>				<b>4,039</b>	<b>\$1,967,560</b>	<b>\$492</b>	

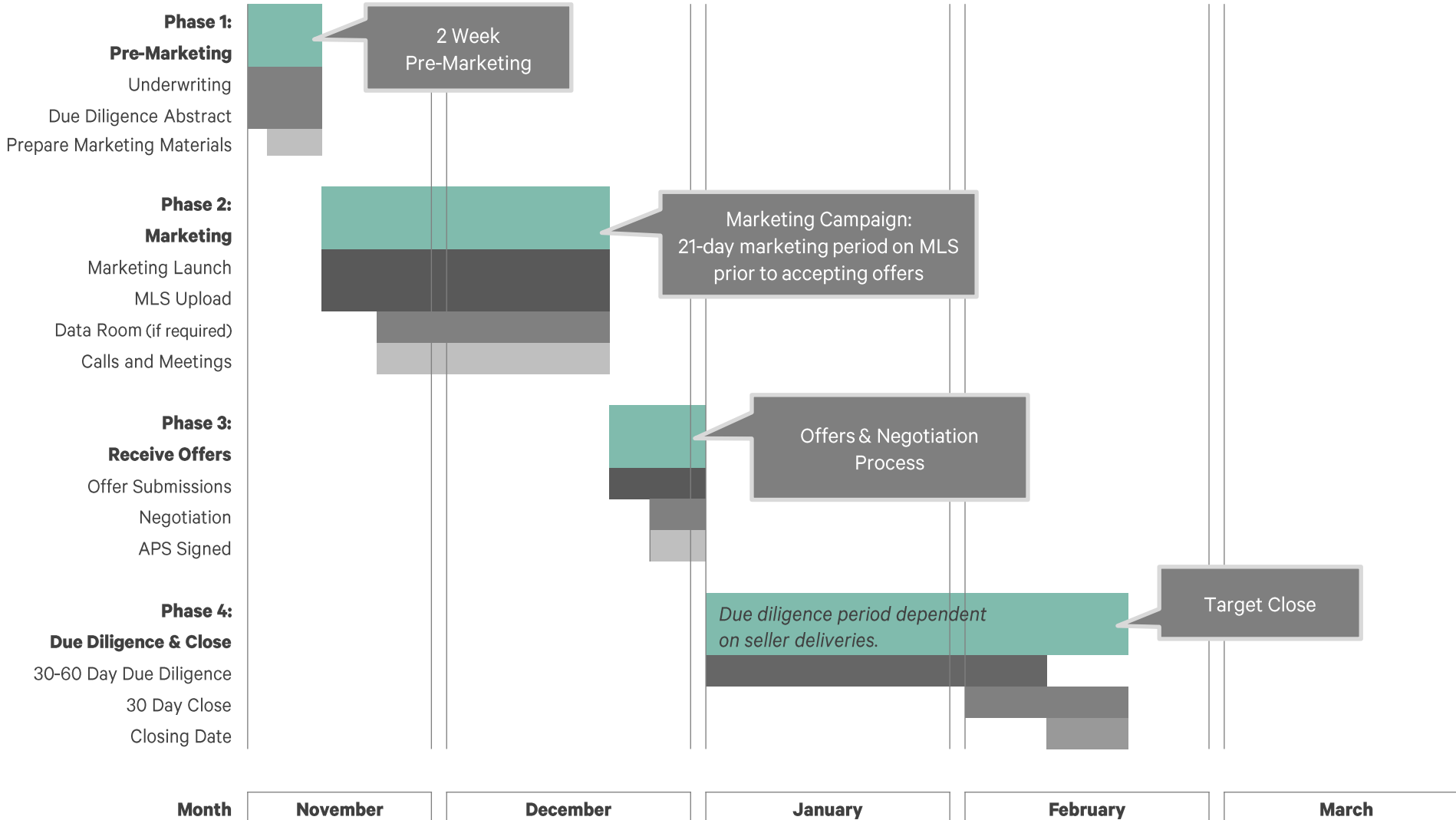
## Valuation Summary & Listing Price

- The average sold price/SF for comparable buildings is \$380/SF. The most similar comparable is 53 Augusta Street which sold vacant in August 2022 for \$386/SF.
- The current average listing price for comparable buildings is \$492/SF. 3 of the 5 comparable listings have been on the market for over 45 days.
- Rising interest rates have put downward pressure on pricing and buyer activity, although there remains significant liquidity in the market. We're currently seeing an increase in deal structuring (VTB, extended closing, etc).
- Based on the comparable sales/availabilities and current market environment, the value is likely to be between \$ [REDACTED]. However, the existing kitchen and bar area (assuming good working condition) will have additional value for restaurant and bar owners which may yield the highest price. Therefore, to maximize the sale price of the property, CBRE and M Commercial Realty recommend the following listing price:

[REDACTED]

# Marketing Process & Timeline

STRATEGIC ADVISORY PROPOSAL



## TARGET OBJECTIVES

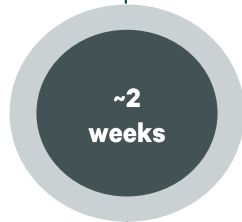
- Implement a broad-based marketing program targeted investors and users.
- Produce marketing and due diligence materials that provide important and accurate information for buyers to make an educated offer.
- Create competition by holding off offers for the first 21 days of the marketing period.
- Navigate the buyer through due diligence and closing to sustain momentum throughout the deal.
- Maintain complete transparency through the entire process.
- Provide the Receiver with all necessary process documentation to ensure sale approval is granted.



# Marketing Process & Timeline



PREPARATION /  
PRE-MARKETING



**PRE-MARKETING**

- Order aerial photos and compile all due diligence materials in your possession
- Prepare **custom marketing materials** (flyer, ads, dataroom, signage, etc.)
- Underwrite/abstract all operational elements and due diligence items
- **“Whisper Campaign”** to potential prospects prior to going to market



MARKETING CAMPAIGN

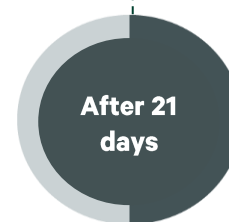


**MARKETING**

- **Broad marketing launch** through our proprietary data base and MLS, including outside brokers
- **Comprehensive coverage** of all potential buyers – users, investors, developers, and builders
- **Underwriting team** to help drive buyer assumptions
- Weekly **reporting updates**, as required



OFFER SUBMISSIONS



**OFFERING PROCESS**

- Offers to be reviewed **upon submission** following the **21 day** marketing period
- **Direct the process** based on market activity and feedback
- Select buyer based on **terms, conditions, price, and reputation**
- Negotiate critical **APS** terms



APS  
COMPLETED



DUE DILIGENCE WAIVER /  
CLOSING



**DUE DILIGENCE**

- Assume 30-60 day **due diligence** period and 30-60 day **close**
  - Up front due diligence can help reduce conditional timelines
- Facilitate due diligence process and respond to buyer questions
- Assist with closing conditions and documentation
- Maintain **competitive tension** through to closing

**CLOSING**

# Terms of Engagement



## LISTING PRICE & SUCCESS FEE COMMISSION

Listing Price: ██████████

Commission: 5% of gross sale price + HST (split 50/50 with a cooperating broker)



## TERM & PAYMENT

6-month MLS listing with 180-day holdover

CBRE & M Commercial Realty success fee is payable upon transaction close



## MARKETING COSTS & REPORTING

All marketing costs paid by CBRE

Weekly written reporting with daily communication, as required

# Team Profiles

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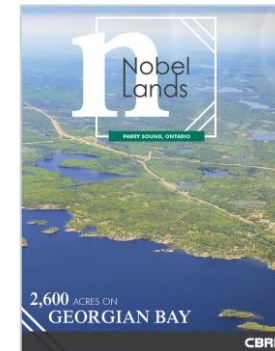
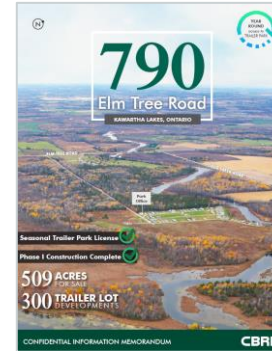
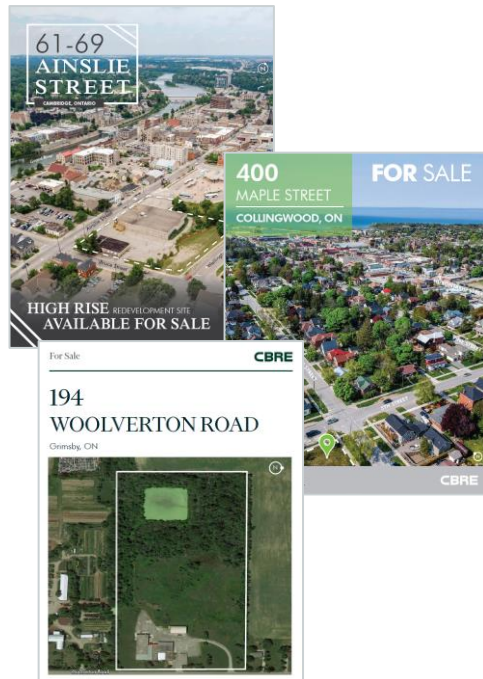
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Thank you.



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**THE TORONTO-DOMINION BANK**  
Applicant

-and- **2580363 ONTARIO INC. and 2580361 ONTARIO INC.**  
Respondents

Court File No. CV-22-0078521-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**MOTION RECORD**  
**(Returnable: April 27, 2023)**

**Volume 1 of 2**

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