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Reply to:
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March 17, 2010

TO: ALL PARTIES ON THE SERVICE LIST

Dear Sirs and Madams:

Re: 1539304 Ontario Inc. o/a Trinity Landing (“Trinity Landing”)

Please find enclosed the Receiver’s motion record for the motion returnable April 22, 2010, served in accordance with the *Rules of Civil Procedure*.

Please also note that several parties have advised the Receiver that they will object to materials which are not served and filed in a timely fashion. Pursuant to the amendments to the *Rules of Civil Procedure* effective January 1, 2010, please recall that responding motion records must be served at least four days prior to the return of a motion. All materials must be filed with the Court at least three days prior to the return of a motion.

If you have any questions, please do not hesitate to contact the undersigned at any time.

Yours truly,

Lang Michener LLP



Per: Aaron Rousseau

AR

cc: Ira Smith

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

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

**MOTION RECORD
(returnable April 22, 2010)**

March 17, 2010

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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September 1, 2009 to February 28, 2010

Affidavit of Ira Smith dated March 17, 2010 regarding the fees and disbursements of Pelican Woodcliff Inc. for the period from September 1, 2009 to October 9, 2009

AA

Letter dated March 15, 2010 from Mr. Vasan confirming the return of deposits in accordance with the Second Approval Order

BB

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

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

**NOTICE OF MOTION
returnable April 22, 2010**

Ira Smith Trustee & Receiver Inc., in its capacity as Court-appointed Interim Receiver and Receiver and Manager (the "Receiver") of 1539304 Ontario Inc. (the "Debtor") will make a motion to the Court on April 22, 2010 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto as Schedule "A":
 - (a) approving the Fourth Report of the Receiver dated March 17, 2010 (the "Fourth Report") and the actions of the Receiver as set out therein;

- (b) approving the fees and disbursements of the Receiver and those of its counsel;
- (c) directing that the Receiver pay the net realization of the assets, property and undertaking of the Debtor into Court to the credit of this action;
- (d) discharging the Receiver and terminating the Receivership;
- (e) such further and other relief as counsel may request and this Honourable Court may permit

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the Order appointing the Receiver dated November 12, 2008, Ira Smith Trustee & Receiver Inc. was appointed as Interim Receiver and Receiver and Manager of the assets, undertaking and property of the Debtor pursuant to ss. 47(1) of the *Bankruptcy and Insolvency Act, Act*, R.S.C. 1985 C. B-3 (the "BIA") and s. 101 of the *Courts of Justice Act*, R.S.O. 1190, c. C-43 (the "CJA").
2. On October 16, 2009, the Receiver completed the sale of the sole asset of the Debtor, pursuant to a court approved Agreement of Purchase and Sale.
3. A number of creditors are claiming priority interests over the assets of the Debtor and have been unable to reach a resolution.
4. S. 47 of the BIA.
5. S. 101 of the CJA.
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Fourth Report and the exhibits thereto;
2. The Responding Motion Record of the Debtor;

3. Such further and other materials as counsel may advise and this Honourable Court may permit.

Date: March 17, 2010

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

TO: ATTACHED SERVICE LIST

SERVICE LIST

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Lawyers for 1712164 Ontario Ltd.

SCHEDULE "A"

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

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

THE HONOURABLE

)
)
)
)

THURSDAY, THE 22ND DAY

JUSTICE

OF APRIL, 2010

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed interim receiver and receiver and manager (the "Receiver") of all the assets, undertaking and property of 1539304 Ontario Inc. (the "Debtor"), for an order: (a) approving the Fourth Report of the Receiver dated March 17, 2010 (the "Fourth Report") and the actions and activities of the Receiver as detailed therein, and (b) approving the fees of the Receiver and its counsel; (c) approving the distribution of the remaining proceeds and assets of the estate of the Debtor, and (d) discharging Ira Smith Trustee & Receiver Inc. as Receiver of the undertaking, property and assets of the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report and the affidavits of the Receiver and its counsel as to fees contained therein (the "Fee Affidavits") and the Responding Motion Record of the Debtor dated March 4, 2010, filed, and upon hearing the submissions of counsel for the Receiver, ICICI Bank Canada and the City of Hamilton and Mr. Ganatra on behalf of the Debtor, and no one appearing for the other parties served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of Aaron Rousseau sworn March 17, 2010:

1. **THIS COURT ORDERS** that the Fourth Report and the actions of the Receiver as reported therein be and are hereby approved.
2. **THIS COURT ORDERS** that the Receiver's fees and disbursements from September 1, 2009 to March 15, 2010, and the fees and disbursements of its legal counsel, Lang Michener LLP, from September 1, 2010 to February 28, 2010, all as detailed in the Fourth Report and the Fee Affidavits, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver's estimated fees and disbursements after March 15, 2010, and the estimated fees and disbursements of its legal counsel, Lang Michener LLP, after February 28, 2010, all as detailed in the Fourth Report, be and are hereby approved.
4. **THIS COURT ORDERS** that after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to the Court, to the credit of this Application, to be distributed by further Order of this Court.
5. **THIS COURT ORDERS** that, after payment of the amounts set out in paragraph 4 hereof, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of Ira Smith Trustee & Receiver Inc. in its capacity as Receiver.

6. **THIS COURT ORDERS AND DECLARES** that Ira Smith Trustee & Receiver Inc. and all of its directors, officers, employees and agents, and Lang Michener LLP and all its partners and employees (the "Releasees"), are hereby released and discharged from any and all liability that the Releasees now have or may hereafter have by reason of, or in any way arising out of, the Releasees' acts or omissions while acting in as or on behalf of the Receiver herein. Without limiting the generality of the foregoing, the Releasees are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

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

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

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

DATED MARCH 17, 2010

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

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

DATED MARCH 17, 2010

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**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
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DATED MARCH 17, 2010

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DATED MARCH 17, 2010

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**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
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DATED MARCH 17, 2010

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

FOURTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

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

DATED MARCH 17, 2010

1.0 INTRODUCTION

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

The Honourable Madam Justice Pepall made an order dated November 12, 2008 (the “**Receivership Order**”) appointing the Receiver. A copy of the Receivership Order is attached hereto as **Exhibit “A”**.

The Receiver has filed the following Reports with the Court:

a) The First Report to Court dated February 20, 2009 (the **"First Report"**) and a Supplement to the First Report dated March 4, 2009 (the **"Supplementary First Report"**). The First Report was approved by order of the Honourable Madam Justice Pepall dated February 26, 2009, (the **"First Approval Order"**), and the Supplementary First Report was approved by order of the Honourable Madam Justice Pepall dated March 10, 2009, (the **"First Supplement Approval Order"**).

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

c) The Third Report to Court dated September 17, 2009 (the **"Third Report"**), a Supplement to the Third Report dated September 24, 2009 (the **"Supplementary Third Report"**) and a Second Supplement to the Third Report dated October 2, 2009 (the **"Second Supplementary Third Report"**). The Third Report, Supplementary Third Report and Second Supplementary Third Report were approved by order of the Honourable Mr. Justice Cumming dated October 5, 2009 (the **"Third Approval Order"**).

Copies of the First, First Supplement, Second and Third Approval Orders are attached hereto as Exhibits **"B"**, **"C"**, **"D"** and **"E"**, respectively.

1.1 Purpose of this Report -

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

1. the actions and activities of the Receiver since October 2, 2009;
2. the completion of the sale of the Project (as hereinafter defined) to J. Kara Capital Corp. (the "**Purchaser**") in accordance with the APA (as described and defined in the Second Supplementary Third Report and approved in the Third Approval Order);
3. the Receiver's understanding of the positions being taken by various stakeholders who have asserted a priority over the first mortgagee of the real property sold to the Purchaser, ICICI Bank Canada ("**ICICI**" or the "**Bank**"), with respect to the net realization;
4. the efforts taken by the Receiver to attempt to resolve the positions taken by the various stakeholders;
5. the Receiver's opinion regarding the settlement of the stakeholders' issues to allow for a distribution;
6. the Receiver's request to terminate the Receivership;
7. the accounting for the receipts and disbursements of the Receiver from November 12, 2008 to March 15, 2010; and

8. the fees and costs incurred by the Receiver and its legal counsel, Lang Michener LLP (“LM”), for the period subsequent to those fees approved in the Third Report. These respective fees and costs include an estimate of the time to complete the receivership administration subsequent to the date of this Fourth Report, should the recommendation of the Receiver regarding the termination of these receivership proceedings be approved by this Honourable Court.

1.2 Disclaimer -

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

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

2.0 BACKGROUND AND OVERVIEW

In its capacity as Receiver, ISI has reported to this Honourable Court on the nature of the Debtor's business operation and sole known asset, a condominium project under construction, located at 80 King William Street, in the City of Hamilton (the "Project"). The Receiver refers the readers of this Fourth Report to the First Report for a complete overview of the business and its sole asset. The Receiver further advises that on October 16, 2009 the sales transaction contemplated by the J. Kara APA (as defined in the Second Supplementary Third Report) closed, and title which vested in the Receiver was conveyed to J. Kara Capital Corp (the "Sales Transaction").

3.0 ACTIVITIES OF THE RECEIVER

Since the Second Supplementary Third Report, the Receiver has undertaken the following activities:

- arranged for final readings of the utilities serving the Project to be taken, paid all final utility, security, insurance and property tax accounts and arranged for the accounts to be closed or transferred to the Purchaser;
- executed all required documents as part of the completion of the sale to the Purchaser;
- received the gross sales proceeds in the amount of \$3,110,359.49;
- returned the deposit funds held in trust and any interest earned thereon to Canlight Realty Corporation ("Canlight") and paid the break fee in the amount of \$290,151.50 that they were entitled to in accordance with the sale to the Purchaser¹;

¹ The Endorsement of the Honourable Mr. Justice Cumming, dated September 25, 2009 (Exhibit "A" to the Second Supplementary Third Report), allowed the Canlight offer to stand as a "stalking horse" bid in the amended sales process which all parties consented to. One of the terms of the amended sales process was that should Canlight not be the successful bidder, it would be entitled to a break fee, calculated based upon the ultimate sales price.

- paid all outstanding accounts previously approved by this Honourable Court for the Receiver, its counsel LM and its consultants Pelican Woodcliff Inc. as well as any outstanding accounts of other suppliers incurred in the performance of activities previously approved by this Honourable Court;
- repaid the outstanding borrowings from ICICI by way of Receiver's Certificates inclusive of interest and fees totaling \$600,127.77;
- opened an interest bearing account to hold the net receipts (less the necessary disbursements made as referred to above and as further disclosed in Exhibit "X" attached to this Fourth Report) pending a distribution to be approved by this Honourable Court;
- performed a review of the outstanding lien claims and certain of Mutual Gain's progress reports on the Project;
- issuance of the second interim report prepared in accordance with Section 246(2) of the BIA (attached hereto as **Exhibit "F"**);
- identified the groups of key stakeholders who are asserting claims in priority to the security of ICICI, the first mortgagee of the Project and the first secured creditor of the Debtor;
- engaged certain of the stakeholder groups to determine the nature of their respective claims and positions and instructed legal counsel to deal with various stakeholders' legal counsel on this matter.

3.1 Sales Transaction –

On October 16, 2009, the sale to the Purchaser was completed. As indicated above, the net proceeds of the sale are being held in an interest-bearing account at ICICI. A copy of the Statement of Adjustments for the sale is attached hereto and marked **Exhibit "G"**.

In accordance with the endorsement of the Honourable Mr. Justice Cumming dated September 25, 2009, a break fee was paid to Canlight. Their deposit (with earned interest) was also returned to them.

3.2 Repayment of the Borrowing Charge –

The Receivership Order created a Borrowing Charge that was amended and increased by the First and Second Approval Orders. The Receiver was permitted to borrow up to \$700,000 by way of issuance of Receiver's Certificates. The funding for the Borrowing Charge was provided by the Applicant, ICICI. Nine Receiver's Certificates were issued (inclusive of the 4th certificate which was withdrawn and voided at the mutual request of the Receiver and the Applicant). A total of \$580,000 was borrowed by the Receiver. By letter dated October 19, 2009, the Applicant advised that the outstanding balance of the advances drawn under the Borrowing Charge, inclusive of accrued interest and fees totalled \$600,127.77. The Receiver directed the Applicant to debit the Receiver's trust account, held at ICICI, in full satisfaction of the outstanding balance.

4.0 IDENTIFICATION OF STAKEHOLDERS

Attached hereto as **Exhibit "H"** is a summary indicating the parties who have registered liens against the Project including quantum, date of last supply, and date of perfection. From discussions with counsel for the Applicant, it would appear that these lien claimants can be grouped into two classes of stakeholders, and classified by the year of perfection. The noted exception is 1712164 Ontario Ltd. ("171") whose lien was registered after the date of the Receivership Order. 171 registered without obtaining either leave of the Court to lift the stay of proceedings in order to register or the written consent of the Receiver.

Including the lien claimants, there are several stakeholders that the Receiver is aware of, that claim to have an interest in the net sale proceeds in priority to the claim of ICICI. In order to

assist this Honourable Court, the Receiver will identify the stakeholder groups and describe what the Receiver understands to be the position taken by each respective group.

The stakeholder groups the Receiver is currently aware of are as follows:

1. the collective group of lien claimants whose liens were perfected in the calendar year 2007 (the “**2007 Lien Holders**”);
2. the collective group of lien claimants whose liens were perfected in the calendar year 2008 (the “**2008 Lien Holders**”);
3. 171;
4. the Applicant and first mortgagee, the Bank;
5. the second mortgagee, the City of Hamilton (the “**City**”);
6. the Respondent Debtor, its officers, directors and shareholders (the “**Respondent**”);
and
7. parties who have either supplied materials or services to the Debtor (and did not register a lien), paid deposits directly to the Debtor or who have loaned money to the Debtor on an unsecured basis (collectively referred to as “**Unsecured Creditors**”).

Given the various lien claimants purporting to hold an interest in the net sales proceeds in priority to that of the Bank, any such ultimately proven interest would reduce the amount otherwise available for distribution to the first mortgagee, the Bank. Therefore, the Receiver felt it was appropriate to accede to the Bank’s request to initially allow Mr. H. Whiteley of Gowling

Lafleur Henderson LLP, counsel for the Applicant, to take carriage of any discussions with the lien holders and attempt to reach an appropriate settlement for recommendation to the Receiver. The cost of the Bank's legal counsel performing this role was to the account of the Bank and therefore also served as an attempt to advance a settlement at no cost to any party ultimately proven to have an interest in priority to that of the Bank, if any.

The Receiver understood that Mr. J. Lefurgey of Martens Lingard LLP (counsel for multiple lien claimants) was liaising with Mr. Whiteley. During November 2009, it was the Receiver's understanding, that Mr. Whiteley circulated an omnibus proposal indicating that the Applicant wished to have all lien claims settled, without litigation, for approximately 10 cents on the dollar of the face value of such claims. It is the understanding of the Receiver that this offer was rejected and that to date no proposed settlement has been achieved for presentation to the Receiver for consideration and if deemed advisable, recommendation to this Honourable Court.

Described below is the Receiver's current understanding of the various positions being communicated.

4.1 2007 Lien Holders –

Attached hereto as **Exhibit "I"** is a letter from the Debtor dated October 2, 2006, to 1604249 Ontario Ltd., operating as Epp Contracting ("**Epp Contracting**"). Epp Contracting was the original contractor for the Project and ceased work in 2006 as it was "unable to meet the stipulated substantially completion date" (sic).

Building Technology Specialists Inc. ("**BTS**") took over the contract to complete the work. In early 2007, as a result of cash flow problems experienced by the Debtor, work on the project

stopped and BTS and several subcontractors liened the Project. Attached hereto as **Exhibit "J"** is a copy of the contract between BTS and the Debtor.

The Receiver understands that it is the contention of the 2007 Lien Holders that all of their work was approved by the architect, the Debtor and the independent cost consultant and/or project certifier and furthermore their invoices were approved for payment. In October 2007 these liens were bonded off but not discharged when the Bank posted Letters of Credit with the Court.

The Receiver's understanding is that the 2007 Lien Holders believe they have first priority entitlement to any distribution from the receivership and in priority to the Bank. Accordingly, they have not agreed to any compromise settlement as of the date of this Fourth Report. The Receiver's understanding is that the total quantum of the 2007 Lien Holders' registered liens is \$1,366,717.19.

4.2 2008 Lien Holders –

Attached hereto as **Exhibit "K"** is the Executive Summary from Mutual Gain's 4th Interim Progress Draw Report, dated May 31, 2007. Numbered paragraph 4 (on the second page of the Exhibit) indicates that BTS

abandoned its contract, and presumably the Project. The Debtor then contracted with 171, the third general contractor to work on the Project, to complete the Project.

In mid 2008, once again the Debtor encountered cash flow problems and construction of the Project was halted and the subcontractors liened to preserve their rights. It is the Receiver's understanding that discussions between the Bank and the 2008 Lien Holders were held and that Mr. David Swift, counsel for one of the 2008 Lien Holders proposed a settlement offer that the

2008 Lien Holders were in support of. The Receiver understands that the Bank has not been responsive to Mr. Swift's settlement offer. The Receiver's understanding is that the total quantum of the 2008 Lien Holders' registered liens is \$281,106.26.

4.3 171 –

Attached hereto as **Exhibits "L" and "M"** is a copy of: (i) the contract between 171 and the Debtor; and (ii) the Articles of Incorporation of 171. 171 was incorporated by the spouse of Mr. H. Epp, who is the principal of the original contractor, Epp Contracting. As reported to this Honourable Court in the First Report², on November 19, 2008 Mr. B. Smith of the Receiver accompanied by representatives of Pelican Woodcliff Inc. met at the Project site with Mr. Epp. The Receiver informed Mr. Epp of the receivership proceedings and solicited a quotation from him to perform various emergency, safety and security work. As further described in the First Report, Mr. Epp was ultimately retained by the Receiver and paid in full for his work as contracted by the Receiver. As also reported in the First Report, Mr. H. Ganatra, the principal of the Debtor, advised during the Receiver's meeting with him on November 13, 2008 that Mr. Epp was providing property management services³. The Receiver's understanding is that the quantum of the lien registered by 171 is \$428,471.70.

4.4 The Bank –

Attached hereto as **Exhibit "N"** to this Fourth Report is the opinion of LM ("LM"), dated March 3, 2009 (previously disclosed as Exhibit "G" in the Receiver's Supplementary First Report) with

² First Report, page 7, section 3.3

³ First Report, Page 5, Section 3.1

respect to the security of the Applicant in which LM opines that the Bank's security ranks as valid and enforceable charges against both the real and personal property of the Debtor and that the security of the City is subordinate to those of the Bank (the "LM Opinion"). The Receiver refers readers of this Fourth Report to its Supplementary First Report, specifically Page 6, Section 4.0 for its detailed summary of the Bank's security. Attached hereto as **Exhibit "O"** is the Supplementary First Report, without Exhibits.

The Bank holds security over the Project in the form of a first mortgage and based on the LM Opinion the security is valid and enforceable. The indebtedness to the Bank as at March 11, 2010, under its first mortgage is \$5,526,748.07. Attached hereto as **Exhibit "P"** is a current payout statement. The Receiver understands that as of the date of this Fourth Report, the Bank has not reached a settlement with either the 2007 or the 2008 Lien Holders. The Receiver's legal counsel, LM, has written to legal counsel for the respective Lien Holders and the Bank, to inquire whether any parties would like the Receiver to attempt to assist in the discussions, and to advise that, it is otherwise the Receiver's intention to recommend to this Honourable Court that the Receiver be authorized to pay into Court the net receivership funds on hand after payment of the final approved fees and costs of the Receiver and LM and that after making such payment, the Receiver be discharged.

Attached as **Exhibit "Q"** is a copy of the LM's most recent letter to the parties on the service list dated March 4, 2010, advising of the Receiver's position as indicated above.

No party has contacted the Receiver or LM advising that they believe that it would be helpful for the Receiver to assist in discussions.

4.5 The City –

The City is the second mortgagee of the Project. Attached hereto as **Exhibit “R”** is a summary provided by the City to the Receiver, showing advances to the Debtor totalling \$1,101,207.00. The City previously took the position that its security ranks either in priority to or *parri passu* with the Bank’s security. The Receiver’s current understanding is that the City is no longer advancing these positions. Attached hereto as **Exhibit “S”** is LM’s letter to the City’s legal counsel, Mr. R. Weston of Feltmate Delibato Heagle LLP, and Mr. Weston’s email reply advising that the City is not disputing the priority.

On March 16, 2010, Mr. Weston sent an email to LM indicating that the City will now be filing material, after the Receiver serves and files its Motion Record containing this Fourth Report, in order to assert a claim in priority over the claim of the Bank.

4.6 The Respondent –

Throughout the receivership proceedings Mr. Ganatra, the principal of the Debtor, has made both oral and written submissions to this Honourable Court in opposition of the relief sought by the Receiver on its motions. The Receiver’s understanding is that the basis of Mr. Ganatra’s opposition revolves mainly around his past experiences with and his perception of the Bank’s conduct. Mr. Ganatra has not been represented by counsel throughout the proceedings and the Receiver has instructed LM not to object to his submissions.

On March 4, 2010, LM received by facsimile, without exhibits or enclosures an affidavit sworn by Mr. Ganatra on that same date (the “**Ganatra Affidavit**”). On March 8, 2010, a 9:30 AM

adjournment hearing was scheduled before the Honourable Mr. Justice Cameron. Mr. Ganatra did attend at that hearing and supplied LM and this Honourable Court with clerical amendments that were to be read in conjunction with the Ganatra Affidavit. The Ganatra Affidavit will be discussed in greater detail in section 5.0 below.

4.7 Unsecured Creditors –

Attached hereto as **Exhibit “T”** is a listing of parties that the Receiver believes may have an unsecured claim against the Debtor. The Receiver cautions that this listing is tentative and subject to change, and only lists those parties the Receiver is aware of. As the secured creditors will suffer a shortfall, there are no funds to distribute to the unsecured creditors and therefore running a claims bar process would be an unnecessary expense. Attached hereto as **Exhibit “U”** is a copy of the Receiver’s letter dated March 10, 2010 to all potential unsecured creditors known to the Receiver and not already on the service list for these proceedings. Those parties who requested service were served and are noted on the service list for this motion.

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5.0 THE GANATRA AFFIDAVIT

The bulk of the Ganatra Affidavit either addresses Mr. Ganatra's past dealings with the Bank and his opinions regarding the Bank's conduct towards the Debtor or are irrelevant to these receivership proceedings, given the various approvals obtained by the Receiver from this Honourable Court. The Receiver will not respond to each and every point raised in the Ganatra Affidavit. However where matters concerning the conduct of the Receiver or the receivership administration are raised the Receiver believes it is important to specifically address those points.

5.1 *Allegations that the Receiver, the Bank and Pelican Woodcliff Inc. ("PWI") were in collusion*

In paragraphs 11.1, 11.2, 15.2 and 16 of the Ganatra Affidavit, Mr. Ganatra alleges that the Bank's ultimate goal was to have the Project sold for as little as possible through an alleged collusion between itself, PWI and the Receiver so that the Bank should suffer a shortfall and have to pursue a claim against Mr. Ganatra on his personal guarantee. The statements made by Mr. Ganatra are false, misleading and inflammatory.

The Receivership Order allowed the Receiver to retain consultants, and the Receiver sought the specific approval of this Honourable Court to enter into the consulting contract retaining PWI. This approval was given in the First Supplement Approval Order (Exhibit C to this report). That order is a valid and subsisting order granted after the Court heard submissions from, *inter alia*, Mr. Ganatra, and that order has not been appealed. In making application for approval for the Receiver to enter into the contract retaining PWI, the Receiver disclosed in the First Report:

“PWI was known to both ISI and ICICI prior to the appointment of the Receiver.”⁴

Attached as **Exhibit “V”** is a copy of the Court approved PWI consulting agreement entered into by the Receiver.

5.2 Allegations that the Receiver’s sales process was designed to pay PWI a commission

In paragraph 16 of the Ganatra Affidavit it is alleged that the Sales Process, as approved by this Honourable Court as part of the Second Approval Order (Exhibit D to this report) was faulty and was skewed to pay PWI a commission. The Receiver confirms that the retainer agreement referred to above, which was included as Exhibit C to the First Report and is included as Exhibit V to this Fourth Report and was approved for the Receiver to enter into by the First Supplement Approval Order, is the only contract in place between the Receiver and PWI. That contract does not allow for PWI to receive any payment as a commission.

Rather, it allows for PWI to be paid at agreed upon hourly rates for the level of staff used and the Receiver has always included PWI’s dockets in its reporting to this Honourable Court and has always sought approval of PWI’s fees and activities as part of seeking approval of the actions, activities, disbursements and reports of the Receiver. To date this Honourable Court has issued several orders approving *inter alia* the reports of the Receiver, which includes the accounts of PWI.

Mr. Ganatra has been in attendance in Court for all such approval hearings, has made submissions to the Court and has not appealed any of the valid and subsisting orders approving

⁴ See Section 4.0, page 9 of the First Report.

the reports of the Receiver, including, the accounts of PWI.

5.3 *Allegations that the Receiver conspired with the Bank in an attempt to minimize the realization and that the Receiver's sales process was faulty*

In paragraphs 3.5, 4.3, 4.4, 14, 15, 15.1, 16, and 18 of the Ganatra Affidavit, Mr. Ganatra alleges that the Receiver either of its own accord or in collusion with the Bank deliberately employed tactics to minimize the realization of the Project. The statements made by Mr. Ganatra are false, misleading and inflammatory.

The Receiver advises that it undertook the sales process as approved by this Honourable Court in the First Approval Order which is a valid and subsisting order that the Receiver advises has not been appealed. Furthermore, the price obtained through the Sales Process as described in the Third Report was supported by an independent appraisal conducted by Pocrnic Realty Advisors Inc. Attached hereto as **Exhibit "W"** is a copy of the summary contained in the Pocrnic Appraisal indicating that the value of the Project as of the date of the appraisal was \$2 million.

Furthermore, the ultimate sale of the Project to J. Kara Capital Corp., through a Court supervised amended sales process, was consented to by all parties, including Mr. Ganatra and the final sale was approved as part of the Third Approval Order which remains a valid and subsisting order that has not been appealed.

5.4 *Allegations that the Receiver intended to protect the interests of Canlight and that the Receiver knew that Canlight would be the ultimate buyer*

The statements made in paragraphs 16.1 and 16.2 of the Ganatra Affidavit are false, misleading and inflammatory. The Receiver advises that prior to the commencement of these proceedings, the Receiver has never had any prior dealings with Canlight.

Canlight, amongst others, participated in a Court supervised sales process and adhered to the Court approved Terms and Conditions of Sale. The result of that sales process was that Canlight had submitted the highest and best offer for the purchase of the Project and consequently, the Receiver's recommendation to the Court was that the Canlight offer to purchase be approved.

At the time the Receiver attended in Court to obtain approval for such recommendation, a higher offer was brought to Court by legal counsel for the ultimate purchaser. As a result of discussions held that day in Court, all parties, including Mr. Ganatra, consented to a modified Court supervised sales process. That modified sales process produced a better offer that the Receiver then recommended to the Court for approval. Upon hearing submissions of all parties, including Mr. Ganatra, who did not object to the sale to the Purchaser, the sale to the Purchaser was approved.

5.5 *The Respondent's request to have Mr. Ganatra's fees approved*

The Receiver opposes this request made in point 19, paragraph 5 of Mr. Ganatra's affidavit. The Receivership Order requires the Debtor to provide certain assistance to the Receiver. The Receiver has never engaged Mr. Ganatra or Ganatra Holdings Inc. to perform any services on behalf of the Debtor or on behalf of the Receiver.

6.0 DISTRIBUTION AND TERMINATION OF THE RECEIVERSHIP

Given the positions taken by the various stakeholders, as described herein, the Receiver currently has insufficient information to rely upon in order to recommend to this Honourable Court a proposed final distribution. The Receiver reports that it currently also has insufficient

documentation to be of direct assistance to the stakeholders in attempting to reach resolution on the Lien Holder issues described above.

6.1 Balance of the Funds Held In Trust -

As a settlement between the Bank and both the 2007 and the 2008 Lien Holders has not been reached, the Receiver is of the opinion that its continuing appointment will not add any further value to the resolution between the parties and may not be required. On March 4, 2010, the Receiver canvassed the parties on the service list with respect to their desire to have the Receiver remain involved in a mediation role. The Receiver is currently of the belief that a trial of the issues may be required to determine entitlement as to priority and quantum. As such the Receiver recommends that it proceed to pay its approved final fees and those of LM, not already advanced by way of interim draw, from funds in its trust account, as detailed below:

- final Fees of the Receiver of \$13,182.08 plus the estimate to complete of \$13,438 (inclusive of GST); and
- LM's estimate of fees to complete of \$15,907.00 (inclusive of GST)

The Receiver recommends that the balance of the funds held in trust, after payment of the above amounts, being the amount of \$2,001,645.10, plus interest earned net of bank charges after the date of this Fourth Report, be paid into Court, to be distributed by such further Order of the Court that may be made. The Receiver also seeks its discharge and termination of the receivership once the final amount is paid into Court.

If directed by the Court, the Receiver and LM are prepared to assist the parties by taking carriage of the determination of the rights of the Lien Holders, ICICI and the City and reporting its

recommendations to this Honourable Court as to the settlement of these issues and distribution of the remaining funds.

7.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

Attached as **Exhibit "X"** is the Receiver's Statement of Receipts and Disbursements for the period November 12, 2008 to March 15, 2010, indicating funds on hand as of March 15, 2010 in the amount of \$2,044,172.18.

8.0 FEES AND DISBURSEMENTS OF THE RECEIVER

Attached hereto as **Exhibit "Y"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from September 1, 2009 to March 15, 2010 in the amount of \$68,373.21 (inclusive of GST). To date, the amount of \$55,191.13 has been advanced on account of these fees and disbursements.

Should the Court concur with the Receiver's recommendation of terminating the receivership, the Receiver estimates its final fees for time incurred subsequent to March 17, 2010 to be \$13,438 (inclusive of GST), representing 40.5 hours of time, which is also referenced in Section 6.1, above.

9.0 FEES AND DISBURSEMENTS OF LM

Attached hereto as **Exhibit "Z"** is the Affidavit of Mr. Aaron Rousseau of LM, attesting to the fees and disbursements of LM for the period from September 1, 2009, to February 28, 2010 in the amount of \$70,672.55 (inclusive of GST). The full amount has been advanced on account of these fees and disbursements.

Should the Court concur with the Receiver's recommendation of terminating the receivership, LM estimates its final fees for time incurred subsequent to February 28, 2010 to be \$15,907, which has been included in the figure in Section 6.1 above.

10.0 FEES AND DISBURSEMENTS OF PWI

Attached hereto as **Exhibit "AA"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of PWI for services provided at the request of the Receiver for the period from September 1, 2009 to October 9, 2009 in the amount of \$12,303.47 (inclusive of GST). PWI has been paid in full for all services rendered to the Receiver following the closing of the Sales Transaction and the related housekeeping matters. No further services from PWI have been required.

11.0 OTHER MATTERS

The Second Approval Order (attached hereto as Exhibit "D") directed certain deposit funds held in trust by the Company's solicitor, Burns Vasan Argiropoulos LLP ("**Burns Vasan**"), as of the date of the Receivership Order, arising from units sold by the Company prior to that date, to be returned to the respective proposed condominium unit purchasers.

Attached hereto as **Exhibit "BB"** is a copy of the letter of Mr. R. S. Vasan, Barrister and Solicitor dated March 15, 2010, formerly of Burns Vasan, regarding the distribution of deposit funds.

12.0 CONCLUSION AND RECOMMENDATIONS

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

1. the actions and activities of the Receiver as described in this Fourth Report;
2. the professional fees and disbursements of the Receiver from September 1, 2009 to March 15, 2010, and the estimate to complete the administration in the amount of \$13,438, as contained in this Fourth Report;
3. the professional fees and disbursements of LM, from September 1, 2009 to February 28, 2010 and the estimate to complete the administration in the amount of \$15,907, as contained in this Fourth Report;
4. the professional fees and disbursements of PWI as contained in this Fourth Report;
5. the Receiver's recommendation approving that the Receiver pay the net amount remaining in the amount of \$2,001,645.10, be paid into Court for distribution by such further Order of the Court;
6. the Receiver's recommendation that it be discharged once the funds have been paid into Court; and
7. such other advice and direction from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

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All of which is respectfully submitted at Toronto, Ontario this 17th day of March, 2010.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity

Per:



President

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

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

THE HONOURABLE MADAM)
JUSTICE PEPALL)
WEDNESDAY, THE 12th DAY
OF NOVEMBER, 2008

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s. 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43
and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

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

ON READING the affidavit of Lionel Meunier, sworn September 4, 2008 and the Exhibits thereto, and on hearing the submissions of counsel for the Bank, no other parties appearing although duly served as appears from the affidavit of service of Fiorella Sasso sworn September 10, 2008, and on reading the consent of Smith to act as the Receiver, *the City of Hamilton + from 1539304 custans inc. 87P*

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed ~~\$800,000~~ ^{200,000} (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. 8UP

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

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

GENERAL

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

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

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



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2008

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Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

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

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2008.

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

Per: _____

Name:

Title:

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

GOWLING LAFLEUR HENDERSON LLP

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

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

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

Solicitors for the Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 26TH DAY
JUSTICE PEPALL.) OF FEBRUARY, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed interim receiver and receiver and manager (the "Receiver") of all the assets, undertaking and property of 1539304 Ontario Inc. (the "Debtor"), for an order, *inter alia*, approving the First Report of the Receiver dated February 20, 2009, (the "First Report") and the actions and activities of the Receiver as detailed therein, and for an order approving the sales process outlined in the First Report (the "Sales Process") in relation to the assets, undertaking and property of the Debtor was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver and the exhibits thereto, filed, and upon hearing the submissions of counsel for the Receiver, *ICICI Bank Canada, the City of Hamilton + Mr Ganatra on behalf of 1539304 Ontario Inc.* and no one appearing for the other parties

served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of Deborah Russell sworn February 20, 2009:

SERVICE

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

STP

FIRST REPORT

2. THIS COURT ORDERS that the First Report and the actions of the Receiver as

reported therein be and are hereby approved *with exception of approval of the PwI contract which is adjourned to be addressed before me on March 10, 2009 + without prejudice to 1539304 customer inc*

STP

3. THIS COURT ORDERS that the Receiver's fees and disbursements from November 13, 2008 to February 15, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from November 11, 2008 to December 17, 2008 and from January 5, 2009 to January 30, 2009, all as detailed in the First Report, be and are hereby approved.

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

SALE PROCESS

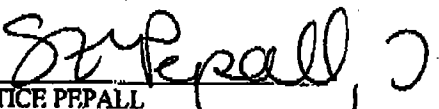
5. THIS COURT ORDERS that the sale process as described in the First Report and as specifically described in Exhibit "F" to the first Report and procedures and conditions contained therein including the Terms and Condition of Sale at Exhibit "G" to the First Report

(collectively, the "Sale Process") is approved, and the Receiver is authorized and directed to implement and to take all steps necessary or desirable to complete and fulfill all requirements, terms, conditions and steps contemplated therein, and any information received by the Receiver or its respective directors, officers, counsel, agents, professional advisors or employees related to or arising from the Sale Process shall be kept confidential and be utilized only for the purposes of the Sale Process and for no other purpose.

6. **THIS COURT ORDERS** that the confidentiality agreement to be executed by all prospective purchasers seeking to participate in the Sales Process, attached as Exhibit "F" to the First Report, is hereby approved.

FUNDING OF THE RECEIVERSHIP

7. **THIS COURT ORDERS** that the Receiver's authority to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon it as interim receiver and receiver and manager of the Debtor and the Receiver's Borrowing Charge, both as set out in paragraph 20 of the Order Appointing the Receiver dated November 12, 2008, are hereby amended to increase the Receiver's authority to borrow monies and the Receiver's Borrowing Charge to \$450,000.


JUSTICE PEPALL

BETWEEN:

ICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

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

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

ORDER

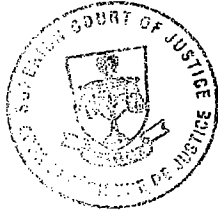
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Lawyers for Ira Shalh Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.



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

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

THE HONOURABLE MADAM)
JUSTICE PEPALL)
) THURSDAY, THE 10TH DAY
) OF MARCH, 2009
)

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed interim receiver and receiver and manager (the "Receiver") of all the assets, undertaking and property of 1539304 Ontario Inc. (the "Debtor"), for an order: (a) approving the Supplement to the First Report of the Receiver dated March 4, 2009 (the "Supplementary Report") and the actions and activities of the Receiver as detailed therein, and (b) approving the engagement of Pelican Woodcliff Inc. ("PWI") as consultant pursuant to the engagement letter dated November 17, 2008 contained in the First Report of the Receiver dated February 20, 2009, (the "First Report"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Supplementary Report of the Receiver and the exhibits thereto and the First Report and the exhibits thereto, filed, and upon hearing the submissions of counsel for

the Receiver, ICICI Bank Canada and the City of Hamilton and Mr. Ganatra on behalf of the Debtor, and no one appearing for the other parties served with the Receiver's Supplementary Motion Record, although duly served as appears from the affidavit of service of Aaron Rousseau sworn March 5, 2009:

1. **THIS COURT ORDERS** that the Supplementary Report and the actions and activities of the Receiver as reported therein be and are hereby approved.
2. **THIS COURT ORDERS** that the engagement of PWI as consultant by the Receiver pursuant to the engagement letter dated November 17, 2008, as contained in the Supplementary Report and the First Report be and is hereby approved.



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

MAR 10 2009

PER/PAR: *JN* Joanne Nicoara
Registrar, Superior Court of Justice

BETWEEN:

ICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

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

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

ORDER

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Fax: (416) 365-1719

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

~~SCHEDULE A~~

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

THURSDAY, THE 11TH DAY
OF JUNE, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

ORDER

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

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

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

SERVICE

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

STP

SECOND REPORT

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

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

RETURN OF DEPOSITS

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

FUNDING OF THE RECEIVERSHIP

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

- 3 -

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

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

Attest, J.

APPENDIX "A"

TRINITY LANDING

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

500P

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

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton-Wentworth of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial

legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

Oct 5, 2009 Peter A. Cumming J.

Schedule A – Form of Receiver’s Certificate

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

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

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

RECEIVER’S CERTIFICATE

RECITALS

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

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

certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____.

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

Per: _____

Name:

Title:

Schedule "B" - Purchased Assets – Real Property

Legal Description:

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

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

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

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

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

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

General Permitted Encumbrances

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

Specific Permitted Encumbrances

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

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

~~SCHEDULE B~~

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

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

THE HONOURABLE
JUSTICE

)
)
)
)

MONDAY, THE 5TH DAY
OF OCTOBER, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc. in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of 1539304 Ontario Inc. (the "Debtor") for an order, *inter alia*, approving the Third Report of the Receiver, dated September 17, 2009 (the "Third Report"), the Supplementary Third Report of the Receiver, dated September 22, 2009 (the "Supplementary Third Report") and the Second Supplementary Report of the Receiver, dated October 2, 2009 (the "Second Supplementary Third Report"), and the actions and activities of the Receiver as detailed therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report, the Supplementary Third Report and the Second Supplementary Third Report, and the exhibits thereto, filed, and on hearing the submissions of counsel for the Receiver, ICICI Bank Canada, the City of Hamilton, Canlight Realty

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

SERVICE

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

THIRD REPORT

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

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

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

Upon the filing of the Receiver's Certificate that vests title, the sealing order is lifted.

Oct 5, 2009

Peter A. Cumming J.

BETWEEN:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

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

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

ORDER

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

Leslie A. Wittlin
Law Society Registration #14629M
Tel: (416) 307-4087

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

Aaron Rousseau
Law Society Registration #53833E
Tel: (416) 307-4081
Fax: (416) 365-1719

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

Ira Smith

TRUSTEE & RECEIVER INC.

Suite 6-167 Applewood Crescent, Concord, Ontario Canada L4K 4K7

Telephone: (905) 738-4167 – Fax: (905) 738-9848

Web site: www.irasmithinc.com

31-455723

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

INTERIM REPORT NUMBER 2 OF THE RECEIVER AND MANAGER
under subsection 246(2) of the Bankruptcy and Insolvency Act

The Receiver and Manager hereby delivers its interim report number 2:

1. By Order of the Ontario Superior Court of Justice (Commercial List) dated the 12th day of November, 2008 the undersigned Ira Smith Trustee & Receiver Inc. ("ISI") became the Interim Receiver and Receiver and Manager, in respect of the property assets and undertakings of 1539304 Ontario Inc., an insolvent company that is described below:

The Receiver has realized upon the sole known asset, namely, a condominium under development located at 80 King William Street, Hamilton, Ontario. The details of the asset, the sales process and the sale have been described at length in the Receiver's reports to Court, which are available from the Receiver's website.

The Receiver is unable to and does not express an opinion on any other assets and liabilities of the company apart from the above noted assets and the liabilities indicated hereafter.

2. The undersigned became the Receiver by virtue of being appointed by the Court.
3. The undersigned took possession or control of the property on the 13th day of November, 2008.
4. Since issuing interim report number 1, the undersigned has:
 - a) sought direction from the Court and obtained an Order directing the lawyer who held deposits in-trust to return them to the respective depositors;
 - b) continued with the Court approved sales process previously reported on;
 - c) reported to the Court regarding the results of the sales process (all Court documents are available from the Receiver's website);
 - d) followed the Court's Endorsement, modifying the sales process through which an offer to purchase the asset was obtained;
 - e) received approval of the Court to complete the sales transaction;
 - f) completed the closing as contemplated in the offer to purchase;

- g) payment of all costs relating to occupancy, insurance and the receivership;
- h) repayment of all funding for the receivership, obtained by way of Receiver's Certificates, inclusive of interest and fees; and
- i) holds the net proceeds in an interest bearing trust account.

5. The actions still to be taken by the Receiver are as follows:

- a) liaise with the first mortgagee regarding potential lien claims that may rank in priority to its security;
- b) facilitate discussion with stakeholders as required in preparation for reporting to the Court with respect to distribution;
- c) prepare its final report to the Court regarding distribution of the proceeds of the asset sale; and
- d) obtain its discharge after complying with an Order of the Court with respect to point 5(c).

6. We attach the Receiver's interim statement of receipts and disbursements to date.

DATED at Concord, Ontario, this 1st day of December, 2009

Yours truly,

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity

Per:


Brandon Smith
Estate Manager

Ira
Smith
TRUSTEE & RECEIVER INC.

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

**INTERIM REPORT NUMBER 2 OF THE RECEIVER AND MANAGER
under subsection 246(2) of the Bankruptcy and Insolvency Act**

Mailing List

The Official Receiver
Office of the Superintendent of Bankruptcy
25 St. Clair Avenue E, 6th Floor
Toronto, Ontario M4T 1M2

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

Larry Woods, O.L.S.
L.G. Woods Surveying Inc.
334 Hatt Street,
Dundas, ON L9H 2H9

ICICI Bank Canada
150 Ferrand Drive, Suite 1200
Toronto, ON M3C 3E5
Attn: Mr. Lionel Meunier

The City of Hamilton
21 King Street West, 12th Fl
Hamilton ON L8P 4W7
Attn: Mr. D. Fisher

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

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

RECEIPTS

| | |
|--|--------------|
| Advance from ICICI Bank - Receiver's Certificate No. 1 | \$ 50,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 2 | 50,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 3 | 100,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 4 (Cancelled) | - |
| Advance from ICICI Bank - Receiver's Certificate No. 5 | 41,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 6 | 110,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 7 | 29,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 8 | 130,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 9 | 70,000.00 |
| Deposits re: Offers to Purchase | 520,101.00 |
| Sale of Assets | 2,790,808.00 |
| Occupancy Costs Received from Purchaser | 5,372.25 |
| Interest | 546.09 |

TOTAL RECEIPTS

DISBURSEMENTS

| | |
|--|------------|
| Receiver's Fee | 156,841.86 |
| Pelican Woodcliff Inc. | 171,757.65 |
| Solicitor to the Receiver (Lang Michener LLP.) | 160,655.84 |
| Pinchin Environmental | 19,475.11 |
| Romanov Architect | 7,035.00 |
| Appraisal | 4,687.50 |
| Insurance | 33,674.00 |
| Property Tax (inclusive of arrears) | 27,655.92 |
| Security | 17,279.25 |
| Utilities | 30,972.56 |
| Electrical Repairs | 1,810.73 |
| Harold Epp - Emergency & Contracted Work | 7,565.00 |
| Fees paid to the Official Receiver | 70.00 |
| GST paid | 31,041.06 |
| Provincial sales tax paid | 2,694.72 |
| Locksmith | 750.00 |
| Newspaper Ads/Graphic Artist | 7,492.08 |
| Mould Removal | 36,382.00 |
| Bank Charges | 263.27 |
| Returned Deposits (incl interest earned upon) | 210,013.88 |
| Returned Advances from ICICI Bank | 580,000.00 |
| Interest and Fees Paid on Advances from ICICI Bank | 20,127.77 |
| Break Fee Paid | 290,151.50 |

TOTAL DISBURSEMENTS

AMOUNT ON HAND AS AT DATE 31-03-2009 2,078,531.64

STATEMENT OF ADJUSTMENTS

Ira Smith Trustee & Receiver Inc. (the "Receiver")
 Sale of lands and premises (the "Property") municipally known as
 80 King William Street, Hamilton to
 J. Kara Capital Corp. (the "Purchaser")

Adjusted as at September 30, 2009

SALE PRICE:

Allow Receiver \$3,101,010.00

DEPOSIT:

Held by Receiver
 To be paid to Receiver on Closing
 Allow Purchaser \$310,101.00

REALTY TAXES:

Roll No. 020-153-50130-0000
 2009 Taxes: \$15,610.68
 Receiver's share 272 days
 @42.77 per day = \$11,633.44
 Allow Receiver \$3,977.24

Note: \$3,836.96 due on September 30, 2009
 will be paid out of closing proceeds as per
 funds re-direction

UTILITIES:

Meters to be read at or before closing
 No Adjustment

OTHER

Vendor's expenses from October 1, 2009
 to October 15, 2009:
 Security: \$803.25
 Insurance: \$2,062.80
 Property Management: 2,506.20
 Allow Receiver \$5,372.25

BALANCE DUE ON CLOSING: \$2,800,258.49

Payable in accordance with direction

TOTAL:

\$3,110,359.49

\$3,110,359.49

1539304 ONTARIO INC.

Unit 101, 1330 Gerrard Street East, Toronto, Ontario M4L 1Z1
 Telephone: 416-778-7062 Fax: 416-778-5442

October 2, 2006

Harold Epp
 1604249 ONTARIO LTD.
 o/as EPP Contracting
 2406 Regional Road #1
 St. Catharines, ON - L2R 6P7

Attn: Harold Epp

Dear Sir,

Re: CCDC2 Construction Contract dated January 21, 2004 for \$3,000,000.00 (Amended to \$3,338,000.00) for Construction of Phase I & Phase II (50 Units) Condominium Trinity Landing, 80 King William Hamilton

(1) You have advised us due to circumstance beyond your control, you are unable to meet the stipulated substantially completion date before December 31, 2006 for the Phase I and therefore, you wish to resign and to terminate the above captioned contract, subject to our finding a suitable replacement general contractor, who would complete the balance of the Phase I & Phase II work for the Balance Contract Value as stipulated time period of the contract.

(2) Please be advised we are now in process of finalizing with Building Technologist Specialists Inc. (88 Vaughan Road, Suite 1B, Welland, Ontario - L3B 5Y1) to take over the balance of the above captioned contract work at the balance of the contract value subject to you agreeing to terminate your above captioned contract as on or before October 15, 2006.

(3) Assuming this termination of the contract on or before October 15, 2006 suits your requirements as well. We request that you sign the duplicate copy of this letter, which signifies your acceptance of termination of the above captioned contract on or before October 15, 2006 and we are to proceed with the finalizing the agreement with BTS (Building Technologist Specialists). You have agreed as well that you will not proceed to put any construction lien & protect us from your sub trades lien as well.

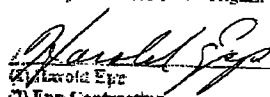
Thank you,

Yours truly,
 1539304 Ontario Inc.


 H. Ganatra

(1) We accept the terminate of the contract on or before October 15, 2006.

(2) We accept we waive our lien rights.


 Harold Epp
 EPP Contracting
 (3) 1604249 Ontario Inc.

Standard construction document CCDC

2

1994

Stipulated price contract

Project: 1539304 Ontario Inc.
Trinity Landing
80 King William Street
Hamilton, Ontario

Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 - 1994 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.



Canadian construction documents committee Reprint 1999

AGREEMENT BETWEEN OWNER AND CONTRACTOR
For use when a stipulated price is the basis of payment

This Agreement made on the 15 day of October in the year 2006

by and between

1539304 Ontario Inc.

hereinafter called the "Owner"

and

Building Technology Specialists Inc.

hereinafter called the "Contractor"

The Owner and the Contractor agree as follows:

ARTICLE A-1 THE WORK

The Contractor shall:

- 1.1 perform the Work required by the Contract Documents for
Completion of Work for Building
Condo Conversion

located at

80 King William Street
Hamilton, Ontario

which have been signed by the parties, and for which

Romanov & Romanov Architects

is acting as and is hereinafter called the "Consultant" and

- 1.2 do and fulfill everything indicated by this Agreement, and

- 1.3 commence the Work by the 21 day of October in the year 2006 and, subject to
adjustment in Contract Time as provided for in the Contract Documents, attain Substantial Performance
of the Work, by the 30 day of April in the year 2007 .



CCDC 2 - 1994 File 00502

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ARTICLE A-2

- 2.1 The *Contract* supersedes all prior negotiations, representations, or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.
- 2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

ARTICLE A-3

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement - THE WORK:

- Agreement Between Owner and Contractor
- Definitions
- The General Conditions of the Stipulated Price Contract
 - Attached 'Schedule A' General Scope of Work
 - Attached 'Schedule B' Requirements to be provided by 1539304 Ontario Inc.
 - Attached 'Schedule C' Detailed Payment Terms.

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. Supplementary Conditions; Specifications, giving a list of contents with section numbers and titles, number of pages, and date; Drawings, giving drawing number, title, date, revision date or mark; Addenda, giving title, number, date)



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ARTICLE A-4

4.1 The Contract Price, which excludes Value Added Taxes, is:

One Million Eighty Three Thousand Two Hundred Fifty

dollars

and 0 cents. \$ 1,083,250.00

4.2 Value Added Taxes (of 6 %) payable by the Owner to the Contractor are:

Sixty Four Thousand Nine Hundred Ninty Five

dollars

and 0 cents. \$ 64,995.00

4.3 Total amount payable by the Owner to the Contractor for the construction of the Work is:

One Million One Hundred Forty Eight Thousand Two
Hundred Forty Five

dollars

and 0 cents. \$ 1,148,245.00

4.4 All amounts are in Canadian funds.

4.5 These amounts shall be subject to adjustments as provided in the Contract Documents.

CCDC 2 - 1994 File 00502

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ARTICLE A-5 PAYMENT

- 5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of Ten (10 %) the *Owner* shall in Canadian funds:
- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payment, and
 - .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
 - .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.
- 5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 - INSURANCE.
- 5.3 Interest
- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at of Three percent (3 %) per annum above the bank rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The bank rate shall be the rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the chartered banks.
 - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the amount of any claim settled pursuant to Part 8 of the General Conditions - DISPUTE RESOLUTION from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.



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ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES

- 6.1 Notices in writing between the parties or between them and the *Consultant* shall be considered to have been received by the addressee on the date of delivery if delivered to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended by hand or by registered post; or if sent by regular post, to have been delivered within 5 *Working Days* of the date of mailing when addressed as follows:

The Owner at

Unit 1330 Gerrard Street East, Toronto Ontario, M4L 1Z1
Tel: (416) 778-7062 Fax: (416) 778-5442

The Contractor at

82 Vaughan Rd., Welland Ontario, L3B 5Y1
Tel: (905) 714-1472 Fax: (905) 714-4669

The Consultant at

375 Parkside Drive, Toronto Ontario, M6R 2Z6
Tel: (416) 766-8750 Fax: (416) 766-8760

ARTICLE A-7 LANGUAGE OF THE CONTRACT

- 7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English language shall prevail.

- Complete this statement by striking out inapplicable term.

- 7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

- 8.1 The *Contract Documents* are to be read into and form part of this Agreement and the whole shall constitute the *Contract* between the parties, and subject to the law and the provisions of the *Contract Documents* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

CCDC 2 - 1994 File 00502

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5


In witness whereof the parties hereto and by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

OWNER

1539304 Ontario Inc.

signature

Khan Khokhar
President
name and title of person signing

signature

Hasumukh Gariatra
Secretary Treasurer
name and title of person signing

CONTRACTOR

Building Technology Specialists Inc.

signature

Michael Losier
President
name and title of person signing

signature

Shawn Kehoe
Secretary Treasurer
name and title of person signing

WITNESS

signature

MOHAMMAD FAZIL
name and title of person signing

WITNESS

signature

name and title of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Contractor requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
 - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

CCDC 2 - 1994 File 00502

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BUILDING **T**ECHNOLOGY **S**PECIALISTS INC.

Schedule 'A' - General Scope of Work

October 15, 2006

Phase # 1

1. Caulk existing windows on first three floors complete with backer rod and clean frames of any stucco spatter.
2. Supply and erect sidewalk walkway scaffolding complete with roof planks and plywood top plate to protect pedestrians during construction of the addition.
3. Clean up building site of debris and construction material no longer required.
4. Supply and erect stair access scaffold on the exterior of building during framing.
5. Install kitchen cabinets as required as provided by the owners.
6. Co-ordinate the installation of the remaining electrical and mechanical work.
7. Co-ordinate and supervise installation of fire alarm system, communication system and intercom system.
8. Complete required trim work in remaining unit along with furnace access doors.
9. Supply and install, including but not limited to, items 9 to 24 for all units of Phase #1 to provide unit occupancy as issued by the City Of Hamilton.

Phase # 2

10. Demolition of existing mechanical room on roof complete with removal and disposal of the material.
11. Remove existing roof and apply temp. roof during construction.
12. Supply and erect complete structural stud framing for both floor including floor joists roof assembly and all required bracing.
13. Supply and install E.I.F.S. wall systems complete with moldings and detail window returns as indicated on the drawings.
14. Supply and install new addition concrete floor system complete with steel decking and provide polish floor finish with cure and seal applied.
15. Supply and install ceramic tile flooring in common corridor and in each units kitchen, power room, bathroom, and hallway as required.
16. Supply and install tile wall covering for the kitchen backsplash, shower and bath tub.
17. Supply and apply 1 coat tinted primer and 2 coats finish paint in each unit based on 2 colors only. Ceiling to be white in color.
18. Supply and install all drywall and fire rating required for the building addition tape coated and ready for paint application.



BUILDING
TECHNOLOGY
SPECIALISTS INC.

Schedule 'A' - General Scope of Work

Cont'd

19. Supply and install standard white melamine kitchen cabinets with standard grade pre-formed countertops. An allowance of \$3,000.00 for the supply kitchen/bathroom millwork has been included.
20. Rough-in for required plumbing fixtures and mechanical items based on the lay-out in the drawings. We have assumed that all services are located in the floor directly below the building addition and can be tied in.
21. Supply and install base model plumbing fixtures for kitchen and bathrooms with moen standard grade faucets.
22. Rough- in for electrical requirements based on the lay-out on the drawings. We have assumed that adequate service will be provided from the floor directly below the building addition.
23. Supply and install window systems as required and to match existing window configuration as indicated on the drawings.
24. Supply and install new building addition roof system complete with metal flashings, trims and downspouts as required by the drawings.
25. Supply and install all building insulation and vapour barrier as required on the provided drawings.
26. Supply and install, including but not limited to, items 9 to 24 for all units of Phase #2 to provide unit occupancy as issued by the City Of Hamilton.

END



BUILDING
TECHNOLOGY
SPECIALISTS INC.

Schedule 'B' - To Be Provided By 1539304 Ontario Inc.

October 15, 2006

1. Provide back up for the work completed to date on Phase #2 by H.Epp Contracting and their respective sub-trades/suppliers along with confirmation of payments for these items.
2. Mortgage company confirmation letter indicating Building Technology Specialists as the 'Accepted Contractor' and a commitment letter of \$1,083,250.00.
3. Certification or confirmation of remaining amount of funds available from the City of Hamilton and details of release of the funds.
4. Priority list for individual units sold with details of upgrades. *THIS REQUIREMENT MUST BE PROVIDED TO US NO LATER THAN NOVEMBER 15, 2006 IN ORDER THAT A SCHEDULE CAN BE PROVIDED TO YOU BY November 17, 2006*
5. Payment certificate format for progress billings approved or provided by the mortgage company.

END



BUILDING
TECHNOLOGY
SPECIALISTS INC.

Schedule 'C' - Detailed Payment Terms

October 15, 2006

1. Invoices to be submitted on a bi-weekly basis and will exceed \$100,000 to be approved by the owners and consultant with-in 3 days of receipt. Invoice will be based on the work completed with in the 2 week period and indicate any deposits or pre-payments required as individual line items.
2. Payment is to be received no later than 3 business days from advance of funds from mortgage.

END



| 80 KING WILLIAM STREET | | | | | | |
|---|--------------|----------------|--------------|-------------|-----------------------|--------------|
| | BUDGET | SEPT. 8TH DRAW | TO DATE | TO COMPLETE | ICICI BUDGET INCREASE | TO COMPLETE |
| PHASE I | | | | | | |
| MOBILISATION | 37,000.00 | | 37,000.00 | 0.00 | | 0.00 |
| SUPERVISION PROJECT MOR. | 185,000.00 | 800.00 | 183,100.00 | 1,900.00 | | 1,900.00 |
| DEMOLITION CLEAN UP | 206,000.00 | | 206,000.00 | 0.00 | | 0.00 |
| SAND BLASTING | 80,000.00 | | 80,000.00 | 0.00 | | 0.00 |
| SCAFFOLDING | 25,000.00 | | 25,000.00 | 0.00 | | 0.00 |
| CONCRETE CUTTING | 60,000.00 | | 60,000.00 | 0.00 | | 0.00 |
| STRUCTURAL STEEL AND FRAMES | 40,000.00 | | 40,000.00 | 0.00 | | 0.00 |
| CORE SLAB | 30,000.00 | | 30,000.00 | 0.00 | | 0.00 |
| MASONRY | 80,000.00 | | 80,000.00 | 0.00 | | 0.00 |
| STEEL STAIRS AND RAILINGS | 69,000.00 | | 61,750.00 | 7,250.00 | | 7,250.00 |
| ROOFING | 0.00 | | 0.00 | 0.00 | | 0.00 |
| WINDOWS AND ALUM DOORS | 150,000.00 | | 150,000.00 | 0.00 | | 0.00 |
| STUCCO EXTERIOR | 85,000.00 | | 85,000.00 | 0.00 | | 0.00 |
| CEMENT FLOORS AND STAIR FILLINGS | 30,000.00 | | 30,000.00 | 0.00 | | 0.00 |
| EXT. & INT. ST. STUDS DRYWALL CEILING | 587,000.00 | 2,000.00 | 383,000.00 | 4,000.00 | | 4,000.00 |
| MECHANICAL | 110,000.00 | | 107,000.00 | 3,000.00 | | 3,000.00 |
| ELECTRICAL AND FIXTURES (\$243.00) | 189,100.00 | | 181,500.00 | 7,600.00 | | 7,600.00 |
| PLUMBING AND FIXTURES (\$277.00) | 136,300.00 | | 130,300.00 | 6,000.00 | | 6,000.00 |
| KITCHEN CAB WC VANITIES (\$1,500.00) | 104,800.00 | 1,200.00 | 88,600.00 | 39,000.00 | | 39,000.00 |
| HM DOORS FRAMES, HARDWARE | 87,000.00 | | 85,800.00 | 1,200.00 | | 1,200.00 |
| FLOORING (\$488.00) | 90,000.00 | 8,040.00 | 82,000.00 | 8,000.00 | | 8,000.00 |
| ROUGH CARPENTRY | 8,000.00 | | 8,000.00 | 0.00 | | 0.00 |
| CLOSED DOORS, TRIM | 10,000.00 | | 9,000.00 | 1,000.00 | | 1,000.00 |
| PAINTING PATCH UP WORK | 83,000.00 | 2,000.00 | 61,500.00 | 2,000.00 | 25,000.00 | 27,000.00 |
| LANDSCAPING & SITE WORK | 0.00 | | 0.00 | 0.00 | | 0.00 |
| MISCELLANEOUS | 45,000.00 | | 45,000.00 | 0.00 | | 0.00 |
| UNDERGROUND PARKING & FACILITIES | 0.00 | | 0.00 | 0.00 | | 0.00 |
| Lobby | | | | | 30,000.00 | 30,000.00 |
| Transformer | | | | | 25,000.00 | 25,000.00 |
| PHASE I SUB-TOTAL | 2,200,000.00 | 14,040.00 | 2,121,750.00 | 78,250.00 | 80,000.00 | 158,250.00 |
| PHASE II | | | | | | |
| MOBILISATION | 20,000.00 | | 20,000.00 | 0.00 | | 0.00 |
| SUPERVISION (\$2,000.00/MONTH) | 14,000.00 | 2,000.00 | 8,000.00 | 8,000.00 | | 8,000.00 |
| TEMP. FACILITIES (\$2,000.00/MONTH) | 14,000.00 | 2,000.00 | 8,000.00 | 8,000.00 | | 8,000.00 |
| MISC. DEMO, CLEAN UP (\$500.00/MONTH) | 21,000.00 | 500.00 | 20,000.00 | 1,000.00 | 25,000.00 | 26,000.00 |
| B-EXCAV & RACKELL, RET WALL SOG | 20,000.00 | | 33,000.00 | -13,000.00 | | -13,000.00 |
| B-SERVICE CONNECTION | 10,000.00 | 2,000.00 | 10,000.00 | 0.00 | | 0.00 |
| B-NEW DRAINAGE | 20,000.00 | 2,000.00 | 20,000.00 | 0.00 | | 0.00 |
| B-MECHANICAL | 3,000.00 | | 0.00 | 3,000.00 | | 3,000.00 |
| B-SPRINKLERS | 9,000.00 | | 0.00 | 9,000.00 | 15,000.00 | 24,000.00 |
| B-ELECTRICAL | 7,000.00 | | 0.00 | 7,000.00 | | 7,000.00 |
| B-O/H DOORS, HM DOORS & FRAMES | 5,000.00 | | 0.00 | 5,000.00 | 10,000.00 | 15,000.00 |
| B-DRYWALL, PAINTING MISCELLANEOUS | 4,000.00 | | 0.00 | 4,000.00 | | 4,000.00 |
| B-STRUCTURAL (BEAM 3002 TOPPING) | 15,000.00 | 5,000.00 | 5,000.00 | 10,000.00 | | 10,000.00 |
| CONCRETE FMMK BEDAN, FINISHES | 18,000.00 | | 0.00 | 18,000.00 | | 18,000.00 |
| STRUCTURAL STEEL JOISTS | 50,000.00 | | 29,000.00 | 21,000.00 | | 21,000.00 |
| STRUCTURAL METAL STUDS | 184,000.00 | 50,000.00 | 50,000.00 | 144,000.00 | | 144,000.00 |
| METAL DECK | 31,000.00 | | 0.00 | 31,000.00 | 15,000.00 | 46,000.00 |
| STEEL STAIRS & RAILING (#1, #2) | 10,000.00 | | 0.00 | 10,000.00 | 15,000.00 | 25,000.00 |
| ROUGH CARP. W. TRIM (\$1,000.00/SULLE) | 12,000.00 | | 0.00 | 12,000.00 | | 12,000.00 |
| SUITE STAIRS (\$500.00/SULLE) | 8,000.00 | | 0.00 | 8,000.00 | | 8,000.00 |
| KIT CABINETS VANITIES (\$2,000.00/SULLE) | 24,000.00 | | 0.00 | 24,000.00 | | 24,000.00 |
| METAL SPRING | 30,000.00 | | 0.00 | 30,000.00 | | 30,000.00 |
| ROOFING FLASHING RAFTERS | 83,000.00 | 10,000.00 | 10,000.00 | 43,000.00 | | 43,000.00 |
| WINDOWS SCREENS MIRRORS | 75,000.00 | | 0.00 | 75,000.00 | | 75,000.00 |
| CAULKING | 2,000.00 | | 0.00 | 2,000.00 | | 2,000.00 |
| DOORS, FR. HAROW, (\$2,000.00/SULLE) | 24,000.00 | | 0.00 | 24,000.00 | | 24,000.00 |
| STUCCO (ACRYLIC) TO EXT WALLS | 45,000.00 | | 0.00 | 45,000.00 | | 45,000.00 |
| DRYWALL INSULATION | 105,000.00 | | 0.00 | 105,000.00 | | 105,000.00 |
| FLOORING - COMMON AREAS | 3,000.00 | | 0.00 | 3,000.00 | | 3,000.00 |
| - CUITES (\$1,000.00/SULLE) | 12,000.00 | | 0.00 | 12,000.00 | | 12,000.00 |
| PAINTING | 21,000.00 | | 0.00 | 21,000.00 | | 21,000.00 |
| TOILET ACCESSORIES (\$100.00/SULLE) | 2,000.00 | | 0.00 | 2,000.00 | | 2,000.00 |
| GARBAGE DISPOSAL | 4,000.00 | | 0.00 | 4,000.00 | | 4,000.00 |
| MAIL BOXES | 10,000.00 | | 0.00 | 10,000.00 | | 10,000.00 |
| LOCKERS | 8,000.00 | | 0.00 | 8,000.00 | | 8,000.00 |
| ELEVATORS | 110,000.00 | 10,000.00 | 100,000.00 | 10,000.00 | | 10,000.00 |
| MECHANICAL - HVAC (\$2,000.00/SULLE) | 24,000.00 | | 0.00 | 24,000.00 | | 24,000.00 |
| PLUMBING ROUGH IN (\$1,000.00/SULLE) | 24,000.00 | | 0.00 | 24,000.00 | | 24,000.00 |
| PLUMBING FIXTURES (\$3,000.00/SULLE) | 6,000.00 | | 0.00 | 6,000.00 | | 6,000.00 |
| GAS (\$1,000.00/SULLE) | 12,000.00 | | 0.00 | 12,000.00 | | 12,000.00 |
| ELECTRICAL ROUGH IN - COMMON | 15,000.00 | | 0.00 | 15,000.00 | | 15,000.00 |
| ELECTRICAL ROUGH IN - SUITES (\$1,000.00) | 18,000.00 | | 0.00 | 18,000.00 | | 18,000.00 |
| ELECTRICAL FIXTURES (\$200.00/SULLE) | 3,000.00 | | 0.00 | 3,000.00 | | 3,000.00 |
| FIRE ALARM | 5,000.00 | | 4,000.00 | 1,000.00 | 20,000.00 | 21,000.00 |
| CONTINGENCY | 20,000.00 | | 0.00 | 20,000.00 | | 20,000.00 |
| PHASE II SUB-TOTAL | 1,438,000.00 | 82,500.00 | \$13,000.00 | \$28,000.00 | 100,000.00 | \$25,000.00 |
| PROJECT TOTAL | 3,338,000.00 | \$7,540.00 | 2,434,750.00 | \$83,250.00 | 180,000.00 | 1,083,250.00 |

1539034 ONTARIO INC.
TRINITY LANDING CONDOMINIUMS
80 KING WILLIAM STREET, HAMILTON, ONTARIO
INTERIM BUDGET REVIEW AND PROGRESS DRAW REPORT
No. 4

I EXECUTIVE SUMMARY

The following is a brief summary of our findings as they relate to the budget and status of the project. We have also noted any issues, which in our opinion require your attention.

(a) Project Profile

The Trinity Landing Condominiums consists of one separate building located at 80 King William Street, Hamilton. This is an existing building and formerly was used by the publisher of The Hamilton Spectator as part of its newspaper printing and publishing operation. The project involves renovations to the existing building in order to convert it into a Residential Condominium consisting of 50 residential units and 1 level below grade parking garage, providing parking for 20 cars on a site of approximately 0.35 acre. There are 3 public parking lots near the property on King William Street and Catharine Street. The proposed condominium will be a standard freehold condominium. The units will be single-family residential freehold condominium units. The project is being developed by 1539304 Ontario Inc. o/a Trinity Landing and has a gross above grade floor area of 54,543 square feet as noted in the Project Statistics shown on Romanov Romanov Architects Incorporated Drawing A0.1 dated September 14, 2005. The existing building was constructed in 1926 with heavy concrete frame structure and brick masonry exterior walls with the 3rd floor being added in 1950 of similar construction. Trinity Landing includes construction of 2 additional interconnected loft floors in light gauge steel with poured concrete floors. The exterior of the building is being refinished with painted existing brick, acrylic stucco and stained glass windows to provide plenty of natural light. The interior of the building will have finished common areas and suites as noted in the Standard Suite Features included in the Borrower's Sales Brochure.

The project is being constructed by 1712164 Ontario Limited under a CCDC 2 – 1994 Stipulated Price Contract. The project is located at 80 King William Street in the City of Hamilton, Ontario.

Mutual Gain Inc. has been retained to review Trinity Landing Condominiums hard and soft cost budgets and to provide ongoing Progress Draw Reports.

We summarize the gross floor area for Trinity Landing Condominiums as follows:

| | Number of Units | Total Gross Floor Area, S.F. |
|---------------|-----------------|------------------------------|
| First Floor | 12 | 12,861 |
| Second Floor | 13 | 12,861 |
| Third Floor | 13 | 12,861 |
| Forth Floor | 12 | 10,519 |
| Fifth Floor | Included | 5,441 |
| Totals | 50 | 54,543 S.F. |

We summarize the net saleable area for Trinity Landing Condominiums as follows:

| | Number of Units | Saleable Floor Area S. F. |
|----------------------------|-----------------|---------------------------|
| First Floor | 12 | 9,907 |
| Second Floor | 13 | 10,744 |
| Third Floor | 13 | 10,862 |
| Forth and Fifth Floor | 12 | 13,775 |
| Total Saleable Area | 50 | 45,288 S.F. |

1539034 ONTARIO INC.
TRINITY LANDING CONDOMINIUMS
80 KING WILLIAM STREET, HAMILTON, ONTARIO
INTERIM BUDGET REVIEW AND PROGRESS DRAW REPORT
No. 4

I EXECUTIVE SUMMARY

(b) Important Notes

1. The budget for the completion of Trinity Landing Condominiums totaling \$7,635,000.00 has increased by \$970,000.00 since our last Report. The budget equates to \$152,700.00 per unit or \$139.98 per square foot of gross floor area. We have included a summary of the budget increase and revised Source of Funds as Appendix F.
2. The project budget includes a contingency allowance totaling \$123,939.42. The contingency as a percentage of the net cost to complete is 5.4%, which should be adequate to complete the project.
3. The hard costs - construction budget of \$4,325,885.00, which equates to \$86,517.70 per unit or \$79.31 per square foot has increased by \$402,385.00. The hard costs - construction component of the budget covering divisions 1 to 16 inclusive totaling \$3,847,560.81 includes the cost to date and cost to complete for Phases I and II of the project, which were partially completed by the previous general contractors, H. Epp Contracting and Building Technology Specialists Inc. and are now being completed by 1712164 Ontario Limited. and includes a \$28,300.00 contingency within their contract. The balance of the budget is attributable to \$125,000.00 for appliances, \$80,000.00 for purchaser upgrades, \$110,000.00 for miscellaneous material purchases, \$116,324.19 for miscellaneous payments made by the Borrower on behalf of Building Technology Specialists Inc. and a further \$47,000.00 contingency.
4. We have reviewed a copy of the executed CCDC 2 - 1994 Stipulated Price Contract between the Borrower and Building Technology Specialists Inc. dated October 15, 2006. The Contract covers completion of Phase I of the project (which was partially completed by the previous general contractor H. Epp Contracting) and completion of Phase II of the project for the lump sum price of \$1,083,250.00 including an \$11,500.00 contingency. We included a copy of the Contract as Appendix N in the Budget Review. We note that BTS abandoned this Contract on April 22, 2007 at which time the value of completed work was valued at \$506,969.81 by Romanov Romanov Architects Incorporated. Romanov and Romanov Architects Incorporated's Certificate For Payment No. CP05147-05 is included within Appendix C.
5. We have reviewed a copy of the executed CCDC 2 - 1994 Stipulated Price Contract between the Borrower and 1712164 Ontario Limited. dated May 30, 2007. The Contract covers completion of Phase I of the project (which was partially completed by the previous general contractors, H. Epp Contracting and Building Technology Specialists Inc) and completion of Phase II of the project for the lump sum price of \$905,141.00 including a \$28,300.00 contingency. We have included a copy of the Contract as Appendix J.
6. The Lender's advance for this Progress Draw totals \$239,711.89. We have included a schedule showing the disbursement of funds at the beginning of Appendix G.
7. The City of Hamilton authorised occupancy of the Ground and 2nd floor common areas on January 26, 2007 and we included a copy of their Letter dated January 26, 2007 as Appendix H in Progress Draw Report No. 3. Occupancy of the sold suites can now commence on a suite-by-suite basis with individual inspections carried out at that time.

1539034 ONTARIO INC.
TRINITY LANDING CONDOMINIUMS
80 KING WILLIAM STREET, HAMILTON, ONTARIO
INTERIM BUDGET REVIEW AND PROGRESS DRAW REPORT
No. 4

I EXECUTIVE SUMMARY

(b) Important Notes

8. We have reviewed a copy of an Insurance Binder issued by Phoenix Eastern Insurance Brokers Inc. dated June 14, 2007. The Binder indicates Commercial General Liability coverage of \$5,000,000.00 (\$2,000,000.00 per occurrence) expiring August 14, 2007. We note that the Lender is named as additional insured.
9. We have reviewed a copy of an Insurance Policy issued by ING Insurance Company of Canada. dated March 5, 2007. The Policy indicates Building Broad Form coverage of \$5,000,000.00 expiring February 28, 2008. We note that the Lender is named as additional insured.
10. We have reviewed Building Permit No. 02 196351 01 R3 issued by the City of Hamilton dated March 14, 2006 which permits construction of 38 residential apartments on the first 3 floors and Building Permit No. 05 255156 00 R3 issued by the City of Hamilton dated March 23, 2006 which permits the additional 2 floors containing 12 residential apartments and conversion of the existing basement to a parking garage.
11. Under the Ontario Building Code an Architect and Professional Engineers of various disciplines must be retained to undertake regular general reviews to determine that a building of this size is constructed in general conformity with the documents prepared by an Architect or Professional Engineer that formed the basis for the issuance of the Building Permit. Written reports of these reviews must be forwarded to the Chief Building Official of the City of Hamilton on a regular basis. Copies of current Consultants' Reports were included as Appendix I in Progress Draw Report No 3.

(c) Sales Summary and Purchaser Deposits

The Borrower has reported it has achieved 8 presales (16%) generating \$1,392,000.00 in gross revenue. The Borrower is projecting gross revenue on 42 remaining units, parking and upgrade sales totaling \$7,587,644.00. After deduction of GST totaling \$342,756.33 the net projected total sales revenue is \$8,636,887.67.

The Borrower has reported it has received deposits totaling \$108,856.80 (\$62,388.80 unit deposits, and \$46,468.00 upgrade deposits) on 8 presales to date.

The Borrower's lawyer is holding unit deposits up to \$100,000.00 in trust until closing. The Borrower plans to utilise unit deposits in excess of \$100,000.00 as a source of funds and is in the process of negotiating a facility with Lombard Canada Limited.

Upgrade deposits are being utilised as a source of funds and \$46,468.00 has been received and utilised to date.

We understand that the Lender will verify all Sales Agreements.

We have included a copy of the Sales and Deposit Summary as Appendix I.

1539034 ONTARIO INC.
TRINITY LANDING CONDOMINIUMS
80 KING WILLIAM STREET, HAMILTON, ONTARIO
INTERIM BUDGET REVIEW AND PROGRESS DRAW REPORT
No. 4

I **EXECUTIVE SUMMARY**

(d) **Construction Schedule**

Phase I

Structure is generally weather tight, common area finishes are progressing, sold suites on Ground and 2nd floor are ready for occupancy, unsold suites on Ground and 2nd floor are ready for final finishing, installation of floor finishes and kitchens on 3rd floor suites is progressing and main floor aluminum entrance doors and glass are complete.

Phase II

Parking garage mechanical and electrical work is proceeding, elevator is installed, steel structure is complete up to the 4th floor level, interior steel stud walls are progressing on the 4th floor, the 5th floor concrete slab is poured and the 5th floor steel structure is progressing.

Occupancy of Phase I Ground and 2nd floor common areas was granted by the City of Hamilton on January 26, 2007.

At the time of our site visit Phase I was approximately 96% complete and Phase II was approximately 50% complete.

We have included within Appendix H a copy of an undated construction schedule prepared by 1712164 Ontario Ltd., which indicates construction can be completed within 5 months of recommencing construction. In our opinion 5 months is a realistic time for completion of the project.

We will be visiting the site at least monthly during the balance of the construction period and will continue to report on the status of the schedule following each visit.

Standard construction document CCDC

2
1994

Stipulated price contract

Project:

RENTAL BUILDING PHASE
80 KING ST. W. TORONTO
HAMILTON ONTARIO

Apur's CCDC 2 copyright still here. The replication of this text does not waive the attention of the party preparing the use of this document that it is for an historic and unapproved issue of CCDC 2 - 1994 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.



Canadian construction documents committee

Reprint 1998

Standard Construction Document CCDC 2 - 1994

AGREEMENT BETWEEN OWNER AND CONTRACTOR
For use when a stipulated price is the basis of payment

This Agreement made on the ~~13th~~ day of ~~June~~ in the year ~~2007~~.

by and between

~~353304 - ONTARIO~~

hereinafter called the "Owner"

and

~~712164 - ONTARIO~~

hereinafter called the "Contractor"

The Owner and the Contractor agree as follows:

ARTICLE A-1 THE WORK

The Contractor shall:

1.1 perform the Work required by the Contract Documents for

~~TRANSIT AND TRIP PHASE~~

located at

~~BOYING WILKINS CREB
HAMILTON ONTARIO~~

which have been signed by the parties, and for which

~~ROMANOV ROBLANOVSKI CONSULTANTS~~

is acting as and is hereinafter called the "Consultant" and

1.2 do and fulfill everything indicated by this Agreement, and

1.3 commence the Work by the ~~13th~~ day of ~~June~~ in the year ~~2007~~ and, subject to adjustment in Contract Time as provided for in the Contract Documents, attain Substantial Performance of the Work, by the ~~13th~~ day of ~~November~~ in the year ~~2007~~.

CCDC 2 - 1994 File 00502

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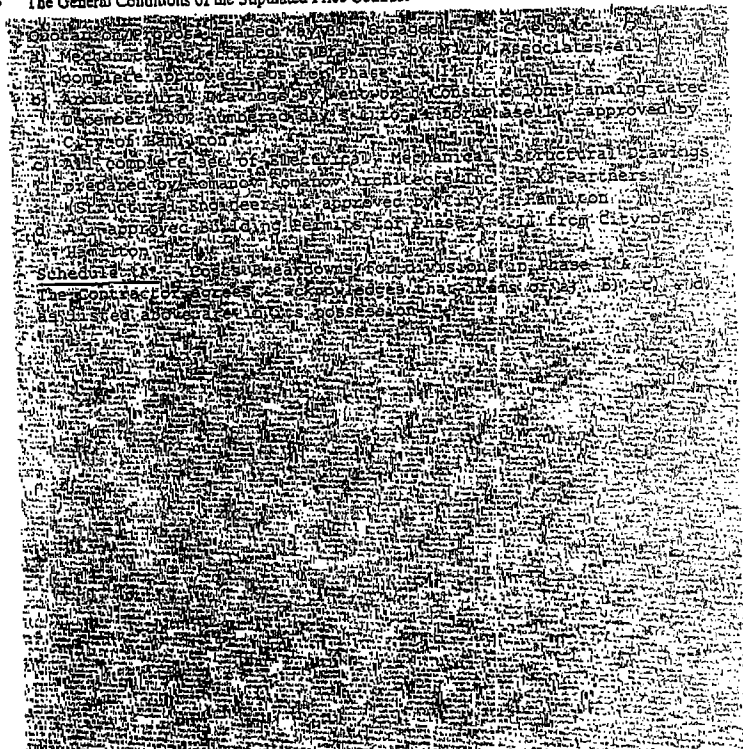
ARTICLE A-2

- 2.1 The Contract supersedes all prior negotiations, representations, or agreements, either written or oral, relating in any manner to the Work, including the bidding documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.
- 2.2 The Contract may be amended only as provided in the Contract Documents.

ARTICLE A-3

3.1 The following are the Contract Documents referred to in Article A-1 of the Agreement - THE WORK:

- Agreement Between Owner and Contractor
- Definitions
- The General Conditions of the Stipulated Price Contract



* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. Supplementary Conditions; Specifications, giving a list of contents with section numbers and titles, number of pages, and date; Drawings, giving drawing number, title, date, revision date or mark; Addenda, giving title, number, date)

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ARTICLE A-4

4.1 The Contract Price, which excludes Value Added Taxes, is:

NINE HUNDRED AND SEVENTY EIGHT THOUSAND AND NO/100 CENTS

dollars

and \$ [REDACTED] cents.

4.2 Value Added Taxes (of [REDACTED]%) payable by the Owner to the Contractor are:

[REDACTED]

dollars

and \$ [REDACTED] cents.

4.3 Total amount payable by the Owner to the Contractor for the construction of the Work is:

NINE HUNDRED AND SEVENTY EIGHT THOUSAND AND NO/100 CENTS

dollars

and \$ [REDACTED] cents.

4.4 All amounts are in Canadian funds.

4.5 These amounts shall be subject to adjustments as provided in the Contract Documents.

ARTICLE A-5 PAYMENT

- 5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of ~~10%~~ (10%) the *Owner* shall in Canadian funds:
- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payment, and
 - .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
 - .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.
- 5.2 .4 All payments to be made by the *Owner* within 5 days after (CONT'D)*
 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 - INSURANCE.
- 5.3 Interest
- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at ~~5%~~ percent (5%) per annum above the bank rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The bank rate shall be the rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the chartered banks.
 - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the amount of any claim settled pursuant to Part 8 of the General Conditions - DISPUTE RESOLUTION from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.
- 5.1 .4 receipt of Construction Progress advances from the Constructive Mortgage advances & as per their lender's conditions.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES

6.1 Notices in writing between the parties or between them and the Consultant shall be considered to have been received by the addressee on the date of delivery if delivered to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended by hand or by registered post; or if sent by regular post, to have been delivered within 5 Working Days of the date of mailing when addressed as follows:

The Owner at

1559 ...
1538 ...
UNIT ...
ONTARIO ...

The Contractor at

172216 ...
2378 ...
R.R. ...
ONTARIO ...

The Consultant at

ROBSON ...
375 ...
TORONTO ...
M6R ...

ARTICLE A-7 LANGUAGE OF THE CONTRACT

7.1 When the Contract Documents are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English language shall prevail.

• Complete this statement by striking out inapplicable term.

7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

8.1 The Contract Documents are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties, and subject to the law and the provisions of the Contract Documents shall endure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto and by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

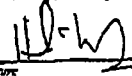
OWNER

1539304 ONTARIO INC


Signature

KHAN ROSHAN, PRESIDENT

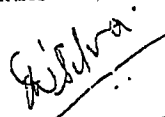
name and title of person signing


Signature

K. GARATRA, DIRECTOR

name and title of person signing

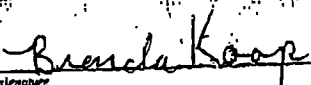
WITNESS


Signature

name and title of person signing

CONTRACTOR

1712184 ONTARIO LTD.


Signature

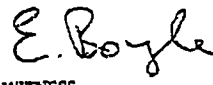
BRENDA KOOP, PRESIDENT

name and title of person signing

(I have authority to bind the Corporation)

Signature

name and title of person signing



WITNESS

Signature

name and title of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Contractor requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
 - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

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DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

1. **Contract**
The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities, and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.
2. **Contract Documents**
The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.
3. **Owner**
The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.
4. **Contractor**
The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.
5. **Subcontractor**
A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work*, or to supply *Products* worked to a special design for the *Work*.
6. **Supplier**
A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products* not worked to a special design for the *Work*.
7. **Consultant**
The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the Architect, the Engineer, or entity licensed to practice in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.
8. **Project**
The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.
9. **Work**
The *Work* means the total construction and related services required by the *Contract Documents*.
10. **Place of the Work**
The *Place of the Work* is the designated site or location of the *Work* identified in Article A-1 of the Agreement - THE WORK.
11. **Product**
Product or *Products* means material, machinery, equipment, and fixtures furnishing the *Work*, but does not include machinery and equipment used to prepare, fabricate, convey, or erect the *Work*, which are referred to as construction machinery and equipment.
12. **Provide**
Provide means to supply and install.

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13. **Contract Price**
The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - **CONTRACT PRICE.**
14. **Contract Time**
The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - **THE WORK** from commencement of the *Work* to *Substantial Performance of the Work*.
15. **Working Day**
Working Day means a day other than a Saturday, Sunday, or a holiday which is observed by the construction industry in the area of the *Place of the Work*.
16. **Supplemental Instruction**
A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of specifications, drawings, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.
17. **Change Order**
A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:
 - a change in the *Work*;
 - the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
 - the extent of the adjustment in the *Contract Time*, if any.
18. **Change Directive**
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing a change in the *Work* within the general scope of the *Contract Documents*.
19. **Substantial Performance of the Work**
Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.
20. **Value Added Taxes**
Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax and any similar tax, the payment or collection of which is by the legislation imposing such tax an obligation of the *Contractor*.

Standard Construction Document CCDC 2 - 1994

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents. It is not intended, however, that the *Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
 - .2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 The specifications are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, and the services necessary for the performance of the *Work*.
- 1.1.7 The drawings are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location, and dimensions of the *Work*, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.8 Neither the organization of the specifications into divisions, sections, and parts nor the arrangement of drawings shall control the *Contractor* in dividing the work among *Subcontractors* and *Suppliers* or in establishing the extent of the work to be performed by a trade.
- 1.1.9 If there is a conflict within *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Contractor*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - Division 1 of the specifications,
 - Divisions 2 through 16 of the specifications,
 - material and finishing schedules,
 - drawings.

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- 2 drawings of larger scale shall govern over those of smaller scale of the same date.
 - 3 dimensions shown on drawings shall govern over dimensions scaled from drawings.
 - 4 later dated documents shall govern over earlier documents of the same type.
- 1.1.10 The Owner shall provide the Contractor, without charge, sufficient copies of the Contract Documents to perform the Work.
- 1.1.11 Specifications, drawings, models, and copies thereof furnished by the Consultant are and shall remain the Consultant's property, with the exception of the signed Contract sets, which shall belong to each party to the Contract. All specifications, drawings, and models furnished by the Consultant are to be used only with respect to the Work and are not to be used on other work. These specifications, drawings, and models are not to be copied or altered in any manner without the written authorization of the Consultant.
- 1.1.12 Models furnished by the Contractor at the Owner's expense are the property of the Owner.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the Place of the Work shall govern the interpretation of the Contract.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the Owner, Consultant, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 AUTHORITY OF THE CONSULTANT

- 2.1.1 The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities, and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of the Owner, the Contractor, and the Consultant.
- 2.1.3 If the Consultant's employment is terminated, the Owner shall immediately appoint or reappoint a Consultant against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former Consultant.

GC 2.2 ROLE OF THE CONSULTANT

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents* during construction until issuance of the final certificate for payment, and subject to GC 2.1 - AUTHORITY OF THE CONSULTANT and with the *Owner's* concurrence, from time to time until the completion of any correction of defects as provided in paragraph 12.3.3 of GC 12.3 - WARRANTY.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will determine the amounts owing to the *Contractor* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT, and GC 5.7 - FINAL PAYMENT.
- 2.2.5 The *Consultant* will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations, or general construction practice. The *Consultant* will not be responsible for the *Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of, or be responsible for the acts or omissions of the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.2.6 The *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents* and shall make findings as to the performance thereunder by both parties to the *Contract*, except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER. Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. When making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Contractor*.
- 2.2.7 Claims, disputes, and other matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, shall be referred initially to the *Consultant* by notice in writing given to the *Consultant* and to the other party for the *Consultant's* interpretation and finding which will be given by notice in writing to the parties within a reasonable time.
- 2.2.8 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed, or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.2.9 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*.
- 2.2.10 The *Consultant* will review and take appropriate action upon such *Contractor's* submittals as shop drawings, *Product* data, and samples, as provided in the *Contract Documents*.

- 2.2.11 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 2.2.12 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.13 All certificates issued by the *Consultant* shall be to the best of the *Consultant's* knowledge, information, and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.2.14 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe, and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notice of when the work will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notice of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.

GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Contractor* shall promptly remove from the *Place of the Work* and replace or re-execute defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall make good promptly other contractors' work destroyed or damaged by such removals or replacements at the *Contractor's* expense.
- 2.4.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the *Contract Documents*. If the

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Owner and the Contractor do not agree on the difference in value, they shall refer the matter to the Consultant for a determination.

PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The Contractor shall have total control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents.
- 3.1.2 The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the Work under the Contract.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.2.1 The Owner reserves the right to award separate contracts in connection with other parts of the Project to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the Project, or when work is performed by the Owner's own forces, the Owner shall:
- 1 provide for the co-ordination of the activities and work of other contractors and Owner's own forces with the Work of the Contract;
 - 2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the Place of the Work;
 - 3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the Contract;
 - 4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 - INSURANCE and co-ordinate such insurance with the insurance coverage of the Contractor as it affects the Work; and
 - 5 take all reasonable precautions to avoid labour disputes or other disputes on the Project arising from the work of other contractors or the Owner's own forces.
- 3.2.3 When separate contracts are awarded for other parts of the Project, or when work is performed by the Owner's own forces, the Contractor shall:
- 1 afford the Owner and other contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute their work;
 - 2 co-ordinate and schedule the Work with the work of other contractors and Owner's own forces and connect as specified or shown in the Contract Documents;
 - 3 participate with other contractors and the Owner in reviewing their construction schedules when directed to do so; and
 - 4 where part of the Work is affected by or depends upon for its proper execution the work of other contractors or Owner's own forces, promptly report to the Consultant in writing and prior to proceeding with that part of the Work, any apparent deficiencies in such work.

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Failure by the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of the deficiencies in the work of other contractors or *Owner's* own forces except those deficiencies not then reasonably discoverable.

- 3.2.4 Where a change in the *Work* is required as a result of the co-ordination and connection of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.
- 3.2.5 Claims, disputes, and other matters in question between the *Contractor* and other contractors shall be dealt with as provided in Part 8 of the General Conditions - DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

GC 3.3 TEMPORARY SUPPORTS, STRUCTURES, AND FACILITIES

- 3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use.
- 3.3.2 The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such temporary supports, structures, and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of GC 3.1 - CONTROL OF THE WORK, paragraph 3.3.1, and paragraph 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for temporary supports, structures, and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

GC 3.4 DOCUMENT REVIEW

- 3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be to the best of the *Contractor's* knowledge, information, and belief and in making such review the *Contractor* does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* did not discover. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

GC 3.5 CONSTRUCTION SCHEDULE

- 3.5.1 The *Contractor* shall:
- .j) prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*;

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2. monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
3. advise the *Consultant* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.

GC 3.6 CONSTRUCTION SAFETY

- 3.6.1 Subject to paragraph 3.2.2.2 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the *Work*.

GC 3.7 SUPERVISOR

- 3.7.1 The *Contractor* shall employ a competent supervisor and necessary assistants who shall be in attendance at the *Place of the Work* while work is being performed. The supervisor shall not be changed except for valid reason.
- 3.7.2 The supervisor shall represent the *Contractor* at the *Place of the Work* and notices and instructions given to the supervisor by the *Consultant* shall be held to have been received by the *Contractor*.

GC 3.8 SUBCONTRACTORS AND SUPPLIERS

- 3.8.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
1. enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 2. incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 3. be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers*, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.
- 3.8.2 The *Contractor* shall indicate in writing, at the request of the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.
- 3.8.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.
- 3.8.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.
- 3.8.5 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to whom the *Contractor* may reasonably object.

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- 3.8.6 The Owner, through the Consultant, may provide to a Subcontractor or Supplier information as to the percentage of the Subcontractor's or Supplier's work which has been certified for payment.

GC 3.9 LABOUR AND PRODUCTS

- 3.9.1 The Contractor shall provide and pay for labour, Products, tools, construction machinery and equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Contract.
- 3.9.2 Products provided shall be new. Products which are not specified shall be of a quality consistent with those specified and their use acceptable to the Consultant.
- 3.9.3 The Contractor shall maintain good order and discipline among the Contractor's employees engaged on the Work and shall not employ on the Work anyone not skilled in the tasks assigned.

GC 3.10 DOCUMENTS AT THE SITE

- 3.10.1 The Contractor shall keep one copy of current Contract Documents, submittals, reports, and records of meetings at the Place of the Work, in good order and available to the Owner and the Consultant.

GC 3.11 SHOP DRAWINGS

- 3.11.1 Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, Product, and other data which the Contractor provides to illustrate details of a portion of the Work.
- 3.11.2 The Contractor shall provide shop drawings as described in the Contract Documents or as the Consultant may reasonably request.
- 3.11.3 The Contractor shall review all shop drawings prior to submission to the Consultant. The Contractor represents by this review that the Contractor has determined and verified all field measurements and field construction conditions, or will do so; Product requirements; catalogue numbers; and similar data and that the Contractor has checked and co-ordinated each shop drawing with the requirements of the Work and of the Contract Documents. The Contractor shall confirm this review of each shop drawing by stamp, date, and signature of the person responsible. At the time of submission the Contractor shall notify the Consultant in writing of any deviations in the shop drawings from the requirements of the Contract Documents.
- 3.11.4 The Contractor shall submit shop drawings to the Consultant to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of other contractors. Upon request of the Contractor or the Consultant, they jointly shall prepare a schedule of the dates for submission and return of shop drawings. Shop drawings which require approval of any legally constituted authority having jurisdiction shall be submitted to such authority by the Contractor for approval.
- 3.11.5 The Contractor shall submit shop drawings in the form specified or as the Consultant may direct. The Consultant will review and return shop drawings in accordance with the schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The Consultant's review is for conformity to the design concept and for general arrangement only. The Consultant's review shall not relieve the Contractor of responsibility for errors or omissions in the shop drawings or for meeting all requirements of the Contract Documents unless the Consultant expressly notes the acceptance of a deviation on the shop drawings.
- 3.11.6 Upon the Consultant's request, the Contractor shall revise and resubmit shop drawings which the Consultant rejects as inconsistent with the Contract Documents unless otherwise directed by the Consultant. The Contractor shall notify the Consultant in writing of any revisions to the resubmission other than those requested by the Consultant.

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GC 3.12 USE OF THE WORK

- 3.12.1 The *Contractor* shall confine construction machinery and equipment, storage of *Products*, and operations of employees to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Work* with *Products*.
- 3.12.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

GC 3.13 CUTTING AND REMEDIAL WORK

- 3.13.1 The *Contractor* shall do the cutting and remedial work required to make the several parts of the *Work* come together properly.
- 3.13.2 The *Contractor* shall co-ordinate the *Work* to ensure that this requirement is kept to a minimum.
- 3.13.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.
- 3.13.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 3.14 CLEANUP

- 3.14.1 The *Contractor* shall maintain the *Work* in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.14.2 The *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Work* clean and suitable for occupancy by the *Owner* before attainment of *Substantial Performance of the Work*. The *Contractor* shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining work.
- 3.14.3 Prior to application for the final certificate for payment, the *Contractor* shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees.

PART 4 ALLOWANCES**GC 4.1 CASH ALLOWANCES**

- 4.1.1 The *Contract Price* includes cash allowances stated in the *Contract Documents*, which allowances shall be expended as the *Owner* directs through the *Consultant*.
- 4.1.2 Cash allowances cover the net cost to the *Contractor* of services, *Products*, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the work stipulated under the cash allowances but do not include any *Value Added Taxes* payable by the *Owner* to the *Contractor*.

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- 4.1.3 The *Contract Price*, and not the cash allowances, includes the *Contractor's* overhead and profit in connection with such cash allowances.
- 4.1.4 Where costs under a cash allowance exceed the amount of the allowance, the *Contractor* shall be compensated for any excess incurred and substantiated plus an amount for overhead and profit as set out in the *Contract Documents*.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the actual cost and each cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Contractor* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.
- 4.2.2 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE
- 4.2.3 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.2 and the contingency allowance.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Contractor*, prior to execution of the Agreement, and/or promptly from time to time thereafter, furnish to the *Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall notify the *Contractor* in writing of any material change in the *Owner's* financial arrangements during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made monthly as the *Work* progresses.
- 5.2.2 Applications for payment shall be dated the last day of the agreed monthly payment period and the amount claimed shall be for the value, proportionate to the amount of the *Contract*, of work performed and *Products* delivered to the *Place of the Work* at that date.
- 5.2.3 The *Contractor* shall submit to the *Consultant*, at least 14 days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.

- 5.2.4 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.5 The *Contractor* shall include a statement based on the schedule of values with each application for payment.
- 5.2.6 Claims for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 The *Consultant* will issue to the *Owner*, no later than 10 days after the receipt of an application for payment from the *Contractor* submitted in accordance with GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT, a certificate for payment in the amount applied for or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly notify the *Contractor* in writing giving reasons for the amendment.
- 5.3.2 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT no later than 5 days after the date of a certificate for payment issued by the *Consultant*.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall prepare and submit to the *Consultant* a comprehensive list of items to be completed or corrected and apply for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.
- 5.4.2 No later than 10 days after the receipt of the *Contractor's* list and application, the *Consultant* will review the *Work* to verify the validity of the application, and no later than 7 days after completing the review, will notify the *Contractor* whether the *Work* or the designated portion of the *Work* is substantially performed.
- 5.4.3 The *Consultant* shall state the date of *Substantial Performance of the Work* or designated portion of the *Work* in a certificate.
- 5.4.4 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, will establish a reasonable date for finishing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:
1. submit an application for payment of the holdback amount,
 2. submit a sworn statement that all accounts for labour, subcontracts, *Products*, construction machinery and equipment, and other indebtedness which may have been incurred by the *Contractor* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.

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- 5.5.2 After the receipt of an application for payment from the *Contractor* and the sworn statement as provided in paragraph 5.5.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount has not been placed in a separate holdback account, the *Owner* shall, 10 days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.
- 5.5.4 The holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice, or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 Where legislation permits and where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*.
- 5.6.2 Notwithstanding the provisions of the preceding paragraph, and notwithstanding the wording of such certificates, the *Contractor* shall ensure that such subcontract work or *Products* is protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment.
- 5.7.2 The *Consultant* will, no later than 10 days after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application. The *Consultant* will, no later than 7 days after reviewing the *Work*, notify the *Contractor* that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Consultant* finds the *Contractor's* application for final payment valid, the *Consultant* will issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 - WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 days after the issuance of a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement - PAYMENT.

GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE WORK**GC 6.1 CHANGES**

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make changes in the *Work* consisting of additions, deletions, or other revisions to the *Work* by *Change Order* or *Change Directive*.
- 6.1.2 The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide a notice describing the proposed change in the *Work* to the *Contractor*. The *Contractor* shall present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*, signed by *Owner* and *Contractor*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon the adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*. The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of expenditures and savings to perform the work attributable to the change. If a change in the *Work* results in a net increase in the *Contract Price*, an allowance for overhead and profit shall be included.
- 6.3.3 If a change in the *Work* results in a net decrease in the *Contract Price*, the amount of the credit shall be the net cost, without deduction for overhead or profit. When both additions and deletions covering related work or substitutions are involved in a change in the *Work*, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the *Work*.
- 6.3.4 The *Contractor* shall keep and present, in such form as the *Consultant* may require, an itemized accounting of the cost of expenditures and savings referred to in paragraph 6.3.2 together with supporting data. The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of all of the following:
- .1 wages and benefits paid for labour in the direct employ of the *Contractor* under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the *Owner* and *Contractor*;

- 2 salaries, wages, and benefits of the *Contractor's* office personnel engaged in a technical capacity and other personnel at shops or on the road, engaged in expediting the production or transportation of materials or equipment;
 - 3 contributions, assessments, or taxes incurred for such items as unemployment insurance, provincial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the *Contractor* and included in the cost of the work as provided in paragraphs 6.3.4.1 and 6.3.4.2;
 - 4 travel and subsistence expenses of the *Contractor's* personnel described in paragraphs 6.3.4.1 and 6.3.4.2;
 - 5 the cost of all *Products* including cost of transportation thereof;
 - 6 the cost of materials, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed; and cost less salvage value on such items used but not consumed, which remain the property of the *Contractor*;
 - 7 rental cost of all tools, machinery, and equipment, exclusive of hand tools, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
 - 8 deposits lost;
 - 9 the amounts of all subcontracts;
 - 10 the cost of quality assurance such as independent inspection and testing services;
 - 11 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - 12 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 - PATENT FEES;
 - 13 any adjustment in premiums for all bonds and insurance which the *Contractor* is required, by the *Contract Documents*, to purchase and maintain;
 - 14 any adjustment in taxes and duties for which the *Contractor* is liable;
 - 15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred;
 - 16 the cost of removal and disposal of waste products and debris;
 - 17 cost incurred due to emergencies affecting the safety of persons or property;
- 6.3.5 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.6 If the *Owner* and *Contractor* do not agree on the proposed adjustment in the *Contract Time* or the method of determining it, the adjustment shall be referred to the *Consultant* for determination.
- 6.3.7 If at any time after the start of the work directed by a *Change Directive*, the *Owner* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order* signed by *Owner* and *Contractor*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.1 If the *Owner* or the *Contractor* discover conditions at the *Place of the Work* which are:

- 1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
- 2 physical conditions of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*;

then the observing party shall notify the other party in writing before conditions are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.

6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, shall issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE.

6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* shall report the reasons for this finding to the *Owner* and the *Contractor* in writing.

GC 6.5 DELAYS

6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

6.5.3 If the *Contractor* is delayed in the performance of the *Work* by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties, or without limit to any of the foregoing, by a cause beyond the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*.

6.5.4 No extension shall be made for delay unless notice in writing of claim is given to the *Consultant* not later than 10 *Working Days* after the commencement of delay, providing however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.

6.5.5 If no schedule is made under paragraph 2.2.9 of GC 2.2 - ROLE OF THE CONSULTANT, no claim for delay shall be allowed because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made and not then, unless the claim is reasonable.

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PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK, OR TERMINATE THE CONTRACT

- 7.1.1 If the *Contractor* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, by giving the *Contractor* or receiver or trustee in bankruptcy notice in writing, terminate the *Contract*.
- 7.1.2 If the *Contractor* should neglect to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Consultant* has given a written statement to the *Owner* and *Contractor* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Contractor* in writing that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such notice.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with such schedule.
- 7.1.4 If the *Contractor* fails to correct the default in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*, or
 - .2 terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Contractor's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products*; utilize the construction machinery and equipment; subject to the rights of third parties, finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 withhold further payment to the *Contractor* until a final certificate for payment is issued, and
 - .3 charge the *Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 - WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference, and
 - .4 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor's* work under GC 12.3 - WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Contractor* the difference.

- 7.1.6 The Contractor's obligation under the Contract as to quality, correction, and warranty of the work performed by the Contractor up to the time of termination shall continue in force after such termination.

GC 7.2 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the Owner should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Owner's insolvency, or if a receiver is appointed because of the Owner's insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner or receiver or trustee in bankruptcy notice in writing, terminate the Contract.
- 7.2.2 If the Work should be stopped or otherwise delayed for a period of 30 days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or of anyone directly or indirectly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner notice in writing, terminate the Contract.
- 7.2.3 The Contractor may notify the Owner in writing, with a copy to the Consultant, that the Owner is in default of the Owner's contractual obligations if:
1. the Owner fails to furnish, when so requested by the Contractor, reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract, or
 2. the Consultant fails to issue a certificate as provided in GC 5.3 PROGRESS PAYMENT, or
 3. the Owner fails to pay the Contractor when due the amounts certified by the Consultant or awarded by arbitration or court, or
 4. the Owner violates the requirements of the Contract to a substantial degree and the Consultant, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the Contractor that sufficient cause exists.
- 7.2.4 The Contractor's notice in writing to the Owner provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 Working Days following the receipt of the notice in writing, the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.
- 7.2.5 If the Contractor terminates the Contract under the conditions set out above, the Contractor shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon Products and construction machinery and equipment, and such other damages as the Contractor may have sustained as a result of the termination of the Contract.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 Differences between the parties to the Contract as to the interpretation, application or administration of the Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the Consultant as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the Contract in respect of a matter in which the Consultant has no authority under the Contract to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of

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GC 8.2 - NEGOTIATION, MEDIATION, AND ARBITRATION, and in GC 8.3 - RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

- 8.1.3 If a dispute is not resolved promptly, the *Consultant* shall give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION, AND ARBITRATION

- 8.2.1 In accordance with the latest edition of the Rules for Mediation of CCDC 2 Construction Disputes, the parties shall appoint a Project Mediator
- 1 within 30 days after the *Contract* was awarded, or
 - 2 if the parties neglected to make an appointment within the 30 day period, within 15 days after either party by notice in writing requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 - ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a notice in writing of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a notice in writing of reply to the dispute within 10 *Working Days* after receipt of the notice of dispute setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's notice in writing of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the latest edition of the Rules for Mediation of CCDC 2 Construction Disputes.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving notice in writing to both parties.
- 8.2.6 By giving a notice in writing to the other party, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Arbitration of CCDC 2 Construction Disputes. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a notice is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.

8.2.8 If neither party requires by notice in writing given within 10 *Working Days* of the date of notice requesting arbitration in paragraph 8.2.6 that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be

- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Contractor* has abandoned the *Work*,
 whichever is earlier, and
- 2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the notices required under Part 8 of the General Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.5.
- 8.3.2 Nothing in Part 8 of the General Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible for the making good such damage at the *Contractor's* expense.
- 9.1.3 Should damage occur to the *Work* or *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

GC 9.2 DAMAGES AND MUTUAL RESPONSIBILITY

- 9.2.1 If either party to the *Contract* should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the other party is responsible in law, then that party shall be reimbursed by the other party for such damage. The reimbursing party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.

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- 9.2.2 Claims for damage under paragraph 9.2.1 shall be made in writing to the party liable within reasonable time after the first observance of such damage and if undisputed shall be confirmed by *Change Order*. Disputed claims shall be resolved as set out in Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 9.2.3 If the *Contractor* has caused damage to the work of another contractor on the *Project*, the *Contractor* agrees upon due notice to settle with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Contractor* and may require the *Contractor* to defend the action at the *Contractor's* expense. The *Contractor* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action.
- 9.2.4 If the *Contractor* becomes liable to pay or satisfy a final order, judgment, or award, against the *Owner*, then the *Contractor*, upon undertaking to indemnify the *Owner* against any and all liability for costs, shall have the right to appeal in the name of the *Owner* such final order or judgment to any and all courts of competent jurisdiction.

GC 9.3 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 9.3.1 For the purposes of applicable environmental legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.3.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall
- 1 take all reasonable steps to determine whether any toxic or hazardous substances or materials are present at the *Place of the Work*, and
 - 2 provide the *Consultant* and the *Contractor* with a written list of any such substances and materials.
- 9.3.3 The *Owner* shall take all reasonable steps to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances or materials which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.3.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials which were present at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.3.5 If the *Contractor*
- 1 encounters toxic or hazardous substances or materials at the *Place of the Work*, or
 - 2 has reasonable grounds to believe that toxic or hazardous substances or materials are present at the *Place of the Work*,
- which were not disclosed by the *Owner*, as required under paragraph 9.3.2, or which were disclosed but have not been dealt with as required under paragraph 9.3.4, the *Contractor* shall
- 3 take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and
 - 4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.

- 9.3.6 If the *Contractor* is delayed in performing the *Work* or incurs additional costs as a result of taking steps required under paragraph 9.3.5.3, the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the *Contractor* shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.
- 9.3.7 Notwithstanding paragraphs 2.2.6 and 2.2.7 of GC 2.2 - ROLE OF THE CONSULTANT, or paragraph 8.1.1 of GC 8.1 - AUTHORITY OF THE CONSULTANT, the *Consultant* may select and rely upon the advice of an independent expert in a dispute under paragraph 9.3.6 and, in that case, the expert shall be deemed to have been jointly retained by the *Owner* and the *Contractor* and shall be jointly paid by them.
- 9.3.8 The *Owner* shall indemnify and hold harmless the *Contractor*, the *Consultant*, their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.
- 9.3.9 GC 9.3 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 - RIGHTS AND REMEDIES or GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Contractor* as stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for the building permit, permanent easements, and rights of servitude. The *Contractor* shall be responsible for permits, licenses, or certificates necessary for the performance of the *Work* which were in force at the date of bid closing.
- 10.2.3 The *Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.4 The *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the date of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Contractor* shall notify the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 - CHANGES, GC 6.2 - CHANGE ORDER, and GC 6.3 - CHANGE DIRECTIVE.

- 10.2.5 If the *Contractor* fails to notify the *Consultant* in writing; and fails to obtain direction as required in paragraph 10.2.4; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.

GC 10.3 PATENT FEES

- 10.3.1 The *Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Contractor* or anyone for whose acts the *Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan, or design of which was supplied to the *Contractor* as part of the *Contract Documents*.

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, *Substantial Performance of the Work*, and the issuance of the final certificate for payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

PART II INSURANCE — BONDS

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the *Contractor* shall provide, maintain, and pay for the insurance coverages specified in GC 11.1 - INSURANCE. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of the final certificate for payment. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

J. General Liability Insurance:

General liability insurance shall be in the joint names of the *Contractor*, the *Owner*, and the *Consultant*, with limits of not less than \$2,000,000 per occurrence and with a property damage deductible not exceeding \$2,500. The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*. Where the *Contractor* maintains a single, blanket policy, the addition of the *Owner* and the *Consultant* is limited to liability arising out of the *Project* and all operations necessary or incidental thereto. The policy shall be

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endorsed to provide the *Owner* with not less than 30 days notice in writing in advance of any cancellation, and of change or amendment restricting coverage.

2. Automobile Liability Insurance:

Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Contractor*, and endorsed to provide the *Owner* with not less than 15 days notice in writing in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.

3. Aircraft and Watercraft Liability Insurance:

Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$2,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*. The policies shall be endorsed to provide the *Owner* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage.

4. Property and Boiler and Machinery Insurance:

- (1) "All risks" property insurance shall be in the joint names of the *Contractor*, the *Owner*, and the *Consultant*, insuring not less than the sum of the amount of the *Contract Price* and the full value, as stated in the Supplementary Conditions, of *Products* that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$2,500. The insurance coverage shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement, provided that IBC Form 4042 shall contain the latest edition of the relevant CCDC endorsement form. The coverage shall be maintained continuously until 10 days after the date of the final certificate for payment.
- (2) Boiler and machinery insurance shall be in the joint names of the *Contractor*, the *Owner*, and the *Consultant* for not less than the replacement value of the boilers, pressure vessels, and other insurable objects forming part of the *Work*. The insurance provided shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form" and shall be maintained continuously from commencement of use or operation of the property insured and until 10 days after the date of the final certificate for payment.
- (3) The policies shall allow for partial or total use or occupancy of the *Work*. If because of such use or occupancy the *Contractor* is unable to provide coverage, the *Contractor* shall notify the *Owner* in writing. Prior to such use or occupancy the *Owner* shall provide, maintain, and pay for property and boiler insurance insuring the full value of the *Work*, as in sub-paragraphs (1) and (2), including coverage for such use or occupancy and shall provide the *Contractor* with proof of such insurance. The *Contractor* shall refund to the *Owner* the unearned premiums applicable to the *Contractor's* policies upon termination of coverage.
- (4) The policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. The *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to

the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*.

- (5) The *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds and as provided in GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 - PROGRESS PAYMENT. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*.
- (6) In the case of loss or damage to the *Work* arising from the work of another contractor, or *Owner's* own forces, the *Owner*, in accordance with the *Owner's* obligations under paragraph 3.2.2.4 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as provided in GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 - PROGRESS PAYMENT.

5 Contractors' Equipment Insurance:

"All risks" contractors' equipment insurance covering construction machinery and equipment used by the *Contractor* for the performance of the *Work*, including boiler insurance on temporary boilers and pressure vessels, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. The policies shall be endorsed to provide the *Owner* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* agrees to waive the equipment insurance requirement.

- 11.1.2 The *Contractor* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Contractor's* responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.
- 11.1.3 Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required or waive the course of construction insurance requirement.
- 11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and the *Consultant*. The *Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the amount which is due or may become due to the *Contractor*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.

GC 11.2 BONDS

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any surety bonds required by the *Contract*.
- 11.2.2 Such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfilment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION — WAIVER — WARRANTY

GC 12.1 INDEMNIFICATION

12.1.1 The Contractor shall indemnify and hold harmless the Owner and the Consultant, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings (hereinafter called "claims"), by third parties that arise out of, or are attributable to, the Contractor's performance of the Contract provided such claims are:

- .1 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and
- .2 caused by negligent acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable, and
- .3 made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of the Work.

The Owner expressly waives the right to indemnify for claims other than those stated above.

12.1.2 The obligation of the Contractor to indemnify hereunder shall be limited to \$2,000,000 per occurrence from the commencement of the Work until Substantial Performance of the Work and thereafter to an aggregate limit of \$2,000,000.

12.1.3 The Owner shall indemnify and hold harmless the Contractor, the Contractor's agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Work.

12.1.4 GC 12.1 - INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 - RIGHTS AND REMEDIES or GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

GC 12.2 WAIVER OF CLAIMS

12.2.1 Waiver of Claims by Owner

As of the date of the final certificate for payment, the Owner expressly waives and releases the Contractor from all claims against the Contractor including without limitation those that might arise from the negligence or breach of contract by the Contractor except one or more of the following:

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of GC 12.1 - INDEMNIFICATION or GC 12.3 - WARRANTY;
- .3 those arising from the provisions of paragraph 9.3.5 of GC 9.3 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS and arising from the Contractor bringing or introducing any toxic or hazardous substances and materials to the Place of the Work after the Contractor commences the Work.

In the Common Law provinces GC 12.2.1.4 shall read as follows:

- .4 those made in writing within a period of 6 years from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be

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prescribed by any limitation statute of the province or territory of the *Place of the Work* and arising from any liability of the *Contractor* for damages resulting from the *Contractor's* performance of the *Contract* with respect to substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible.

As used herein "substantial defects or deficiencies" means those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*.

In the Province of Quebec GC 12.2.1.4 shall read as follows:

.4 those arising under the provisions of Article 2118 of the Civil Code of Quebec

12.2.2 Waiver of Claims by Contractor

As of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing prior to the *Contractor's* application for final payment and still unsettled; and
- .2 those arising from the provisions of GC 9.3 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or GC 10.3 - PATENT FEES.

12.2.3 GC 12.2 - WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 - RIGHTS AND REMEDIES or GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY

GC 12.3 WARRANTY

- 12.3.1 The warranty period with regard to the *Contract* is one year from the date of *Substantial Performance of the Work* or those periods specified in the *Contract Documents* for certain portions of the *Work* or *Products*.
- 12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 Except for the provisions of paragraph 12.3.6 and subject to paragraph 12.3.2, the *Contractor* shall correct promptly, at the *Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the warranty periods specified in the *Contract Documents*.
- 12.3.4 The *Owner*, through the *Consultant*, shall promptly give the *Contractor* notice in writing of observed defects and deficiencies that occur during the warranty period.
- 12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.3.
- 12.3.6 The *Contractor* shall be responsible for obtaining *Product* warranties in excess of one year on behalf of the *Owner* from the manufacturer. These *Product* warranties shall be issued by the manufacturer to the benefit of the *Owner*.

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SCHEDULE "A"

| 80 KING WILLIAM STREET - NEW CONTRACT (MAY 1, 2007) | | | | | | |
|---|-------------------|---------|-------------|-----------------------|-------------|--|
| | BUDGET | TO DATE | TO COMPLETE | (C/I) BUDGET INCREASE | TO COMPLETE | |
| PHASE I (38 UNITS) | PHASE I | | | | | |
| MOBILIZATION | | | | | | |
| SUPERVISION PROJECT MANAGER | 2,000.00 | | | | | |
| CLEAN UP - NEW A/C | 2,000.00 | | | | | |
| SAND BLASTING | | | | | | |
| SCAFFOLDING | | | | | | |
| CONCRETE CUTTING | | | | | | |
| STRUCTURAL STEEL AND FRAMES | | | | | | |
| CORE SLAB | | | | | | |
| MASONRY | | | | | | |
| STEEL STAIRS AND RAILINGS | | | | | | |
| ROOFING | | | | | | |
| WINDOWS AND ALUMINUM DOORS | | | | | | |
| STUCCO EXTERIOR | | | | | | |
| CEMENT FLOORS AND STAIR FILLINGS | | | | | | |
| DRYWALL, CEILING REPAIRS FOR 3RD FLOOR ONLY | | | | | | |
| RE. WATER DAMAGES | 20,231.00 | | | | | |
| MECHANICAL | 1,500.00 | | | | | |
| ELECTRICAL AND FIXTURES | 3,500.00 | | | | | |
| PLUMBING AND FIXTURES | 3,500.00 | | | | | |
| KITCHEN CAB. HWC VANITIES (\$1,500.00) | 17,040.00 | | | | | |
| H.M. DOORS FRAMES, HARDWARE | 2,500.00 | | | | | |
| DOORING | 2,000.00 | | | | | |
| ROUGH CARPENTRY | | | | | | |
| CLOSET DOORS, TRIM | 500.00 | | | | | |
| *PAINTING PATCH UP WORK | 20,900.00 | | | | | |
| LANDSCAPING & SITE WORK | | | | | | |
| *MISCELLANEOUS | 2,000.00 | | | | | |
| UNDERGROUND PARKING & FACILITIES | | | | | | |
| LOBBY | 4,000.00 | | | | | |
| TRANSFORMER | | | | | | |
| *REPAIRS & SECURIZING DURING MARCH - MAY 2007 | 10,000.00 | | | | | |
| PHASE I SUB-TOTAL | 100,771.00 | | | | | |
| PHASE II (12 NEW UNITS) | PHASE II | | | | | |
| MOBILIZATION | | | | | | |
| SUPERVISION | 5,000.00 | | | | | |
| MISC. DEMO, CLEAN UP (\$500.00/MONTH) | | | | | | |
| B-CONCRETE & DRIVEWAY RAMP | 30,000.00 | | | | | |
| B-SERVICES CONNECTION | | | | | | |
| B-NEW DRAINAGE | | | | | | |
| B-MECHANICAL & HVAC 3x4000 | 12,000.00 | | | | | |
| B-SPRINKLERS | 28,200.00 | | | | | |
| B-ELECTRICAL | | | | | | |
| B-DOOR DOORS, H.M. DOORS & FRAMES | 8,000.00 | | | | | |
| B-DRYWALL, PAINTING MISCELLANEOUS | 3,100.00 | | | | | |
| B-STRUCTURAL (BEAM 3002 TOPPING) | 13,000.00 | | | | | |
| CONCRETE FMMX BEDAN, FINISHES | | | | | | |
| STRUCTURAL STEEL JOISTS | 23,000.00 | | | | | |
| STRUCTURAL METAL STUDS | 9,500.00 | | | | | |
| METAL DECK | 19,000.00 | | | | | |
| STEEL STAIRS & RAILING (B1, B3) | | | | | | |
| ROUGH CARP. WD. TRIM (\$750.00/SUITE) | 3,000.00 | | | | | |
| SUITE STAIRS (\$1,500.00/SUITE) | 18,000.00 | | | | | |
| KIT CABINETS VANITIES (\$2,500.00/SUITE) | 30,000.00 | | | | | |
| METAL SIDING | 30,000.00 | | | | | |
| ROOFING, FLASHING PAVERS | 80,000.00 | | | | | |
| *WINDOWS, SCREENS, CAULKING | 92,700.00 | | | | | |
| *PATIO DOORS & WINDOWS | 12,000.00 | | | | | |
| *DOORS, FR. HOLLOW (\$1,641.61/UNIT) | 15,700.00 | | | | | |
| STUCCO (ACRYLIC) TO EXT. WALLS | 20,000.00 | | | | | |
| DRYWALL, INSULATION | 75,000.00 | | | | | |
| FLOORING - COMMON AREAS | 4,500.00 | | | | | |
| 12 - SUITES (\$1,000.00/SUITE) | 12,000.00 | | | | | |
| PAINTING | 25,000.00 | | | | | |
| TOILET ACCESSORIES (\$300.00/SUITE) | 3,600.00 | | | | | |
| GARBAGE DISPOSAL | 600.00 | | | | | |
| MAILBOXES | 10,000.00 | | | | | |
| ENTRY SYSTEM | 12,000.00 | | | | | |
| LOCKERS | 8,500.00 | | | | | |
| ELEVATORS | 10,500.00 | | | | | |
| MECHANICAL - HVAC (\$4,000.00/UNIT) | 48,000.00 | | | | | |
| PLUMBING ROUGH IN | 13,000.00 | | | | | |
| PLUMBING FIXTURES (\$500.00/UNIT) | 6,000.00 | | | | | |
| GAS (\$500.00/UNIT) | 6,000.00 | | | | | |
| ELECTRICAL ROUGH IN - COMMON | 7,500.00 | | | | | |
| ELECTRICAL ROUGH IN - SUITES (\$5418.00) | 65,000.00 | | | | | |
| ELECTRICAL FIXTURES (\$250.00/SUITE) | 3,000.00 | | | | | |
| FIRE ALARM | 6,790.00 | | | | | |
| CONTINGENCY | 28,500.00 | | | | | |
| PHASE II SUB-TOTAL | 809,070.00 | | | | | |
| PROJECT TOTAL | 905,841.00 | | | | | |

REVISED: MAY 30, 2007
 *CHANGES (FROM PREVIOUS) ARE IN BOLD

5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la société.

NONE

6. The classes and any maximum number of shares that the corporation is authorized to issue:
Catégories et nombre maximal, s'il y a lieu, d'actions que la société est autorisée à émettre :

UNLIMITED COMMON SHARE

7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series:
Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions qui peut être émise en série

NOT APPLICABLE

8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:
L'émission, le transfert ou la propriété d'actions est/n'est pas restreint. Les restrictions, s'il y a lieu, sont les suivantes :

NOT RESTRICTED

Noms et adresses des fondateurs :

First name, middle names and surname or corporate name
Prénom, autres prénoms et nom de famille ou
dénomination sociale

Full address for service or address of registered office or
of principal place of business giving street & No. or R.R.
No., municipality and postal code
Domicile élu au complet, adresse du siège social ou
adresse de l'établissement principal, y compris la rue et le
numéro ou le numéro de la R.R., le nom de la
municipalité et le code postal

BRENDA MARGARET EPP

2378 King St. RR#1, ST. CATHARINES
ONTARIO L2R 6P7

These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

Brenda Epp Signatures of incorporator(s) /
Signatures des fondateurs

Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

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

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

Reply to:
Leslie A. Wittlin
Direct Tel: 416-307-4087
Direct Fax: 416-304-3855
lwittlin@langmichener.ca

March 3, 2009

VIA E-MAIL

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

Attention: Ira Smith

Dear Ira:

**Re: 1539304 Ontario Inc., carrying on business as Trinity Landing (“Trinity Landing”)
- Receivership**

Following the remarks of Justice Pepall in Court on Thursday, February 26, 2009 and as requested by you, we have now specifically reviewed the security held by ICICI Bank Canada (the “Bank”) over the property, assets and undertaking of Trinity Landing securing the indebtedness, liabilities and obligations of Trinity Landing to the Bank.

Bank Security Review

According to the Affidavit of Lionel Meunier, the Assistant Vice-President of the Bank, sworn September 4, 2008, Trinity Landing granted the following security to the Bank upon which it relied in seeking your appointment as Receiver:

1. Charge/Mortgage charging the lands and premises known municipally as 80 King William Street, Hamilton, registered as instrument no. WE436883 on December 4, 2006 in the Land Registry Office at Hamilton and subsequently amended (the “Mortgage”).
2. General Security Agreement dated November 29, 2006, notice of which was filed under the *Personal Property Security Act* Ontario (the “PPSA”) as registration no. 2006 1120 1620 1862 4215 (the “GSA”).

We note that there are several other pieces of security obtained by the Bank and perfected under the PPSA relating to the indebtedness, liabilities and obligations of Trinity Landing to the Bank, but which are collateral to the Mortgage and the GSA.

You have asked us to provide you with an opinion as to the validity and enforceability of the Mortgage and the GSA. We have reviewed search certificates from the Land Registry Office

(No. 62) in Hamilton and under the PPSA with a file currency of November 13, 2008, being the day following the issuance of the receivership order made by Justice Pepall.

In reviewing the Mortgage and the GSA, we have relied upon the Affidavit of Lionel Meunier mentioned above confirming that true copies of both documents are contained as Exhibit "B" and Exhibit "C" to his Affidavit.

In expressing our opinions, we have therefore assumed, without further independent verification by us:

- (a) the genuineness of all signatures on, and the authenticity and completeness of the Mortgage and the GSA as true copies thereof;
- (b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other like officials with respect to those matters referred to herein;
- (c) the accuracy of the description of the collateral contained in the Mortgage and the GSA;
- (d) Trinity Landing has rights in the lands charged by the Mortgage and the property, assets and undertaking charged by the GSA and that value has been given to Trinity Landing by the Bank;
- (e) the indebtedness, liabilities and obligations of Trinity Landing secured by the Mortgage and the GSA were, at all times, legal, valid, binding and enforceable obligations of Trinity Landing;
- (f) Trinity Landing was at the time of authorization, execution and delivery of the Mortgage and the GSA, and is validly constituted and existing under the laws of Ontario, had the corporate power and authority to execute, deliver and perform its obligations under the Mortgage and the GSA, has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Mortgage and the GSA and has duly executed and delivered each of the Mortgage and the GSA;
- (g) there are no agreements, judgments, rulings, instruments, facts or understandings affecting or concerning either of the Mortgage or the GSA or the principal obligations with respect to which each security has been granted, or statutory or regulatory prohibitions on the execution and delivery of any of the Mortgage or the GSA or the security interests granted thereunder by Trinity Landing which were not apparent from a review of each security and which would or might affect the validity or enforceability thereof;

- (h) the Bank did not know and did not have any reason to believe at the time that the creation of the charges and security interests in the collateral described in the Mortgage and the GSA was in contravention of any agreement by which Trinity Landing or its property or assets were bound, if there were such a contravention; and
- (i) that the execution, delivery and performance of obligations under each of the Mortgage and the GSA did and do not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under the relevant provisions of the *Bankruptcy and Insolvency Act*, the *Fraudulent Conveyances Act* (Ontario), the *Assignment and Preferences Act* (Ontario) or any other similar legislation.

Based and relying upon the foregoing and subject to the qualifications, exceptions and limitations herein expressed, we are of the opinion that::

1. under the laws of Ontario, the Mortgage and the GSA constitute legal, valid and binding obligations of Trinity Landing, enforceable against Trinity Landing in accordance with their terms, and are valid and enforceable against a trustee in bankruptcy of Trinity Landing.
2. The Mortgage and the GSA create valid charges and security interests respectively against the collateral owned by Trinity Landing as described therein under the laws of Ontario.
3. Registration has been made in all public offices in Ontario where such registration is necessary as provided under the laws of Ontario with respect to the Mortgage charging the lands described therein, and to perfect in Ontario the security interests created by the GSA in the personal property described therein in favour of the Bank.

The foregoing opinions are subject to the following exceptions and qualifications:

- (a) The enforceability of the Mortgage and the GSA is subject to bankruptcy, insolvency, preference, winding-up, reorganization, arrangement, moratorium and other laws affecting creditors' rights generally;
- (b) The enforceability of the Mortgage and the GSA may be limited by general principles of law and equity relating to the conduct of the parties prior to execution of or in the administration or performance of each piece of security, including, without limitation, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, laches, and reasonableness and good faith in the exercise of discretionary powers;
- (c) A court of competent jurisdiction may exercise its discretion in granting equitable remedies;

- (d) A secured creditor may be required to give (or to have given) a debtor a reasonable time to pay following a demand for payment prior to taking any action to enforce a right of repayment or before exercising any of the rights and remedies expressed to be exercisable by the secured creditor;
- (e) No opinion is expressed as to the existence of, or the right, title or interest of Trinity Landing in and to any real property or personal property or as to the rank or priority of any charge or security interest or other interest expressed to be created by the security held by the Bank; and
- (f) Any charges, mortgages, liens (including subsequently registered construction liens) or other rights existing or established in priority to the charge contained in the Mortgage and the security interests constituted under the GSA.

Priority between the Bank Security and the City Security

You also asked us to review the postponement of interest given to the Bank by the City of Hamilton which was registered on title to the lands charged by the Mortgage and by another mortgage in favour of the City of Hamilton registered on title as instrument no. WE438117 on December 11, 2006 (the “**City of Hamilton Mortgage**”), and the *PPSA* postponement and subordination agreement dated November 29, 2006 made among the Bank, the City of Hamilton and Trinity Landing (the “**PPSA Postponement**”). True copies of each of those documents are contained in Exhibit “D” of the Affidavit in the Lionel Meunier referred to above. The postponement of interest registered on title to the lands charged by the Mortgage and the City of Hamilton Mortgage provides that the City of Hamilton postpones its rights under its charge, general assignment of rents and notice of security interest to the Mortgage and the general assignment of rents in favour of the Bank without any reservation of rights.

The *PPSA* Postponement provides, among other things, that notwithstanding the order of registration of the financing statements made by the City of Hamilton and the Bank, the City of Hamilton postpones and subordinates for all purposes the security held by it to the security held by the Bank so that the security held by the Bank shall rank, in all circumstances and for all purposes, in priority to the security held by the City of Hamilton against the existing and future undertaking and assets of Trinity Landing without limitation whatsoever.

The only reference whatsoever which we could find in any document contained in the Bank’s Motion Record in response to the unsupported oral submission made by Ron Weston, counsel for the City of Hamilton, in Court on February 26, 2009 was that in the October 19, 2006 commitment letter given by the Bank to Trinity Landing under the heading “Anticipated Source of Repayment”. That particular clause in the Bank’s commitment says that all net sales proceeds will be utilized to repay the credit facilities. The Term “Net Sales Proceeds” is defined as the sale price of each of unit in the proposed condominium development less GST, sales commission to a maximum of \$3,500 per unit, and \$25 per square foot payable to the City of Hamilton for loan repayment. There is no other reference in any document to this provision in the commitment letter from the Bank.

Furthermore, it is most unlikely that any intended units in this proposed condominium will ever be sold under the marketing and sales plan now approved by the Court.

As you know, I wrote to both counsel for the City and the Bank on February 27, 2009 specifically requesting that they provide true copies of any other documents pertaining to the repayment of the City of Hamilton Mortgage in priority to or *pari passu* with the Mortgage. So far, only counsel for the Bank responded by providing me with a copy of a letter from the City of Hamilton to the Bank dated September 6, 2007. Among other things, this letter purports to confirm that the registration and closing of condominium units will only occur once Trinity Landing has entered into agreements of purchase and sale that effectively total no less than \$4,500,00 in purchase price net of GST, sales commission and cost of appliances in order to satisfy the Bank that the indebtedness of Trinity Landing will be paid in full. Again, this letter makes it clear that there must be a condominium in existence and at least \$4,500,00 in condominium unit sales agreements, two conditions that are unlikely to be met by Trinity Landing now that there is a receivership underway. A condominium does not exist and there do not appear to be any unit sales agreements approaching that magnitude.

As of the time of completing this letter to you, we are still waiting to hear from counsel for the City to determine if the City has any other evidence of the legal position he referred to in his submissions in Court on February 26, 2009.

Yours truly,

Lang Michener LLP

Per:



Leslie A. Wittlin
LAW/dgc

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

DATED MARCH 4, 2009

1.0 INTRODUCTION

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

The Honourable Madam Justice Pepall made an order dated November 12, 2008 (the "Receivership Order") appointing the Receiver. A copy of the Receivership Order is attached hereto as Exhibit "A".

1.1 Purpose of the Supplementary Report

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

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

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

1.2 Disclaimer

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

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

2.0 BACKGROUND AND OVERVIEW

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

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

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

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

3.1 Mr. Ganatra -

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

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

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

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

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

3.2 *The City* –

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

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

² Paragraph 2.6 of Mr. Ganatra's submission dated February 25, 2009.

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

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

4.0 SECURITY OF THE APPLICANT

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

³ Section 4.0 of the First Report to Court, **RETAINER OF PWI**.

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

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

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

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

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

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

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

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

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

[REST OF PAGE LEFT INTENTIONALLY BLANK]

5.0 FACTORS FOR THE ENGAGEMENT OF PWI

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

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

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

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

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

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

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

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

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

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

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

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

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

6.0 RECOMMENDATION

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

**

**

**

All of which is respectfully submitted at Toronto, Ontario this 4th day of March, 2009.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity

Per: _____

President



March 11, 2010

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

Attn: Brandon Smith, Estate Manager

Dear Mr. Smith:

Re: Loan outstanding Statement

Referring to your email dated March 9, 2010, please find the current outstanding balance as of March 11, 2010 for the mortgage and related expenses as follows:

| | Amount | per diem |
|---------------------------------------|-----------------------|-------------|
| Principal Balance | \$3,904,639.99 | \$669.34 |
| Outstanding Letters of Credit | \$695,451.19 | |
| Accrued Interest | \$512,686.49 | |
| Loan Restructure fee | \$100,000.00 | |
| Letters of Credit fee | \$37,802.04 | |
| Legal fees | \$230,000.00 | (Estimated) |
| Quality Surveyor and Peer Review fees | \$46,168.36 | |
| Total | \$5,526,748.07 | |

For ICICI Bank Canada

P. Romanjar

Authorized Signatory

ICICI Bank Canada

Don Valley Business Park
150 Ferrand Drive, Suite 1200
Toronto, ON M3C 3E5
Canada

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

Lang Michener LLP
Lawyers – Patent & Trade Mark Agents

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

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

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

VIA EMAIL

March 4, 2010

TO: ALL PARTIES ON THE SERVICE LIST

Dear Sirs and Madams:

Re: 1539304 Ontario Inc. o/a Trinity Landing (“Trinity Landing”)

As indicated in our letter of February 18, 2010, the Receiver intends to bring a motion for an Order that the net proceeds of the assets of Trinity Landing, less the final approved fees and disbursements of the Receiver and its legal counsel, be paid into Court. The Receiver will also seek an Order that the Receivership be terminated and the priority disputes be referred for trial.

Should any parties wish the Receiver to continue to remain involved in a mediation role rather than terminating the Receivership, we would ask that you make us aware of that position.

We anticipate that the motion will take two hours. If any party believes more time is necessary, please advise us of this by Wednesday, March 8. We anticipate serving our motion record by March 15, 2010. In light of this, and the Court’s availability, we intend to book April 22, 2010 for the return of this motion. If any party has any objection to this date, please advise of this by Monday, March 8, 2010.

As indicated in our letter of January 8, 2010, a 9:30 appearance has been booked for Monday, March 8, 2010. We wish to emphasize that this appearance is related to scheduling and procedure, and that the Receiver will not be seeking an Order with respect to any substantive issues at this appearance.

If you have any questions, please do not hesitate to contact the undersigned at any time.

Yours truly,

Lang Michener LLP



Per: Aaron Rousseau

AR

cc: Ira Smith

| 80 King William | | | |
|------------------------|-------------------------|-----------------|-----------------------|
| Date | Description | Advances | Total Advanced |
| 11/18/2004 | Loan Advance #1 Phase 1 | \$473,040.00 | \$473,040.00 |
| 3/17/2005 | Loan Advance #2 Phase 1 | \$157,680.00 | \$630,720.00 |
| 7/13/2005 | Loan Advance #3 Phase 1 | \$144,210.00 | \$774,930.00 |
| 5/25/2006 | Loan Advance #4 Phase 1 | \$72,241.00 | \$847,171.00 |
| 2/29/2008 | Loan Advance #1 Phase 2 | \$190,527.00 | \$1,037,698.00 |
| 4/8/2008 | Loan Advance #2 Phase 2 | \$63,509.00 | \$1,101,207.00 |

Lang Michener LLP
Lawyers – Patent & Trade Mark Agents

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

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

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

VIA EMAIL

February 18, 2010

FELTMATE DELIBATO HEAGLE LLP
3600 Billings Court, Suite 200
Burlington, Ontario
L7N 3N6
Attn: Ronald Weston
rweston@fdhlawyers.com

Dear Mr. Weston:

Re: 1539304 Ontario Inc. o/a Trinity Landing (“Trinity Landing”)

The Receiver is preparing a report to the Court to accompany its motion for distribution for the proceeds of the assets of Trinity Landing.

On February 26, 2009, the City of Hamilton (the “City”) submitted to the Court that it believed that its security over the assets of Trinity Landing ranked either in priority to or parri passu with the ICICI Bank Canada’s security. Please confirm whether the City is continuing to take this position, so that the Receiver may report this to the Court. Please provide your response by February 25, 2010.

If you have any questions, please do not hesitate to contact the undersigned at any time.

Yours truly,

Lang Michener LLP



Per: Aaron Rousseau

AR

Encl.

cc: Ira Smith
Leslie Wittlin

Brandon Smith

From: Aaron Rousseau [arousseau@langmichener.ca]
Sent: March 3, 2010 3:00 PM
To: Ira Smith; Brandon Smith
Cc: Leslie Wittlin
Subject: FW: 15393 Ontario Inc. o/a Trinity Landing - Correspondence

Follow Up Flag: Follow up
Flag Status: Completed

It appears that the City is not disputing the priority of ICICI. That simplifies matters somewhat, and should be reflected in the report. I have also heard from the 2008 lien claimants. See my next email.

Best,
Aaron

From: Ron Weston [<mailto:RWeston@fdhlawyers.com>]
Sent: March 3, 2010 11:24 AM
To: Aaron Rousseau
Cc: Don Fisher
Subject: RE: 15393 Ontario Inc. o/a Trinity Landing - Correspondence

The City is not disputing the priority

From: Aaron Rousseau [<mailto:arousseau@langmichener.ca>]
Sent: Tuesday, March 02, 2010 7:40 PM
To: Ron Weston
Subject: RE: 15393 Ontario Inc. o/a Trinity Landing - Correspondence

Mr. Weston,

Further to my voicemail, I trust you have had the opportunity to consider my letter of February 18, 2010. Please advise us of the City's position with respect to the priority of its security.

Thank you,

Aaron Rousseau
Lang Michener LLP
Tel: (416) 307-4081 (Direct)
Fax: (416) 365-1719
E-mail: arousseau@langmichener.ca

From: Aaron Rousseau [<mailto:arousseau@langmichener.ca>]
Sent: February 18, 2010 10:32 AM
To: Ron Weston
Cc: Ira Smith; Leslie Wittlin
Subject: 15393 Ontario Inc. o/a Trinity Landing - Correspondence

Please see the attached correspondence.

Aaron Rousseau
Lang Michener LLP

Tel: (416) 307-4081 (Direct)
Fax: (416) 365-1719
E-mail: arousseau@langmichener.ca

Lang Michener LLP-
Lawyers - Patent & Trade Mark Agents
Brookfield Place, 181 Bay Street, Suite 2500
Toronto, Ontario, Canada M5J 2T7
Telephone (416) 360-8600 Fax (416) 365-1719
Visit us on the web at www.langmichener.ca

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| CP Office Solutions | Scarborough | ON | M1S3R6 |
| Alldoor Supply Company | Burlington | ON | L7P 5C1 |
| Greg Ksiazek | Hamilton | ON | L8N 3Z1 |
| L.G. Woods Surveyor | Dundas | ON | L9H 2H9 |
| Horizon Utilities Corporation | Hamilton | ON | L8R 3M8 |
| Union Gas Limited | Brantford | ON | N3T 5M4 |
| Howard Shankman | Toronto | ON | M4T 1J9 |
| Harold Epp | St. Catherines | ON | L2R 6P7 |
| Frank Taylor | | | |
| Burns, Vasan, Argiropoulos LLP | Hamilton | ON | L8P 4W7 |
| Sofia Buzelli | Burlington | ON | L7M5A4 |
| Christine Neilson | Hamilton | ON | L8P 1T3 |
| Pamela Davis & Robert Turcotte | Hamilton | ON | L8S 3A4 |
| Jeffery and or Diana Legris | Hamilton | ON | L8E 3LC |
| Deirdre Dixon | Hamilton | ON | L8S 1G2 |
| Messers. Vachon & Kafka | Burlington | ON | L7S 1Y6 |
| Shirley Thai | Hamilton | ON | L8L 2G4 |
| Praful Raythattha | Princeton | NJ | 08540 |
| Charlotte Hell | Hamilton | ON | L8B1X6 |
| Stan Misiak | Ancaster | ON | L9K 4H5 |
| Manju Kotak | Nepean | ON | K2J 4Z7 |
| Dr. David Carll | Fonthill | ON | G0S 1E4 |
| Khan Khokar | Etobicoke | ON | M9V 1A3 |
| Raj Basi | Etobicoke | ON | M9V 1A3 |
| Abdul Quadir Mirza | Etobicoke | ON | M9V 1A3 |
| Hasumukh Ganatra | Etobicoke | ON | M9V 1A3 |
| Carter Creek Estate | Mississauga | ON | L5B4M4 |
| Romanov Romanov Architects Inc. | Toronto | ON | M6R 2Z6 |
| Sibble Roofing Limited | Sherkston | ON | L0S 1R0 |
| Marvin Caplan | Hamilton | ON | L8S 1A2 |
| Rajaram & Yashoda Perumal | Hamilton | ON | L9C 4B3 |
| Mutual Gain | Toronto | ON | M1N 1R3 |
| K.O. & Partners Ltd. | Markham | ON | L3R 2Z4 |
| Ernie Reimer | | | |
| Foremost Financial Corporation | Toronto | ON | M4N 2L6 |
| Canada Revenue Agency | Hamilton | ON | L8N 3E1 |
| Ontario Ministry of Revenue | Oshawa | ON | L1H 8E9 |
| Workplace Safety Insurance Board | Toronto | ON | M5V 3J1 |

ALREADY ON SERVICE LIST

Ira Smith

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

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

March 10, 2010

TO THE UNSECURED CREDITORS OF 1539304 ONTARIO INC.

Dear Sirs

In the Matter of the Receivership of 1539304 Ontario Inc. (the "Company")

As you may be aware, by Order of the Ontario Superior Court of Justice (Commercial List), dated November 12, 2008 (the "Order"), Ira Smith Trustee & Receiver Inc. was appointed interim receiver and receiver and manager of the Company. A copy of the Order as well as all public reports to the Court and Orders are available from the Receiver's website at <http://www.irasmithinc.com/trinity/index.html>.

We advise that the Company's principal line of business was the development of a condominium located at 80 King William Street in the City of Hamilton, Ontario known as Trinity Landing (the "Real Property"). The Company may have traded under the name Trinity Landing or Trinity Landing Condominiums.

We note from our review of certain of the Company's books and records and through information made known to us during the course of the receivership administration, you may have an unsecured claim against the company.

We advise that through the receivership administration the Company's sole asset, the Real Property was sold through a Court approved and supervised sales process. The Receiver is now preparing its fourth report to Court to recommend final distribution of the net sales proceeds and to seek its discharge.

ICICI Bank of Canada held a first mortgage over the Real Property and the City of Hamilton held a second mortgage over the Real Property as well as PPSA security over the Company. There are also several contractors and building trades who have registered liens against the Real Property. These collective group of creditors are considered to be secured creditors (the "Secured Creditors"), subject to the proper quantification of their respective secured claims.

The Receiver advises that the Secured Creditors assert priority claims over the cash realized by the Receiver but have as yet to negotiate a settlement as between themselves

for the Receiver to consider. A trial of the issue may be required to determine the final distribution of the net sales proceeds. Regardless of the outcome, the Secured Creditors will suffer a shortfall as the collective debt to the Secured Creditors far exceeds the net sales proceeds available for distribution. Accordingly there will be no distribution to the Company's unsecured creditors.

Our motion for approval of *inter alia* our proposed distribution and our discharge is scheduled to be heard by the Ontario Superior Court of Justice (Commercial List) on April 22, 2010 at 10:00 AM. The court is located on the eighth floor at 330 University Avenue, Toronto, Ontario. The court room assigned to hear the matter will be posted on the day of the hearing in the hallway.

If you wish to be served with our motion record inclusive of our fourth report please provide your email address for electronic service.

You may contact the undersigned or our counsel, Mr. Aaron Rousseau of Lang Michener LLP at arousseau@langmichener.ca.

Yours truly,

IRA SMITH TRUSTEE & RECEIVER INC.,
solely in its capacity as Court-Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity

Per:



Brandon Smith
Estate Manager



7100 Woodbine Avenue
Suite 208
Markham, Ontario L3R 5J2
tel: (905) 477-4507
fax: (905) 477-4509

e-mail: pwi@pelicanwoodcliff.com

November 17, 2008

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

Via E-mail: ira@irasmithinc.com

Dear Mr. Smith,

Re: **80 King William Street**
Property Management and Project Management Services

Further to our meeting at the above Property on November 13, 2008, we are pleased to provide you with our proposal for Property Management and Project Management Services in connection with the Trinity Landing condominium project located at 80 King William Street, Hamilton, ON (the "Property").

The purpose of this letter is to record the terms and provisions of the engagement of Pelican Woodcliff Inc. ("PWI") by Ira Smith Trustee & Receiver Inc. ("ISI" or the "Receiver"), solely in its capacity as Interim Receiver and Receiver and Manager. PWI acknowledges that its retainer by the Receiver is in accordance with the terms of the Order of the Ontario Superior Court of Justice (Commercial List) dated November 12, 2008 (the "Appointment Order") and specifically, paragraph 3(d) of the Appointment Order.

We previously became familiar with the Property while preparing a Peer Review Report for ICICI Bank which dealt with the status of the project at that time and provided an estimate of cost to complete together with recommendation. This report is dated June 25, 2008 and based on our preliminary walk through the building on November 13, there has been no material progress in construction since the time of the report.

Our proposal encompasses the following services:

1. Property Management
2. Project Management
3. Disposition Analysis

SCOPE OF WORK

I. Property Management

Under the role of Property Manager, we will be responsible for the following:

- a) Security of the Property including lock replacement, overseeing patrol company, securing points of entry, installing monitoring devices (if deemed necessary);

- b) Building utilities: ensuring that the building is properly heated and has continuous hydro service;
- c) Insurance coverage: with the receiver, ensuring proper coverage;
- d) Building inspections: Minimum of one visit per week by PWI personnel to ensure that the building remains secure and operational.

II. Project Management

1. Emergency Work

We propose that the following activities take place immediately to reduce the likelihood of further deterioration of the building (emergency work).

- a) Meet with the General Contractor to receive his input on the scope of emergency work;
- b) Meet with Consulting Team (Architect and Engineers, as required);
- c) Assemble all available documentation (from Developer, Consultants, General Contractor);
- d) Prepare a scope of emergency work;
- e) Prepare a cost estimate to complete the emergency items and provide it together with recommendations to the Receiver.
- f) Review bid(s) by contractor(s) and co-ordinate work with chosen contractor.

2. Marketing & Sales Review

We propose to conduct:

- a) A review of all the Agreements of Purchase and Sale and prepare a summary of each agreement. This summary will assist the Receiver in deciding which course of action is most appropriate once the Property is stabilized;
- b) A review of the condominium documents;
- c) Meeting with the Sales Agent (Marvin Caplan, Coldwell Banker)

3. Discussions with the City of Hamilton

The City of Hamilton has vested interest in this Property both through its program to revitalize the downtown area and as a Lender to the project. A

meeting with the appropriate people (Councilor, Area Planner, etc.) will help us understand the City's position in regard to the project.

4. Disposition Analysis and Implementation

Based on the information gathered through the above activities, we will provide the Receiver with an analysis of the disposition options available and will provide our recommendations. Once a decision is made as to the optimal mode of disposition, we will manage the process in conjunction with the Receiver.

5. Other

Depending on the requirements of the Receiver, we are able to provide additional project management services based on our experience in condominium development projects.

FEES

Our fees will be based on the following hourly rates:

| | |
|---|-------------------|
| Principals | \$250.00 per hour |
| Associates/Senior Quantity Surveyors/Property Manager | \$170.00 per hour |
| Quantity Surveyors/Junior Management | \$130.00 per hour |
| Analyst | \$110.00 per hour |

The following are preliminary estimates of the range of potential fees.

| | | |
|-----|--|--|
| I. | Property Management: Ia, Ib and Ic | \$15,000 - \$20,000 |
| | Property Management: Id | \$650/week (based on one visit per week) |
| II. | Project Management: II. 1a, II 1b, II 1c, II 1d, II 1f | \$25,000 - \$30,000 |
| | Project Management: II 1e | \$3,000 - \$5,000 |
| | Marketing & Sales Review: II 2 | \$5,000 - \$7,000 |
| | Discussions with City of Hamilton: II 3 | Hourly |
| | Disposition Analysis: II 4 | Hourly |
| | Other: II 5 | Hourly |

Note: The above fee ranges are based on a preliminary understanding of the scope of work. We will inform you if the actual fees exceed the upper end of the range by more than 20%.

EXPENSES

The foregoing fee ranges exclude GST and out of pocket expenses which will be billed in addition

Our invoices will be submitted monthly and are payable within 30 days.

OTHER

PWI is being retained by ISI, solely in its capacity as Court-appointed Interim Receiver and Receiver and Manager of 1539304 Ontario Inc. in connection with the Property ("ISI" or the "Receiver"). The purpose of PWI's retainer is to assist ISI as described above.

This agreement and the terms of PWI's retainer, is subject to the Receiver obtaining the approval of the Ontario Superior Court of Justice (Commercial List) (the "Court") to such Agreement, and is subject to any subsequent Orders of the Court made which may alter or terminate this Agreement.

This Agreement is binding with effect from the date the Court approves the appointment of PWI. It shall remain in effect thereafter, subject to any further Order of the Court affecting this Agreement. The Scope may be altered by the agreement of both parties, subject to Court approval.

PWI will perform the services set out herein as an independent contractor. Nothing contained herein shall be deemed to create any association, partnership, joint venture or to provide either party with the right, power or authority, whether expressed or implied, to create any such duty or obligation on behalf of the other party.

PWI shall comply with all applicable federal, provincial and municipal laws, rules and regulations arising out of or connected with the performance of the services under this Agreement.

PWI acknowledges that it is being retained by ISI, solely in its capacity as the Interim Receiver and Receiver and Manager under the Appointment Order. Any protection granted to ISI by the Appointment Order, or any subsequent Order of the Court, shall also be granted to PWI in performing its duties under this Agreement.

PWI agrees that it must bring to the attention of the Receiver any event which transpires that may lead to any party having a claim against the Property, PWI or the Receiver.

PWI will cooperate and assist the Receiver in the defence of any such claim at the cost of the Receiver.

NOTICES

All notices, requests, demands or other communications (collectively, "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any

other person shall be given in writing by personal delivery or by registered mail, postage prepaid, facsimile transmission or by electronic mail by such other party as follows:

(a) To ISI: #6-167 Applewood Crescent, Concord, ON L4K 4K7
Attention: Ira Smith

Fax: 905.738.9848
Email: ira@irasmithinc.com

(b) To PWI: #208-7100 Woodbine Avenue, Markham, ON L3R 5J2
Attention: Ronald Mandowsky

Fax: 905.477.4509
Email: ronnie@pelicanwoodcliff.com

Or at such other address as may be given by such person to the other parties hereto in writing from time to time.

ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties with respect to all the matters herein and its execution has not been induced by or do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto. Any schedules referred to herein are incorporated herein by reference and form part of the Agreement.

CONFIDENTIALITY

PWI recognizes the confidential nature of this assignment. PWI undertakes that its retainer, and all information obtained by PWI as a result of this retainer, will not be disclosed to third parties unless PWI has first obtained the prior consent of the Receiver to release specific information.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance to the law of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the exclusive jurisdiction of the Court.

TRANSMISSION BY FACSIMILE AND EMAIL

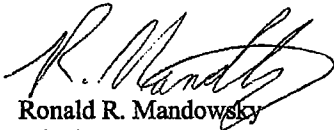
The parties hereto agree that this Agreement, and any other notices to be given under this Agreement, may be transmitted by Facsimile or Email or such similar device and that the reproduction of signatures by facsimile or as contained in Email or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

We look forward to working with you on this project.

If you are in agreement with this proposal, please sign below and return to this office.

Yours truly,

PELICAN WOODCLIFF INC.



Ronald R. Mandowsky
Principal

RRM/am

**IRA SMITH TRUSTEE & RECEIVER INC.,
SOLELY IN ITS CAPACITY AS COURT APPOINTED
INTERIM RECEIVER AND RECEIVER AND MANAGER
OF 1539304 ONTARIO INC.**

WE ACCEPT THE TERMS OF THIS PROPOSAL

Per: _____



President



POCRNIC REALTY ADVISORS INC.

July 28, 2009

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

File No. 10421AJ-09

Dear Mr. Smith:

Reference: Narrative Appraisal Report
80 King William Street, Hamilton, Ontario
Property Identification No. 17167-0115(LT)
Lots 21 and 22, Nathaniel Hughson Survey (Unregistered), S/S King William Street
BTN John Street and Catherine Street, Being Part 1 on 62R-16706; Hamilton

Pursuant to the terms of reference, please find enclosed a Narrative Appraisal Report (the "Report") pertaining to the above captioned property (the "subject property").

The subject property is a partially rehabilitated (88 percent), five (5) level structure consisting of fifty (50) loft-style residential dwelling units. As of June 29, 2009, the effective date of appraisal, Ira Smith Trustee & Receiver Inc. serves as the Court appointed Receiver and Manager (the "Receiver") of the assets, properties and undertakings of 1539304 Ontario Inc., which operated as Trinity Landing Condominiums (collectively the "Company"), as a result of a mortgage default by the Company.

The purpose of this appraisal is to estimate the market value of the subject property on an "as-is" basis. The property rights appraised are those of the fee simple estate, subject to any encumbrances that may be specifically noted herein.

The intended use of this Report is to assist the Receiver in disposition of the subject property.

An inspection of the subject property and the surrounding area was completed by Pocrnic Realty Advisors Inc. on June 29, 2009.

Based upon the completion of the Income Approach and the Direct Comparison Approach, the market value of the subject property on an "as-is" basis, effective June 29, 2009, is estimated to be:

Two Million (\$2,000,000) Dollars

The reader is directed to Section 1.4 of this report entitled, "Assumptions and Limiting Conditions", which provides the context and basis for the herein contained market value estimate.

1/2

◆ APPRAISALS ◆ CORPORATE BROKERAGE ◆ PROPERTY MANAGEMENT ◆ PROPERTY TAX

34 Hess Street South, Hamilton, Ontario L8P 3N1 • Phone (905) 522-7936 • Fax: (905) 522-8120
www.pocrniccommercial.com

Mr. Brandon Smith, BA
Ira Smith Trustee & Receiver Inc.

-2-

Narrative Appraisal Report
80 King William Street, Hamilton

As of the date of this report, I, Steve Pocrnic, have completed the requirements of the Continuing Education Program of the Appraisal Institute of Canada (the "A.I.C.") and have abided by the 2009 edition of the Canadian Uniform Standards of Professional Appraisal Practice (the "CUSPAP") and the Code of Professional Ethics and Standards of Professional Practice of the A.I.C. in the preparation of this report.

As of the date of this report, I, Jim Bettato, an articling appraiser with Pocrnic Realty Advisors Inc. and a candidate member of the A.I.C., have assisted in the preparation of this report.

This report is prepared in accordance with the guidelines of the A.I.C.

Sincerely,

POCRNIC REALTY ADVISORS INC.



Steve M. Pocrnic, AACI, P.App., CCIM, A.I.M.A.
Broker of Record



Jim Bettato, BAA (Urb. Planning)
Broker/Candidate Appraiser-A.I.C.

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

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

| RECEIPTS | |
|--|------------------------|
| Advance from ICICI Bank - Receiver's Certificate No. 1 | \$ 50,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 2 | 50,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 3 | 100,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 4 (Cancelled) | - |
| Advance from ICICI Bank - Receiver's Certificate No. 5 | 41,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 6 | 110,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 7 | 29,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 8 | 130,000.00 |
| Advance from ICICI Bank - Receiver's Certificate No. 9 | 70,000.00 |
| Deposits re: Offers to Purchase | 520,101.00 |
| Sale of Assets (Net of Deposits received) | 2,790,909.00 |
| Occupancy Costs Received from Purchaser | 5,372.25 |
| Union Gas - Refund from Final Reading | 62.31 |
| Interest ¹ | 6,471.29 |
| TOTAL RECEIPTS: | \$ 3,902,915.85 |
| DISBURSEMENTS | |
| Receiver's Fee | 163,546.84 |
| Pelican Woodcliff Inc. | 171,757.65 |
| Solicitor to the Receiver (Lang Michener LLP.) | 191,327.21 |
| Pinchin Environmental | 19,475.11 |
| Romanov Architect | 7,035.00 |
| Appraisal | 4,687.50 |
| Insurance | 33,674.00 |
| Property Tax (inclusive of arrears) | 27,655.92 |
| Security | 17,279.25 |
| Utilities | 30,972.56 |
| Electrical Repairs | 1,810.73 |
| Harold Epp - Emergency & Contracted Work | 7,565.00 |
| Fees paid to the Official Receiver | 70.00 |
| GST paid | 32,951.68 |
| Provincial sales tax paid | 2,694.72 |
| Locksmith | 750.00 |
| Newspaper Ads/Graphic Artist/Internet Data Room | 8,492.08 |
| Mould Removal | 36,382.00 |
| Bank Charges ² | 323.27 |
| Returned Deposits (incl interest earned upon) | 210,013.88 |
| Returned Advances from ICICI Bank | 580,000.00 |
| Interest and Fees Paid on Advances from ICICI Bank | 20,127.77 |
| Break Fee Paid | 290,151.50 |
| TOTAL DISBURSEMENTS | 1,858,743.67 |
| AMOUNT ON HAND AS AT March 15, 2010³ | \$ 2,044,172.18 |

1. Interest will continue to accrue on a monthly basis.

2. Bank charges will continue to accrue at the rate of \$15 per month.

3. Of the total funds on hand, \$2,006,451.23 is held in an interest bearing savings account.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ICICI BANK CANADA

Applicants

- and -

1539304 ONTARIO INC.

Respondents

**AFFIDAVIT OF IRA SMITH
(Sworn March 17, 2010)**

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

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

4. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a summary of the fees charged and accounts rendered by the Receiver in respect of the proceedings (the "**Accounts Summary**") for the period from September 1, 2009 to March 15, 2010 (the "**Time Period**"). A copy of the invoice rendered by the Receiver and referenced in the Accounts Summary are attached to this my Affidavit as **Exhibit "B"**.

5. The Receiver has filed its Fourth Report with this Honourable Court, which outlines, among other things, the Receiver's overall actions and activities since September 17, 2009, the date of its Third Report.

6. A total of 205.2 hours were expended by the Receiver in connection with this matter during the Time Period, giving rise to fees totaling \$64,764.00 (excluding GST) for an average hourly rate of \$315.60 and allocated approximately as outlined in the Accounts Summary.

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

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

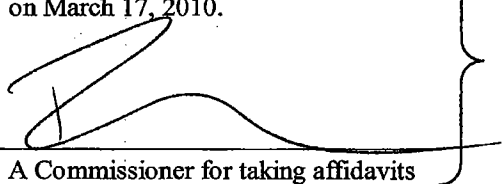
9. I verily believe that the Receiver's accounts are fair and reasonable in the circumstances.

10. Attached as Exhibit "A" to the Affidavit of Aaron Rousseau sworn March 16, 2010 and filed in support of the within motion are copies of the accounts rendered by Lang Michener LLP ("**LM**"), counsel to the Receiver, for the period from September 1, 2009, to February 28, 2010.

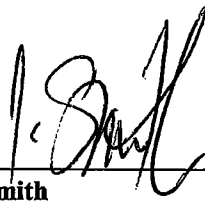
11. LM has rendered services throughout these proceedings consistent with instructions from the Receiver, the Receiver has approved all such accounts and I verily believe that the fees and disbursements of LM are fair and reasonable in the circumstances.

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

SWORN BEFORE ME at the City of
Vaughan, in the Province of Ontario,
on March 17, 2010.



A Commissioner for taking affidavits



Ira Smith


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

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

SEPTEMBER 1, 2009 – MARCH 15, 2010

| Staff Member | Title | Total Hours | Hourly Rate | Amount Billed (GST INCL) |
|---|----------------|---------------------|--|--------------------------|
| Ira Smith MBA, CA•CIRP, Trustee | President | 77.2 | 425.00 | 32,810.00 |
| Brandon Smith BA | Estate Manager | 127.6 | 250.00 | 31,900.00 |
| Cheryl Deshane | Technician | <u>0.4</u> | 135.00 | <u>54.00</u> |
| Total | | <u>205.2</u> | Average hourly rate of \$315.60 | 64,764.00 |
| Disbursements | | | | 353.34 |
| Net Fees and Disbursements (excluding GST) | | | | <u>65,117.34</u> |
| | | | | |

This Exhibit ^A..... referred to in the Affidavit of Ira Smith..... Sworn before me this 17 day of May, 2010



 A Commissioner, etc.

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

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

Tel. (905) 738-4167
Fax (905) 738-9848
Email: ira@irasmithinc.com
Website: www.irasmithinc.com

R-TRINITY

GST # 86236 5699

March 15, 2010

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

For professional services rendered for the period from September 1, 2009 to March 15, 2010 inclusive, in acting as Receiver of 1539304 Ontario Inc. in accordance with the Order of the Ontario Superior Court of Justice (Commercial List) dated November 12, 2008 as follows (detail attached):

| <u>Staff</u> | <u>Hourly rate</u> | <u>Hours</u> | |
|---------------------------------|--------------------|--------------|-------------|
| I. Smith, President and Trustee | \$425 | 77.2 | |
| B. Smith, BA, Estate Manager | \$250 | 127.6 | |
| C. Deshane, Technician | \$135 | 0.4 | |
| | | <u>205.2</u> | |
| | | | \$64,764.00 |

Disbursements (September 1, 2009 to March 15, 2010):

| | | |
|-------------------------|---------------|---------------|
| Phone/Long distance/Fax | 14.00 | |
| Postage | 49.90 | |
| Parking/Mileage | 54.44 | |
| Courier | <u>235.00</u> | |
| | | <u>353.34</u> |

This Exhibit B referred to in the
Affidavit of Ira Smith
Sworn before me this 17 day of Mar, 2010

GST 3,255.87
\$68,373.21

Less Interim Draws (\$55,191.13)
\$13,182.08

[Signature]
A Commissioner, etc.

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

Account Due When Rendered

Ira Smith Trustee & Receiver Inc.
Detail Time Sheet

Period from: 2009-09-01 to 2010-03-15

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

| Date | Name | Duration | Activity | \$ |
|-----------|---------------|----------|---|----------|
| 2-Sep-09 | Brandon Smith | 0.3 | tc w/ v Shaw re site visit; email exchange w/ PWI | 75.00 |
| 8-Sep-09 | Brandon Smith | 0.3 | TC w/ city re court timing/ TC w/ bank re court timing and lien claims | 75.00 |
| 9-Sep-09 | Brandon Smith | 1.2 | emails & TC's w/ PWI, LM & ICICI re closing and housekeeping issues | 300.00 |
| 10-Sep-09 | Brandon Smith | 0.2 | TC w/ Lionel re Vernon rqtst for PEER rwr, adv rovr cant release, health advised bank not to either | 50.00 |
| 10-Sep-09 | Brandon Smith | 1.0 | Exhibit prep and file review re 3rd report to court; emails from counsel re Ganatra needs for service | 250.00 |
| 11-Sep-09 | Brandon Smith | 8.0 | Preparation of draft 3rd report to court | 2,000.00 |
| 14-Sep-09 | Ira Smith | 3.2 | Rvw AND CHANGES TO THIRD REPORT TO COURT | 1,360.00 |
| 15-Sep-09 | Brandon Smith | 0.5 | TC w/ ICICI bank re insurance; TC w/ pot purch; review Ira draft of 3rd report | 125.00 |
| 15-Sep-09 | Ira Smith | 6.3 | CHANGES TO THIRD REPORT AND SENDING DRAFT TO LM FOR Rvw | 2,677.50 |
| 16-Sep-09 | Brandon Smith | 3.0 | rw LM blackline to 3rd report, make changes; prepare exhibits | 750.00 |
| 16-Sep-09 | Ira Smith | 5.2 | Finalization of Trinity Third Report Volume 1 | 2,210.00 |
| 17-Sep-09 | Brandon Smith | 5.0 | Prep exhibits for 3rd rpt v1, finalize 3rd rpt v1, draft pre/copy collate/exhibits etc 3rd rpt v2; email w/ pot purch; email w/ LM | 1,250.00 |
| 17-Sep-09 | Ira Smith | 6.2 | Finalization and issuance of Trinity Third Report Volume 1 including emails and telcon w. L. Wittin and A. Rousseau, writing and finalization and issuance of Third Report Volume 2 | 2,635.00 |
| 18-Sep-09 | Ira Smith | 0.8 | Emails re court on Tuesday, conf call on Monday | 340.00 |
| 21-Sep-09 | Brandon Smith | 5.0 | Conf call w/ Lien holders/LM/Bank & City Solicitor; TC w/ LM; TC w/ Pocrnic; TC w/ PWI; Emails w/ Bank; review Affidavit of H. Ganatra | 1,250.00 |
| 21-Sep-09 | Ira Smith | 1.0 | Conf call w. stakeholders re Receiver's report and attendance in Court tomorrow | 425.00 |
| 21-Sep-09 | Ira Smith | 2.4 | Various emails, rw of Ganatra material, prep for court tomorrow | 1,020.00 |
| 22-Sep-09 | Brandon Smith | 5.0 | travel to/from/attend at court and adjourned re approval of 3rd report; emails from Pocrnic, LM & PWI | 1,250.00 |
| 22-Sep-09 | Ira Smith | 4.2 | Travel to and from and attend in Court re approval of sale | 1,785.00 |
| 23-Sep-09 | Brandon Smith | 1.0 | Discussion w/ bank and counsel re borrowing charge, fees, interest; emails re Friday's attendance | 250.00 |
| 24-Sep-09 | Brandon Smith | 2.0 | Emails w/ Counsel re Friday's attendance; review our Factum; review J. Lefergey factum & E. reamer affidavit; copy collate & bind our supp. Report | 500.00 |

Ira Smith Trustee & Receiver Inc.
Detail Time Sheet

Period from: 2009-09-01 to 2010-03-15

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

| <u>Date</u> | <u>Name</u> | <u>Duration</u> | <u>Activity</u> | <u>\$</u> |
|-------------|----------------|-----------------|--|-----------|
| 24-Sep-09 | Brandon Smith | 2.0 | Review Affidavits/Motion Records of Ganatra & Caplan; emails w/ LM re same | 500.00 |
| 24-Sep-09 | Ira Smith | 1.6 | Prep of Supplementary Third Report to Court, emails w. Aaron Rousseau, disc w. B. Smith | 680.00 |
| 24-Sep-09 | Ira Smith | 0.7 | Rvw of Lefurgey material on behalf of his client Reimer et al, notes in email to LM regarding review of material | 297.50 |
| 24-Sep-09 | Ira Smith | 0.6 | Rvw of Ganatra material and email to LM et al | 255.00 |
| 24-Sep-09 | Ira Smith | 0.4 | Further emails w. Aaron Rousseau re material and positions to be taken in Court tomorrow | 170.00 |
| 25-Sep-09 | Brandon Smith | 8.0 | Prep for, travel to from and attend at court | 2,000.00 |
| 25-Sep-09 | Ira Smith | 11.4 | Prep for Court, emails and telcon w. Les Wittin and Jamil Kara re new offer to purchase, travel to and from and attend in Court on approval motion before Cumming J. | 4,845.00 |
| 26-Sep-09 | Brandon Smith | 2.0 | Emails w/ S.Sood; E. Reimer & M. Caplan, insurance, security and PWI | 500.00 |
| 27-Sep-09 | Brandon Smith | 0.2 | Read emails from Caplan & Reimer | 50.00 |
| 28-Sep-09 | Brandon Smith | 0.5 | Emails re "stalking horse" | 125.00 |
| 29-Sep-09 | Brandon Smith | 8.0 | Matters re new sales process, numerous emails, review CA's TC etc | 2,000.00 |
| 29-Sep-09 | Brandon Smith | 1.0 | Emails re sales process | 250.00 |
| 29-Sep-09 | Cheryl Deshane | 0.4 | Telecall to bank and fax same to verify bank draft for B. Smith | 54.00 |
| 30-Sep-09 | Brandon Smith | 1.0 | Matters re sales process | 250.00 |
| 30-Sep-09 | Brandon Smith | 6.0 | Sales Process, numerous emails, TC's; amend APA, and send; additional matters re sales process | 1,500.00 |
| 30-Sep-09 | Ira Smith | 3.4 | APA issues, pot. Purch issues, rvw and final changes and sign off to APA | 1,445.00 |
| 30-Sep-09 | Ira Smith | 0.4 | Letter to pot purch's enclosing APA | 170.00 |
| 1-Oct-09 | Brandon Smith | 1.2 | Matters re sales process; appts; tcs/emails w/ PWI; matters re M. Caplan alteration of CA and undertaking not to alter APA | 300.00 |
| 1-Oct-09 | Brandon Smith | 4.0 | further matters re sales process; email tcs w/ pot purch and PWI & LM; draft 2nd supp 3rd report | 1,000.00 |
| 1-Oct-09 | Brandon Smith | 0.2 | banking | 50.00 |
| 1-Oct-09 | Ira Smith | 0.4 | Pot purch issues, M. Caplan emails, discs w. B. Smith, emails w. A. Rousseau | 170.00 |
| 2-Oct-09 | Brandon Smith | 6.0 | travel to from and attend at LM for bid opening, finish 2nd supp 3rd rpt | 1,500.00 |

Ira Smith Trustee & Receiver Inc.
Detail Time Sheet

Period from: 2009-09-01 to 2010-03-15

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

| <u>Date</u> | <u>Name</u> | <u>Duration</u> | <u>Activity</u> | <u>\$</u> |
|-------------|---------------|-----------------|---|-----------|
| 2-Oct-09 | Ira Smith | 3.2 | Rvw and changes to 2nd supp third report to court, emails w. LW and AR, discs w. BS re changes and finalization plans | 1,360.00 |
| 2-Oct-09 | Ira Smith | 4.3 | Travel to and from and attend at LM for opening of offers, consideration of offers, analysis and recommendation and completion of 2nd supp 3rd report to court and motion record for Monday | 1,827.50 |
| 5-Oct-09 | Brandon Smith | 4.5 | travel to from and attend at court for hearing re sale to J Kara and 3rd rpt, publish order in data room | 1,125.00 |
| 5-Oct-09 | Ira Smith | 5.2 | Travel to and from and attend Court re approval of sale of property to J. Kara Capital | 2,210.00 |
| 13-Oct-09 | Brandon Smith | 0.4 | emails w/ M. German & M. Winnick re stmt adjustments and utility closings | 100.00 |
| 14-Oct-09 | Brandon Smith | 0.5 | execution of docs and send w/key to LM; email/TC w/ PWI re keys | 125.00 |
| 16-Oct-09 | Brandon Smith | 1.5 | emails/tc re closing housekeeping matters | 375.00 |
| 19-Oct-09 | Brandon Smith | 1.0 | housekeeping matters re closing; pmt of break fee, rtn deposit; TC w/ bank re IC wire xfer, TC w/ Kory re Payout stmt | 250.00 |
| 19-Oct-09 | Brandon Smith | 2.0 | Matters re repayment of DIP; WIP & invoicing, rvw o/s payables; refund deposits and pay break fee | 500.00 |
| 19-Oct-09 | Ira Smith | 0.8 | Rvw and signing of payout cheques and correspondence re Canlight return of deposit and break fee | 340.00 |
| 20-Oct-09 | Brandon Smith | 1.0 | o/s payables; TC w/ Kory re next steps | 250.00 |
| 20-Oct-09 | Brandon Smith | 1.0 | emails re lien claims and review mutual gain report #2 | 250.00 |
| 20-Oct-09 | Ira Smith | 0.3 | Emails re lien claim process and setting up conf call | 127.50 |
| 21-Oct-09 | Brandon Smith | 5.0 | Review Mutual gain reports 3-7 | 1,250.00 |
| 27-Oct-09 | Brandon Smith | 0.5 | TC w/ Bank re savings acct; execute paperwork as reqd | 125.00 |
| 28-Oct-09 | Brandon Smith | 0.4 | TC w/ K.Ng; matters re open savings acct | 100.00 |
| 4-Nov-09 | Brandon Smith | 0.3 | review H. Whiteley schedule and A. Rousseau/L. Wifflin comments; provide comments re Epp lien and plan | 75.00 |
| 4-Nov-09 | Ira Smith | 0.8 | Various emails regarding lien claim settlement issues | 340.00 |
| 9-Nov-09 | Brandon Smith | 1.0 | emails w/ Les & Aaron re procedure for distribution motion and related matters | 250.00 |
| 10-Nov-09 | Brandon Smith | 5.5 | review files and prepare service list for unsecured creds incl. quantum and reason; correspondence re motion date | 1,375.00 |
| 11-Nov-09 | Ira Smith | 0.3 | Emails w. LM re issues for next Report to Court | 127.50 |

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

Period from: 2009-09-01 to 2010-03-15

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

| Date | Name | Duration | Activity | \$ |
|-----------|---------------|----------|---|----------|
| 17-Nov-09 | Brandon Smith | 1.2 | reconcile acct; banking re xfer to Savings account; reconcile utility accts, issue pmt to horizon re final billing; TC w/ Union Gas re adjustment/closing date error and letter re same | 300.00 |
| 17-Nov-09 | Ira Smith | 0.3 | Rvw email from J. Lefurgey and email to H. Whiteley and cc to LM | 127.50 |
| 30-Nov-09 | Brandon Smith | 1.0 | TC w/ Kory at the bank re status update; draft 2nd interim report & R&D Finalize 2nd interim BIA report, R&D, letter to Ganatra, circulate same. | 250.00 |
| 1-Dec-09 | Brandon Smith | 1.5 | correspond w/ K. Ng re cash flow/expenditure; circulate 2nd interim to supp. Parties | 375.00 |
| 9-Dec-09 | Brandon Smith | 0.2 | TC w/ Horizon re o/s bal | 50.00 |
| 17-Dec-09 | Brandon Smith | 0.2 | email to Aaron/Les re vacate motion date | 50.00 |
| 6-Jan-10 | Brandon Smith | 0.2 | bank reconciliation; emails from counsel re rovr's certificate | 50.00 |
| 8-Jan-10 | Brandon Smith | 0.5 | rvw A. Rousseau memo and subsequent related emails | 125.00 |
| 8-Jan-10 | Ira Smith | 0.4 | Email from Aaron Rousseau re Court attendance today and attaching draft letter to attendance list, revisions to draft letter and email to Aaron Rousseau et al with suggested changes | 170.00 |
| 8-Jan-10 | Ira Smith | 0.2 | Email from Aaron Rousseau with Les Wittlin additional changes, rvw of new draft, email to Aaron Rousseau et al approving new draft | 85.00 |
| 11-Jan-10 | Brandon Smith | 0.5 | RVW memo from Aaron re lien holder conf. call; respond re Epp contract; rvw closing docs from LM re sale of property | 125.00 |
| 14-Jan-10 | Brandon Smith | 0.3 | email from/to A. Rousseau re lien claims, review J. Lefurgey/H. Whiteley exchange | 75.00 |
| 19-Jan-10 | Brandon Smith | 0.3 | pmt of Lang Michener lip 12th interim bill | 75.00 |
| 4-Feb-10 | Brandon Smith | 1.2 | tc w/ A. Rousseau re liens, TC w/ I. Smith re same & email re thoughts on how to proceed | 300.00 |
| 11-Feb-10 | Brandon Smith | 3.0 | drafting 4th report | 750.00 |
| 12-Feb-10 | Brandon Smith | 5.0 | drafting 4th report | 1,250.00 |
| 16-Feb-10 | Brandon Smith | 0.6 | rvw Ira BL changes and make further review to 4th report | 150.00 |
| 16-Feb-10 | Ira Smith | 3.2 | Rvw and changes to Fourth Report to Court | 1,360.00 |
| 18-Feb-10 | Brandon Smith | 0.4 | rvw A. Rousseau emails, letters and notes | 100.00 |
| 23-Feb-10 | Brandon Smith | 0.5 | reconcile acct; rvw LM bill of costs, issue pmt | 125.00 |
| 4-Mar-10 | Brandon Smith | 1.7 | numerous emails from A. Rousseau, L. Wittlin, I. Smith re 4th report and letter to service list; revise draft 4th report in light of recent developments | 425.00 |
| 5-Mar-10 | Brandon Smith | 0.8 | review Ganatra affidavit | 200.00 |

Ira Smith Trustee & Receiver Inc.
Detail Time Sheet

Period from: 2009-09-01 to 2010-03-15

Key_name Full_Estate_Name
 R- TRINITY 1539304 Ontario Inc.

| <u>Date</u> | <u>Name</u> | <u>Duration</u> | <u>Activity</u> | <u>\$</u> |
|-------------|-----------------------------|-----------------|--|------------------|
| 8-Mar-10 | Brandon Smith | 0.7 | rvw Ganatra new material, schedule teleconf w/ LM; corresp w/ A. Rousseau re Ganatra's "bill of costs" | 175.00 |
| 9-Mar-10 | Brandon Smith | 4.5 | Conf Call w/ I. Smith, A. Rousseau & L. Wittlin re Ganatra Affidavit and finalizing 4th report | 1,125.00 |
| 9-Mar-10 | Ira Smith | 0.9 | Conf call w. L. Wittlin, A. Rousseau and B. Smith re Rec's next report to court and how to best deal with Mr. Ganatra's assertions and finalizing file | 382.50 |
| 10-Mar-10 | Brandon Smith | 3.0 | draft, send and affidavit re opt in to svc list for unsec creds; emails from A. Rousseau re Ganatra and City | 750.00 |
| 11-Mar-10 | Brandon Smith | 0.4 | corresp w/ A. Rousseau re Vasani | 100.00 |
| 11-Mar-10 | Ira Smith | 7.3 | Rvw and changes to Fourth Report to Court and email to LM for review | 3,102.50 |
| 12-Mar-10 | Brandon Smith | 0.2 | pmt of LM 14th bill | 50.00 |
| 15-Mar-10 | Brandon Smith | 2.5 | R&D, time dockets, prep exhibits for 4th rpt | 625.00 |
| 15-Mar-10 | Ira Smith | 1.8 | Fourth Report to Court | 765.00 |
| | | 205.2 | | 64,764.00 |
| | | | <u>Hourly Rate</u> | <u>Amount</u> |
| | IRA SMITH | 77.2 | | 425.00 |
| | BRANDON SMITH | 127.6 | | 250.00 |
| | CHERYL DESHANE | 0.4 | | 135.00 |
| | Total: | 205.2 | | 64,764.00 |
| | Average Hourly Rate: | 315.6 | | |

ICICI BANK CANADA

1539304 ONTARIO INC.

And

Applicants

Respondents

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF IRA SMITH
(Sworn March 17, 2010)**

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

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

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

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

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

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

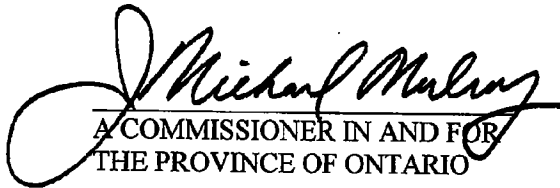
**AFFIDAVIT OF AARON ROUSSEAU
(sworn March 16, 2009)**

I, Aaron Rousseau, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

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

4. Lang Michener has provided services and incurred disbursements as independent counsel to the Receiver for the period from September 1, 2009 to February 28, 2010 as described in the Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Interim Bills of Costs rendered in the receivership, copies of which Interim Bills of Costs are attached hereto as Exhibits "A", "B", "C", "D" and "E" respectively.
5. Based upon my review of the Interim Bills of Costs and my knowledge of the services provided and disbursements incurred in relation to the receivership, I am of the view that the Interim Bills of Costs contain a fair and accurate description of the services provided, the fees billed by Lang Michener for such services and the disbursements incurred by Lang Michener necessarily and incidental to the provision of such services.
6. I make this Affidavit in support of the motion of the Receiver for approval of its fees and disbursements of those of its counsel, and for no other or improper purpose.

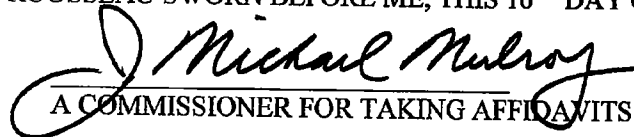
SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario,)
This 16th day of March, 2010)
)
)


A COMMISSIONER IN AND FOR
THE PROVINCE OF ONTARIO



Aaron Rousseau

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF AARON
ROUSSEAU SWORN BEFORE ME, THIS 16TH DAY OF MARCH, 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

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

BETWEEN

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondents

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

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

| Professional | Year of Call | Rate | Total Time | Total Fees |
|---------------------|---------------------|-------------|-------------------|-------------------|
| Cheryl Cohen | Clerk | 225.00 | .60 | 135.00 |
| Alex A. Ilchenko | 1993 | 565.00 | .40 | 226.00 |
| John Kroupis | Clerk | 185.00 | .40 | 74.00 |
| Matthew German | 2004 | 360.00 | 6.40 | 2,304.00 |
| Leslie A. Wittlin | 1974 | 725.00 | 22.40 | 16,240.00 |
| Aaron Rousseau | 2007 | 315.00 | 49.50 | 15,592.50 |
| Catherine Ma | Clerk | 115.00 | 1.50 | 172.50 |

| | |
|-------------------------------------|---------------------------|
| Fees and Disbursements | \$36,651.63 |
| GST on Fees and Disbursements | <u>1,824.18</u> |
| Total Fees and Disbursements | <u>\$38,475.81</u> |

Lang Michener LLP

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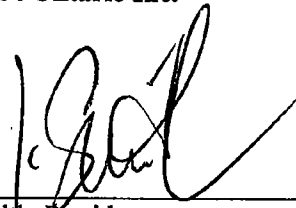
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I hereby certify that I have examined the above bill, the services have been duly authorized and rendered and the charges are in my opinion fair and reasonable.

Dated at Toronto, Ontario, this 24th day of October, 2009.

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

Per:



Ira Smith, President

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

| | | | |
|------------|-----|--|------|
| 01 SEPT 09 | AR | Instructions to contact court regarding motion dates; consider appropriate motion dates; | .10 |
| 03 SEPT 09 | AR | Emails to and from I. Smith, B. Smith and L. Wittlin regarding motion date; | .10 |
| 04 SEPT 09 | LAW | Reviewing exchange of e-mail memoranda between I. Smith, B. Smith and A. Rousseau regarding inquiries by lien holders as to sale of property details and rescheduling return of motion for approval of agreement of purchase and sale; | .30 |
| 04 SEPT 09 | AR | Consider motion dates; draft letter to service list regarding motion date of September 22, 2009; emails to and from J. Lefurgey, counsel for Basic Drywall, regarding wisdom and propriety of refusal to disclose of terms of offer in advance of release of motion materials; | .40 |
| 08 SEPT 09 | LAW | Exchanging email memorandum with A. Rousseau, I. Smith and B. Smith regarding finalizing motion to approve sale and other matters; | .20 |
| 08 SEPT 09 | AR | Listen to voicemail from R. Weston, counsel for City of Hamilton, regarding motion dates; email R. Weston regarding motion dates; email to H. Whiteley, counsel for ICICI Bank regarding motion dates; emails to I. Smith and B. Smith regarding motion dates; | .20 |
| 09 SEPT 09 | AR | Draft letter to service regarding motion date of September 22, 2009; | .10 |
| 10 SEPT 09 | AR | Review letter from H. Ganatra for debtor regarding delivery of motion materials; emails to B. Smith and I. Smith regarding motion date and completion of Receiver's report; | .10 |
| 15 SEPT 09 | LAW | Receiving and reviewing draft third report to court and brief comments in respect thereof; | 1.00 |
| 15 SEPT 09 | AR | Emails to and from I. Smith and B. Smith regarding third report of Receiver; | .20 |
| 16 SEPT 09 | CC | Obtain current property parcel; | .30 |
| 16 SEPT 09 | AAI | Discussing with A. Rousseau request by purchaser to assign agreement; preparing email regarding assignment; | .30 |

Lang Michener LLP

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| | | | |
|------------|-----|--|------|
| 16 SEPT 09 | MRG | Discussion with A. Rousseau regarding Vesting Order for Trinity Landing; review of Vesting Order and provided comments; review e-mail correspondence from A. Rousseau and I. Smith; met with B. Rowlands to discuss issue of assigning Purchase Agreement or obtaining title direction; e-mail advice on Assignment of Purchase Agreement to I. Smith; | 1.20 |
| 16 SEPT 09 | LAW | Reviewing and responding to various e-mails concerning vesting order, assignment and direction regarding title and other issues to be considered; | .60 |
| 16 SEPT 09 | AR | Review and suggest revisions to third report of Receiver; call with J. Quig, counsel for Crotech, regarding motion; emails to and from I. Smith and B. Smith regarding scheduling of conference call; review PIN regarding encumbrances; draft notice of motion, including draft sale approval and vesting order and order approving third report; discussion with M. German, A. Ilchenko and L. Wittlin regarding request from Canlight to have title vest in Printing Press Lofts Inc. and necessary changes to draft order; review asset purchase agreement with Canlight regarding assignment rights; email L. Shapiro regarding draft sale and vesting order; | 5.80 |
| 17 SEPT 09 | MRG | Review e-mail correspondence from A. Ilchenko; met with A. Rousseau to discuss comments on Vesting Order; review e-mail correspondence from L. Wittlin; | .40 |
| 17 SEPT 09 | LAW | Conference call with A. Rousseau and I. Smith regarding request for assignment of agreement of purchase and sale by purchaser to a new company; preparing simple form of direction regarding title; notes to file; | .40 |
| 17 SEPT 09 | AR | Email service list regarding conference call on September 21, 2009; review and suggest revisions to third report of Receiver; prepare motion record of September 17, 2009 using Receiver's report; assemble confidential volume 2 of third report; serve motion record of September 17, 2009; call wit L. Shapiro regarding title, counsel for Canlight; call with L. Shapiro regarding direction regarding title; call with I. Smith and L. Wittlin regarding considerations on direction regarding title from Canlight; leave voicemails for and send emails to L. Shapiro regarding direction regarding title; discuss revisions to sale and vesting order to reflect direction or assignment from Canlight with M. German; | 4.30 |
| 18 SEPT 09 | MRG | Review of e-mail correspondence from A. Rousseau regarding Purchaser' title direction; | .10 |

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|------------|-----|---|------|
| 18 SEPT 09 | AR | Prepare and serve book of authorities for motion of September 22, 2009; listen to voicemail from J. Lefurgey regarding additional prospective purchaser; draft response to J. Lefurgey and discuss with I. Smith and B. Smith; send response to J. Lefurgey regarding additional prospective purchaser; revise cover for motion record of September 17, 2009; write to service list regarding same; prepare affidavit of service for motion record of September 17, 2009; instructions for filing of motion record and confidential volume 2 of Receiver's third report; review direction regarding title from Canlight; | 3.50 |
| 18 SEPT 09 | CM | Attend at Commercial List and filed Motion Record returnable Sept. 22, 2009 with proof of service; | .40 |
| 20 SEPT 09 | AR | Draft agenda and speaking notes for conference call with lien claimants and other stakeholders for September 21, 2009 regarding motion of September 22, 2009 for approval of sale to Canlight Realty Corporation; revise draft vesting order to reflect receipt of direction to engross title in Printing Press Lots Inc.; | 1.00 |
| 21 SEPT 09 | AAI | Discussing with A. Rousseau providing Supplementary Report of the Receiver regarding late offerings made; | .10 |
| 21 SEPT 09 | LAW | Preparation for and participating in conference call with various stakeholders, as scheduled; subsequently exchanging email memoranda with I. Smith and B. Smith; preparing of undertaking regarding disclosure of earlier property appraisals, as requested by certain stakeholders; | 1.80 |
| 21 SEPT 09 | AR | Emails to and from I. Smith, B. Smith and L. Wittlin regarding conference call with lien claimants and other stakeholders and in advance of motion; email counsel for Basic Drywall Inc. and proposed new purchaser regarding method of payment of deposit; draft affidavit of S. Simone regarding receipt of direction from Canlight Realty Corporation; draft supplementary motion record regarding receipt of direction from Canlight Realty Corporation; review responding motion record of debtor and analyze same; email to I. Smith and B. Smith regarding analyzing responding motion record of debtor; call with counsel for Canlight Realty Corporation regarding deadlines in sale agreement; review sale agreement; discuss sale agreement and deadlines with I. Smith and L. Wittlin; email to counsel for Canlight Realty Corporation regarding deadlines and sale agreement and position of Receiver on motion of September 22, 2009; prepare submissions and organize materials for motion of September 22, 2009; | 3.40 |

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|------------|-----|--|------|
| 22 SEPT 09 | LAW | Preparation for and appearance on return of application for approval of agreement of purchase and sale; conferring with I. Smith and B. Smith regarding adjournment to September 25, 2009; reviewing letter from L. Shapiro, solicitor for purchaser and responding thereto; conferring with A. Rousseau regarding notification of adjournment to all stakeholders; | 4.40 |
| 22 SEPT 09 | AR | Revised draft vesting order; attend motion for approval of sale to Canlight Realty Corporation; review letter from counsel for Canlight Realty Corporation regarding extension of time under sale agreement; emails to and from I. Smith, B. Smith and L. Wittlin regarding additional motion materials for return of motion on September 25, 2009; emails to and from counsel for Canlight Realty Corporation regarding extension of time under sale agreement; | 4.30 |
| 23 SEPT 09 | MRG | Review correspondence from Purchaser's solicitor regarding closing; met with C. Cohen regarding obtaining tax certificate; met with A. Rousseau to discuss extension for obtaining vesting order and other closing matters; telephone call with Purchaser's solicitor to discuss closing documents required and mechanics of closing; | .60 |
| 23 SEPT 09 | LAW | Telephone call from I. Smith regarding preparation for return of application on September 25, 2009; exchanging email memoranda with B. Smith; receiving and reviewing and responding to further correspondence from solicitor for purchaser and B. Smith; | .60 |
| 23 SEPT 09 | AR | Draft factum for approval of sale and vesting order; call with K. Fisher and emails to and from L. Shapiro regarding construction needs for project; emails with L. Shapiro regarding recipient of proceeds of sale; emails with I. Smith, B. Smith and L. Wittlin regarding construction needs of project; review report to City of Hamilton Economic Planning Committee regarding project and receivership; call with L. Shapiro regarding PPSA registrations and draft order; review letter from L. Shapiro regarding adjustments to purchase price; review letter from L. Shapiro regarding executions against title and request for revision to draft sale and vesting order; | 6.70 |
| 24 SEPT 09 | CC | Obtain Tax Certificate; | .30 |
| 24 SEPT 09 | MRG | Review of tax certificate received from City of Hamilton; telephone call to tax department to verify outstanding taxes; telephone call with Purchaser's solicitor's office regarding outstanding taxes; prepared Statement of | 2.30 |

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|------------|-----|--|------|
| | | Adjustments and other closing documents; correspondence with A. Rousseau regarding deposit; e-mail draft of Adjustments to client; | |
| 24 SEPT 09 | LAW | Receiving and reviewing multiple emails relating to the return of the application for approval of the agreement of purchase and sale, dealing with the positions of the debtor, and a new bidder for the property outside the sales process; reviewing emails from M. German regarding statement of adjustments and certain details for closing procedures; reviewing factum prepared by A. Rousseau and materials filed by other stakeholders; | 2.50 |
| 24 SEPT 09 | AR | Prepare supplementary motion record of the Receiver of September 24, 2009; serve supplementary motion record on service list; revise factum of the Receiver; instructions to C. Ma regarding filing of supplementary motion record and factum; review and analyze affidavit of M. Caplan; revise draft order regarding approval of sale and vesting order; revise draft order regarding approval of third report; review and analyze amended responding motion record of 159304 Ontario Inc.; review and analyze affidavit of E. Reimer and factum of prospective purchaser; discuss submissions of Caplan, 1539304 Ontario Inc. and prospective purchaser with I. Smith, B. Smith and L. Wittlin; | 6.60 |
| 24 SEPT 09 | CM | Meet with A. Rousseau regarding rush filing; attend at Commercial List and filed Supplementary Motion Record and Factum; | 1.10 |
| 25 SEPT 09 | MRG | Revised closing documents and e-mail draft to L. Shapiro for review; | .40 |
| 25 SEPT 09 | LAW | Preparation for attendance in court on return of application to approve agreement of purchase and sale, attending in court, participating in proceedings and discussions to re-open the sales process to a limited extent, reviewing Kara offer, negotiating terms of renewed sales process; | 6.60 |
| 25 SEPT 09 | AR | Draft oral submissions for motion of September 25th, 2009; organize and prepare materials for Motion; attend Motion and conduct resolution discussions; | 7.10 |
| 26 SEPT 09 | AR | Draft letter to service list regarding adjournment of hearing of motion regarding approval of sale and vesting order to October 5, 2009 and revision to sales process; instructions to transcribe endorsement and attached agreement of parties of September 25, 2009 and review transcription; circulate endorsement agreement and transcriptions to service lists; | .70 |

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|------------|-----|--|------|
| 28 SEPT 09 | MRG | Review of endorsement by court regarding "stalking horse" procedure for sale of property; review of e-mail correspondence from A. Rousseau; | .30 |
| 28 SEPT 09 | LAW | Reviewing and revising existing agreement of purchase and sale form utilized by Receiver for private auction purposes; | 1.00 |
| 28 SEPT 09 | AR | E-mails to and from counsel for Canlight and counsel for E. Reimer regarding error in bid deadline in letter of September 26, 2009; draft letter to service list clarifying bid deadline; emails to and from counsels for J. Kara Capital Corporation regarding Confidentiality Agreement and property inspections; e-mails to and from counsel for E. Reimer regarding Confidentiality Agreement and property inspections; review letter from H. Ganatra of 1539304 Ontario Inc. regarding inspection of property; e-mails to and from B. Smith and I. Smith regarding response to 1539304; draft letter to 1539304 re inspection of property and execution of Confidentiality Agreement; | 1.50 |
| 29 SEPT 09 | MRG | Review of revised Purchase Agreement prepared by L. Wittlin; review of e-mail correspondence from L. Wittlin and I. Smith; | .30 |
| 29 SEPT 09 | LAW | Exchanging multiple e-mails with B. Smith regarding revising agreement of purchase and sale for use in private auction process; reviewing comments of I. Smith, M. German and A. Rousseau and finalizing the form of agreement of purchase and sale for use at private auction; | 1.50 |
| 29 SEPT 09 | AR | Emails to and from, listen to voicemail from and call with E. Reimer regarding delivery of confidentiality agreement; emails from M. Caplan regarding concerns with appointments for viewing of property with prospective purchasers; emails from L. Wittlin, B. Smith and I. Smith regarding revised asset purchase agreement; instructions to C. Ma regarding attendance at court to pull relevant motion materials from file for motion of October 5, 2009; review and revise motion requisition form for motion of October 5, 2009; calls with court registrar regarding motion requisition form; | .60 |
| 30 SEPT 09 | JK | Verified corporate name and conducted PPSA uncertified search and ordered PPSA certificate on 1539304 Ontario Inc.; | .40 |
| 30 SEPT 09 | MRG | Met with A. Rousseau to discuss executions against owner of property and PPSA registrations; review and confirm registrations to be deleted on closing; prepared writ | .80 |

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| | | execution to description to be added to purchase agreement; review of e-mail correspondence regarding PPSA registrations; | |
| 30 SEPT 09 | LAW | Reviewing and responding to multiple e-mails concerning the final draft of the agreement of purchase and sale for use in the private auction process, difficulties with M. Caplan and H. Ganatra; considering various logistical issues which might arise and proposal from solicitor for stalking horse bidder; notes to file; | 1.50 |
| 30 SEPT 09 | AR | Call with court regarding judge for motion of October 5, 2009; revise motion requisition form and send to court; review letter from H. Ganatra regarding inspection of property; emails to and from I. Smith regarding letter from H. Ganatra; draft letter to H. Ganatra regarding inspection rights; call with L. Shapiro, counsel for Canlight regarding additional terms in draft vesting order regarding acceptance of Canlight offer upon failure of other offer to close; discussion with I. Smith and L. Wittlin of same; leave voicemail for L. Shapiro regarding proposal; review asset purchase agreement and revise listed encumbrances; review PPSA search and consider relevance to vesting order; | 2.80 |

TOTAL TAXABLE HOURS

81.20

OUR FEE

\$ 34,744.00

TAXABLE DISBURSEMENTS

| | |
|---------------------------------|-------------|
| Copies | \$ 1,217.45 |
| Courier Delivery | 32.40 |
| Outside Printing | 399.28 |
| Telephone | 1.92 |
| Taxi | 17.14 |
| Fax | 34.50 |
| PPSA Search | 16.00 |
| Electronic Real Estate Searches | 21.00 |

TOTAL TAXABLE DISBURSEMENTS

1,739.69

NON-TAXABLE DISBURSEMENTS

| | |
|---------------------------------|----------|
| Outside Printing | \$ 31.94 |
| Master's Motion | 127.00 |
| Electronic Real Estate Searches | 9.00 |

TOTAL NON-TAXABLE DISBURSEMENTS

167.94

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Goods and Services Tax (5% of \$36,483.69)

1,824.18

TOTAL BALANCE DUE

\$ 38,475.81

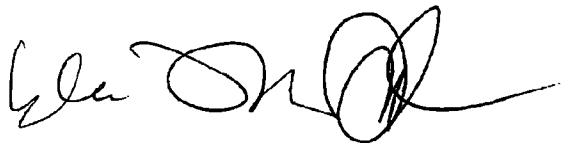
TIME SUMMARY

| Lawyer/Staff | | Hours | Rate | Value |
|-------------------|-----|-------|--------|-----------|
| Cheryl Cohen | CC | .60 | 225.00 | 135.00 |
| Alex A. Ilchenko | AAI | .40 | 565.00 | 226.00 |
| John Kroupis | JK | .40 | 185.00 | 74.00 |
| Matthew German | MRG | 6.40 | 360.00 | 2,304.00 |
| Leslie A. Wittlin | LAW | 22.40 | 725.00 | 16,240.00 |
| Aaron Rousseau | AR | 49.50 | 315.00 | 15,592.50 |
| Catherine Ma | CM | 1.50 | 115.00 | 172.50 |

THIS IS OUR TENTH INTERIM BILL OF COSTS

LANG MICHENER LLP

Per:



Leslie A. Wittlin

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

B E T W E E N:
ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT
TORONTO)

AFFIDAVIT OF AARON ROUSSEAU

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

Leslie A. Wittlin
LSUC No.: 14629M

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

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF AARON
ROUSSEAU SWORN BEFORE ME, THIS 16TH DAY OF MARCH, 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

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

BETWEEN

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondents


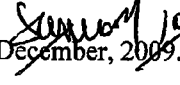

**ELEVENTH INTERIM BILL OF COSTS OF
INDEPENDENT COUNSEL FOR THE INTERIM
RECEIVER AND THE RECEIVER AND MANAGER OF
1539304 ONTARIO INC.**

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

| Professional | Year of Call | Rate | Total Time | Total Fees |
|---------------------|---------------------|-------------|-------------------|-------------------|
| John Kroupis | Clerk | 185.00 | .30 | 55.50 |
| Janine Biener | Clerk | 225.00 | 13.10 | 2,947.50 |
| Matthew German | 2004 | 360.00 | 10.45 | 3,762.00 |
| Leslie A. Wittlin | 1974 | 725.00 | 11.90 | 8,627.50 |
| Aaron Rousseau | 2007 | 315.00 | 20.90 | 6,583.50 |
| Catherine Ma | Clerk | 115.00 | 1.10 | 126.50 |
| Dean Melamed | Articling Student | 230.00 | 1.50 | 345.00 |
| Cheryl Cohen | Clerk | 225.00 | .60 | 135.00 |
| Alex A. Ilchenko | 1993 | 565.00 | .40 | 226.00 |

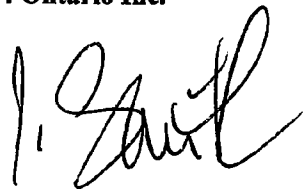
| | |
|-------------------------------------|---------------------------|
| Fees and Disbursements | \$23,447.90 |
| GST on Fees and Disbursements | <u>1,164.19</u> |
| Total Fees and Disbursements | <u>\$24,612.09</u> |

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

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

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

Per:



Ira Smith, President

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

| | | | |
|-----------|-----|--|------|
| 01 OCT 09 | JK | Attended at PPSA office and picked up PPSA's on 1539304 Ontario Inc; | .30 |
| 01 OCT 09 | AR | Emails to and from I. Smith and B. Smith regarding concerns regarding alterations to confidentiality agreement and asset purchase agreement by M. Caplan; draft letter to M. Caplan regarding undertaking regarding no alterations to asset purchase agreement; email from M. Caplan regarding undertaking not to alter asset purchase agreement; emails to and from H. Whitley, counsel for ICICI Bank, I. Smith and B. Smith regarding proposal by Canlight for order approving stocking horse bid if successful bid fails to close; call with H. Whitley regarding Canlight proposal; discuss logistics for sealed bid auction with L. Wittlin; | 1.30 |
| 02 OCT 09 | LAW | Preparation for and attendance to supervise private auction of property pursuant to Judge's order; subsequently meeting and discussing closing details with J. Kara and counsel, reviewing draft report for return of motion on Monday, October 5, 2009; notes to file; | 2.50 |
| 02 OCT 09 | AR | Review second supplement to third report; prepare for sealed-bid auction; attend sealed-bid auction; review and analyze form of asset purchase agreement from J. Kara Capital Corp.; discussions with L. Shapiro, counsel for Canlight and V. Shaw, principal of Canlight, regarding closing risk of J. Kara Capital Corp. offer and effect of failure to close on Canlight offer and break fee; amend notice of motion; amend draft vesting order; assemble third supplementary motion record; draft letter serving third supplementary motion record on service list; | 5.50 |
| 05 OCT 09 | LAW | Preparation for and attendance in Court regarding approval of offer submitted by J. Kara; subsequently receiving and reviewing reasons for decision by Justice Cumming; | 2.50 |
| 05 OCT 09 | AR | Emails to and from S. Sood, counsel for J. Kara Capital Corp. regarding revisions to draft sale approval and vesting order; revise draft sale approval and vesting order; execute affidavit of service for third supplementary motion record; attend motion to approve sale; emails to and from counsel | 3.90 |

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|-----------|-----|--|-----|
| | | for R. Legacy regarding motion result; review endorsement; circulate orders and endorsement to service list; | |
| 06 OCT 09 | MRG | Review of new Purchase Agreement with J. Kara; telephone call with Purchaser's solicitor regarding fire insurance; discussion with L. Wittlin; met with A. Rousseau regarding vesting order; e-mail to purchaser's solicitor regarding contact information for fire insurance agent; | .80 |
| 06 OCT 09 | LAW | Telephone call from B. Bray of Cass Bishop law firm regarding closing of proposed transaction with Kara; conferring with M. German regarding statement of adjustments and obtaining particulars for costs accruing after September 30, 2009; | .40 |
| 06 OCT 09 | AR | Discuss sale approval and vesting order, logistics of closing and registration of sale approval and vesting order with Land Registry Office with M. German; | .60 |
| 07 OCT 09 | MRG | Review of vesting order and purchase agreement in preparation for closing; | .30 |
| 07 OCT 09 | LAW | Reviewing exchange of e-mail between E. Smith and S. Sood; brief consultation with A. Rousseau regarding position of real estate broker in light of wording of offer from Kara; | .30 |
| 07 OCT 09 | AR | Listen to voicemail from F. Taylor, former agent for J. Cara Capital Corp., regarding claim for commission; emails to and from I. Smith, B. Smith and L. Wittlin regarding response and legal issues; | .20 |
| 07 OCT 09 | CM | Review draft Order and Approval and Vesting Order, memo to A. Rousseau regarding same; | .30 |
| 08 OCT 09 | JB | Discussion with M. German regarding statement of adjustments; | .20 |
| 08 OCT 09 | MRG | E-mail to B. Smith regarding expenses incurred by Receiver since October 1st; met with J. Biener regarding meter readings and adjustments; review e-mail correspondence from B. Smith regarding Receiver's expenses and adjustments; telephone call to Purchaser's solicitor regarding statement of adjustments; | .60 |

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|-----------|-----|--|------|
| 08 OCT 09 | CM | Attend at Commercial List and issued and entered Order and Approval and Vesting Order (80 King William Street Property) of Justice Cumming; | .40 |
| 09 OCT 09 | JB | Determine appropriate provisions for and preparation of Application for Vesting Order; telephone call to Land Titles Office regarding completion of Application for Vesting Order; prepare Document Registration Agreement; message Application for Vesting Order to B. Bray via Teraview; e-mail to B. Bray regarding draft Application for Vesting Order and execution of Document Registration Agreement; discussions with M. German regarding final meter readings; | 3.20 |
| 09 OCT 09 | MRG | Preparing Statement of Adjustments for J. Kara closing; e-mails to property manager regarding meter readings; e-mails to B. Smith regarding revisions to Statement of Adjustments to reflect Receiver's expenses since October 1st; revised closing documents to reflect new Purchaser; telephone call with Purchaser's solicitor; e-mail B. Smith regarding Purchaser's request for original copies of all data room documents; met with C. Ma regarding obtaining issued and entered vesting order; e-mail draft closing documents to purchaser's solicitor; e-mail P. Cass regarding data room documents; e-mail B. Smith regarding Purchaser's final inspection of building; met with J. Biener regarding preparing Vesting Order application; review of Draft Application for Vesting Order prepared by J. Biener; further e-mails regarding meter readings and data room materials; telephone call with P. Cass regarding closing deliveries; e-mail M. Winich regarding name of Purchaser and billing address for utility companies; compiled Receiver's expenses and completed revised Statement of Adjustments; review of Purchaser's requisition letter; | 3.20 |
| 09 OCT 09 | LAW | Reviewing exchange of e-mail messages regarding closing details including adjustments, responding to claims by real estate broker for commission in light of wording of agreement of purchase and sale, referral of problem to S. Sood; | .40 |
| 09 OCT 09 | AR | Discussion with M. German regarding adjustments on closing; emails to and from B. Smith, I. Smith and L. Wittlin regarding request from purchaser's counsel for original documents comprising electronic data room and receiver's obligations and liabilities; circulate issued and | 1.10 |

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| | | entered sale approval and vesting order to service list; circulate order approving third report to service list; review revised endorsement of October 5th; circulate revised endorsement to service list; | |
| 13 OCT 09 | JB | E-mails from B. Bray and to M. German regarding Statement of Adjustments and execution of Receipt; | .20 |
| 13 OCT 09 | MRG | Revised Statement of Adjustments; e-mail revised draft to client for review; e-mail Purchaser's solicitor Statement of Adjustments and documents pertaining to Receiver's expenses; review of e-mail correspondence from Property Manager regarding utilities; e-mail to B. Smith; review of security invoice and forwarded to Purchaser's solicitor; discussion with L. Wittlin regarding closing matters; | .90 |
| 14 OCT 09 | JB | Discussion with M. German regarding payment of realty tax arrears and closing documents; preparation of response to requisition letter and closing documents; e-mail to P. Cass and B. Bray regarding response to requisition letter; e-mails to B. Bray regarding wire instructions, execution of Receipt and arrangements for final meter readings; | 2.60 |
| 14 OCT 09 | MRG | Met with J. Biener regarding response to Purchaser's solicitor's letter; review and revised closing documents including Undertaking & Affidavit; e-mail B. Smith regarding closing matters including instructions regarding execution of closing documents; e-mail to Purchaser's solicitor regarding delivery of original drawings; | 1.40 |
| 14 OCT 09 | AR | Call with office of J. Lefurgey, counsel for basic drywall, re consent to agent appearing to adjourn assignment court appearance for 3 to 4 months; | .10 |
| 15 OCT 09 | JB | Discussion with accounting and numerous e-mails from and to B. Bray and to and from D. Galinsky regarding delivery of funds; e-mail from M. Winnick and to L. Shapiro regarding delivery of key; telephone call from I. Machado regarding pick-up of key; e-mail from B. Bray and discussion with M. German regarding delivery of Receipt; letter to P. Cass regarding Vendor's closing deliveries; | 2.50 |
| 15 OCT 09 | MRG | Review of e-mail correspondence from B. Bray; e-mail B. Bray regarding structural documents for property; met with J. Biener regarding various closing matters; met with A. Rousseau regarding delivery and filing of Receivers | 1.40 |

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|-----------|-----|---|------|
| | | Certificate; e-mail Receiver's Certificate to B. Smith for execution and delivery to Purchaser's solicitor; e-mail Purchaser's solicitor regarding delivery of Receiver's Certificate; telephone call with P. Cass regarding property drawings; | |
| 15 OCT 09 | LAW | Reviewing exchange of e-mail correspondence regarding closing mechanics and brief conference with A. Rousseau regarding propriety of paying out return of deposit and break fee following successful closing; | .30 |
| 15 OCT 09 | AR | Listen to voicemail from and leave voicemail for K. Fisher, counsel for Canlight regarding break fee, deposit and direction for payment; call with K. Fisher regarding break fee, deposit and direction for payment; confer with M. German regarding Receiver's certificate and closing; | .40 |
| 16 OCT 09 | JB | Discussions with M. German and accounting regarding wiring of funds to I. Smith; e-mails from and to B. Bray and D. Galinsky regarding sale proceeds; letter from P. Cass regarding Purchaser's closing deliveries; verification of GST number; letter to B. Bray regarding delivery of additional key; receipt of sale proceeds; e-mail to and from B. Bray regarding registration of Application For Vesting Order; e-mail from B. Bray regarding confirmation of registration of Charge/Mortgage and instructions to release funds; instructions to accounting department regarding sale proceeds; letter to Tax Department regarding payment of outstanding realty taxes; | 3.50 |
| 16 OCT 09 | MRG | E-mail to B. Smith regarding Purchaser's request to borrow original drawings; e-mail to Purchaser's solicitor contact information for property manager to obtain structural drawings; telephone call with B. Smith regarding wire instructions; met with L. Wittlin and A. Rousseau to discuss closing matters and funds distribution issues; telephone call with Purchaser's solicitor regarding drawings; telephone call to P. Woodcliff regarding obtaining drawings; review e-mail correspondence from A. Rousseau and B. Smith; met with J. Biener regarding receipt of funds; review of e-mails from B. Bray including registered vesting order; met with J. Biener regarding wiring funds to client's bank account; e-mail confirmation of closing and wire details to client; | 1.75 |

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| 16 OCT 09 | LAW | Reviewing closing details and exchange of e-mail memoranda; conferring with M. German and A. Rousseau regarding return of deposit and payment of break fee to stocking horse bidder and monitoring successful closing with new purchaser; notes to file; | .60 |
| 16 OCT 09 | AR | Discussion with L. Wittlin and M. German of payment date for break fee and deposit and relevance of either on distribution motion; emails to and from B. Smith regarding same; draft letter to counsel for Canlight re direction for payment of deposit and break fee; emails to and from counsel for Canlight re same; | .90 |
| 19 OCT 09 | JB | E-mail from and to B. Bray regarding payment of outstanding realty taxes; | .15 |
| 19 OCT 09 | MRG | Met with J. Biener regarding obtaining wire confirmation for B. Smith; | .10 |
| 19 OCT 09 | LAW | Reviewing memorandum from B. Smith regarding calculation and confirmation of payment of break fee and return of deposit to stalking horse bidder; | .20 |
| 20 OCT 09 | LAW | Reviewing exchange of e-mail memoranda, reviewing and confirming advice to return deposit to stalking horse bidder together with break fee; | .30 |
| 21 OCT 09 | LAW | Receiving and reviewing memorandum from S. Sood requesting copy of original legal stationer's offer from J. Kara and searching therefore; brief e-mail memoranda to S. Sood and B. Smith; | .20 |
| 21 OCT 09 | AR | Emails to and from S. Sood, counsel for J. Kara Capital Corp, regarding original purchase offer; | .10 |
| 22 OCT 09 | AR | Instructions regarding filing of Receiver's Certificate; address difficulties in filing of Receiver's Certificate; | .30 |
| 23 OCT 09 | AR | Instructions to C. Ma to file Receivers Certificate; | .20 |
| 23 OCT 09 | DM | Filing documents; | 1.50 |
| 26 OCT 09 | AR | Examine records regarding original purchase offer from J. Kara Capital Corp.; email to B. Smith, I. Smith and L. Wittlin regarding same; | .20 |

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|-----------|-----|---|------|
| 27 OCT 09 | LAW | Exchanging e-mail memoranda with H. Whiteley, B. Smith and A. Rousseau regarding preparation of a distribution proposal with respect to the lien claimants; | .20 |
| 27 OCT 09 | AR | Email to H. Whiteley, counsel for ICICI Bank, regarding proposal for resolution of lien claims; confer with L. Wittlin regarding distribution proposal; | .20 |
| 27 OCT 09 | CM | Attend at Commercial List and filed Receiver's Certificate; | .40 |
| 28 OCT 09 | LAW | Reviewing exchange of e-mail memoranda with H. Whiteley and A. Rousseau regarding developing the proposal for distribution; | .20 |
| 04 NOV 09 | LAW | Exchanging e-mails with B. Smith, I. Smith and H. Whiteley regarding putting together a proposal for the construction lien claimants; reviewing letter from J. Lefurgey asking for certain information; telephone call from H. Whiteley to clarify the position of ICICI Bank on the lien claims and analysis available from his firm; consultation with I. Smith and A. Rousseau regarding setting a December motion date to report to the court on the sale of the property and deal with the distribution of the proceeds of sale; | 1.50 |
| 04 NOV 09 | AR | Email to B. Smith, I. Smith and L. Wittlin regarding considerations on motion date and report timing; confer with L. Wittlin regarding motion booking; review letter from J. Lefurgey, counsel for Basic Drywall, regarding advances from ICICI Bank to debtor; email from H. Whitley, counsel for ICICI Bank, to J. Lefurgey regarding advances from ICICI Bank to debtor; email to H. Whitley regarding distribution proposal to lien claimants; | .70 |
| 09 NOV 09 | LAW | Reviewing and responding to multiple e-mail messages regarding various outstanding issues, advising Receiver as to position on seeking distribution order and responding to various requests by lien claimants; conferring with A. Rousseau in respect thereof; | 1.00 |
| 09 NOV 09 | AR | Draft letter to service list regarding motion dates; call with S. Sood regarding potential litigation by F. Taylor; confer with I. Smith, B. Smith and L. Wittlin regarding F. Taylor; draft letter to F. Taylor; draft letter to R. Vasan regarding request for confirmation of return of deposits held in trust; review letter from H. Ganatra requesting copy of formerly | 1.60 |

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| | | sealed volume of Receiver's 3rd report regarding property appraisal and motion dates and treatment of ICICI Bank in distribution motion; email to I. Smith, B. Smith and L. Wittlin regarding appropriate response to H. Ganatra; review orders regarding sealing of volume 2 of Receiver's 3rd report; draft response to H. Ganatra and email I. Smith, B. Smith and L. Wittlin regarding same; | |
| 10 NOV 09 | LAW | Exchanging e-mails with I. Smith and A. Rousseau regarding dealing with certain unsecured creditors and accommodating the secured creditors; telephone call from I. Smith regarding planning and timing of next court appearance, preparation of Receiver's report and other matters relating thereto; brief conference with A. Rousseau in respect thereof; | .60 |
| 10 NOV 09 | AR | Discuss new motion date with L. Wittlin, I. Smith and B. Smith; draft letter to service list regarding new motion date; emails to and from P. Sullivan regarding motion date; emails to and from J. Lefurgey regarding motion date; emails to and from S. Sood regarding motion date; discussion with B. Smith regarding letter to unsecured creditors regarding motion; draft letter to H. Ganatra regarding demand that disbursement motion address debtors complaints against ICICI Bank and regarding formerly sealed volume of Receivers 3rd report regarding appraisal of property; emails to and from I. Smith and L. Wittlin regarding letter to H. Ganatra; | 1.10 |
| 11 NOV 09 | AR | Review letter from H. Ganatra regarding sealed volume 2 of 3rd report of Receiver containing appraisal of property; draft letter to H. Ganatra regarding same; | .40 |
| 12 NOV 09 | AR | Email from P. Sullivan, counsel for Randy Legacy, regarding motion date; revise letter to H. Ganatra regarding request for copy of volume 2 of Receiver's Third Report; | .20 |
| 17 NOV 09 | LAW | Exchanging e-mail memoranda with I. Smith, B. Smith, H. Whiteley and A. Rousseau regarding settling on a practical basis all of the construction lien claims; preparation of Receiver's report and booking court time in early January; receiving and reviewing letter from counsel for one lien claimant; brief consultation with A. Rousseau regarding scheduling considerations; notes to file; | .40 |

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Lawyers – Patent & Trade Mark Agents

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|-----------|-----|---|-----|
| 17 NOV 09 | AR | Emails to and from J. Lefurgey, counsel for Basic Drywall, regarding motion date; review email from I. Smith to H. Whitley, counsel for ICICI Bank; emails to I. Smith, B. Smith and L. Wittlin regarding considerations on timing of motion; | .20 |
| 18 NOV 09 | AR | Emails to and from J. Lefurgey, counsel for Basic Drywall, regarding motion date; draft letter to H. Ganatra regarding formerly sealed volume 2 of third report of Receiver; send volume 2 of third report of Receiver to H. Ganatra; | .80 |
| 23 NOV 09 | AR | Draft letter to H. Ganatra regarding volume 2 of third report of Receiver containing appraisal; draft letter to F. Taylor regarding responding to requests for documents in proceeding; | .80 |
| 26 NOV 09 | JB | Preparation of report; | .75 |
| 26 NOV 09 | LAW | Reviewing exchange of multiple e-mails regarding dealing with construction lien claims and scheduling court time for January 2010 to deal with all issues; | .30 |
| 30 NOV 09 | AR | Email to H. Whitley, counsel for ICICI Bank, regarding negotiations with lien claimants for settlement regarding distribution; | .10 |

TOTAL TAXABLE HOURS

59.25

OUR FEE

\$ 22,447.50

TAXABLE DISBURSEMENTS

| | | |
|-----------------------|----|--------|
| Copies | \$ | 689.25 |
| Courier Delivery | | 65.41 |
| Online Legal Research | | 9.81 |
| Telephone | | 8.64 |
| Taxi | | 14.29 |
| Fax | | 48.75 |

TOTAL TAXABLE DISBURSEMENTS

836.15

NON-TAXABLE DISBURSEMENTS

| | |
|-----------------|--------------|
| Transcripts | 15.00 |
| Tax Certificate | 52.00 |
| Bank Charges | <u>97.25</u> |

TOTAL NON-TAXABLE DISBURSEMENTS 164.25

Goods and Services Tax (5% of \$23,283.65) 1,164.19

TOTAL BALANCE DUE \$ 24,612.09

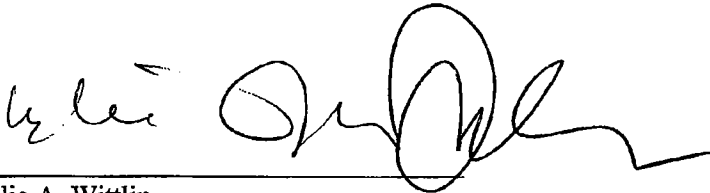
TIME SUMMARY

| Lawyer/Staff | | Hours | Rate | Value |
|-------------------|-----|-------|--------|----------|
| John Kroupis | JK | .30 | 185.00 | 55.50 |
| Janine Biener | JB | 13.10 | 225.00 | 2,947.50 |
| Matthew German | MRG | 10.45 | 360.00 | 3,762.00 |
| Leslie A. Wittlin | LAW | 11.90 | 725.00 | 8,627.50 |
| Aaron Rousseau | AR | 20.90 | 315.00 | 6,583.50 |
| Catherine Ma | CM | 1.10 | 115.00 | 126.50 |
| Dean Melamed | DM | 1.50 | 230.00 | 345.00 |

THIS IS OUR ELEVENTH INTERIM BILL OF COSTS

LANG MICHENER LLP

Per:



Leslie A. Wittlin

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

BETWEEN:
ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT
TORONTO)

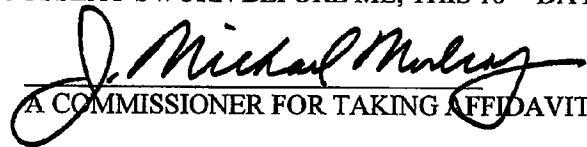
BILL OF COSTS

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

Leslie A. Wittlin
LSUC No.: 14629M

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

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF AARON
ROUSSEAU SWORN BEFORE ME, THIS 16TH DAY OF MARCH, 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

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

BETWEEN

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondents

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

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

| Professional | Year of Call | Rate | Total Time | Total Fees |
|---------------------|---------------------|-------------|-------------------|-------------------|
| Janine Biener | Clerk | 225.00 | 2.65 | 596.25 |
| Matthew German | 2004 | 360.00 | 1.30 | 468.00 |
| Leslie A. Wittlin | 1974 | 725.00 | .40 | 290.00 |
| Aaron Rousseau | 2007 | 315.00 | .60 | 189.00 |

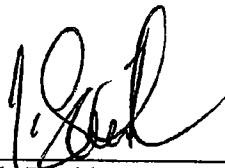
Fees and Disbursements \$1,578.00
GST on Fees and Disbursements 78.90
Total Fees and Disbursements \$1,656.90

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

Dated at Toronto, Ontario, this 10th day of January, 2010.

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

Per:



Ira Smith, President

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

| | | | |
|----------------------------|-----|--|-------------|
| 11 DEC 09 | AR | Emails to and from S. Gaffrey, counsel for construction lien claimant regarding date of distribution motion; | .10 |
| 14 DEC 09 | AR | Emails to and from S. Gaffrey, counsel for construction lien claimant regarding date of distribution motion; | .10 |
| 17 DEC 09 | LAW | Reviewing memoranda from B. Smith, voice message to H. Whitley regarding bank's position on striking a compromise with the lien claimants; receiving and reviewing correspondence from solicitors for three lien claimants; | .40 |
| 17 DEC 09 | AR | Email from B. Smith regarding ongoing discussions between lien claimants and bank, obstacles to delivery of Receiver's report regarding distribution and instructions to adjourn motion date; draft letter to service list regarding intention to adjourn Jan 8 motion; emails from D. Swift, J. Quinn, J. Lefurgey and P. Sullivan, counsel for the lien claimants, regarding negotiations with bank and adjournment of motion for Jan 8; | .30 |
| 18 DEC 09 | JB | Preparation of reporting letter and organization of enclosures; | 1.00 |
| 18 DEC 09 | AR | Leave voicemail for H. Whitley, counsel for ICICI Bank, regarding negotiations with lien claimants; email to H. Whitley regarding same; | .10 |
| 21 DEC 09 | JB | Discussion with M. German regarding draft report; finalize draft reporting letter; | 1.25 |
| 21 DEC 09 | MRG | Reviewed and revised reporting letter regarding sale of 80 King William Street, Hamilton; | .70 |
| 29 DEC 09 | MRG | Revised reporting letter regarding sale of Hamilton property and met with J. Biener to discuss revisions; | .60 |
| 30 DEC 09 | JB | Revisions to reporting letter; | .40 |
| TOTAL TAXABLE HOURS | | | <u>4.95</u> |
| OUR FEE | | | \$ 1,543.25 |

TAXABLE DISBURSEMENTS

| | | | |
|---|-----------|------------|------------------------|
| Copies | \$ | 34.25 | |
| Fax | | <u>.50</u> | |
| TOTAL TAXABLE DISBURSEMENTS | | | 34.75 |
| Goods and Services Tax (5% of \$1,578.00) | | | <u>78.90</u> |
| TOTAL BALANCE DUE | \$ | | <u>1,656.90</u> |

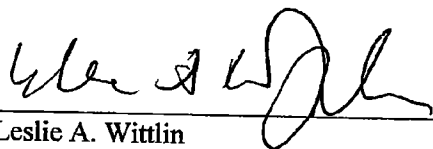
TIME SUMMARY

| Lawyer/Staff | | Hours | Rate | Value |
|-------------------|-----|-------|--------|--------|
| Janine Biener | JB | 2.65 | 225.00 | 596.25 |
| Matthew German | MRG | 1.30 | 360.00 | 468.00 |
| Leslie A. Wittlin | LAW | .40 | 725.00 | 290.00 |
| Aaron Rousseau | AR | .60 | 315.00 | 189.00 |

THIS IS OUR TWELFTH INTERIM BILL OF COSTS

LANG MICHENER LLP

Per:



Leslie A. Wittlin

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

BETWEEN:
ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT
TORONTO)

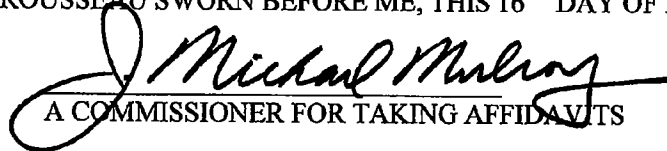
BILL OF COSTS

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

Leslie A. Wittlin
LSUC No.: 14629M

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

THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT OF AARON
ROUSSEAU SWORN BEFORE ME, THIS 16TH DAY OF MARCH, 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

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

BETWEEN

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondents

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

FOR PROFESSIONAL SERVICES RENDERED as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as court appointed interim receiver and receiver and manager of 1539304 Ontario Inc., for the period from January 1, 2010 to January 31, 2010 as particularized in the Schedule of time docket entries annexed hereto;

| Professional | Year of Call | Rate | Total Time | Total Fees |
|---------------------|---------------------|-------------|-------------------|-------------------|
| Mary Ricci | Clerk | 235.00 | .10 | 23.50 |
| Janine Biener | Clerk | 235.00 | 1.00 | 235.00 |
| Matthew German | 2004 | 375.00 | .20 | 75.00 |
| Leslie A. Wittlin | 1974 | 750.00 | 2.00 | 1,500.00 |
| Aaron Rousseau | 2007 | 335.00 | 5.50 | 1,842.00 |

Fees and Disbursements \$3,752.72
GST on Fees and Disbursements 187.64
Total Fees and Disbursements \$3,940.36

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

Dated at Toronto, Ontario, this 25th day of February, 2010.

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

Per:



Ira Smith, President

**Schedule of time docket entries for the period
from January 1, 2010 to January 31, 2010**

| | | | |
|-----------|-----|--|------|
| 04 JAN 10 | LAW | Telephone discussion with I. Smith regarding resolving construction lien claims and priority issues in respect thereof; voice message to H. Whitely, counsel for bank; brief consultation with A. Rousseau regarding further adjournment required; | .30 |
| 04 JAN 10 | AR | Leave voicemails for H. Whitely, counsel for ICICI Bank and I. Smith regarding negotiations with lien claimants and alternative steps to be taken by Receiver in the event that no progress achieved by bank's initiative; | .10 |
| 06 JAN 10 | MR | Review and reply to email from C. Ma regarding Receiver's Certificate; | .10 |
| 06 JAN 10 | MRG | Discussion with A. Rousseau regarding filing of Receiver's Certificate with court; | .20 |
| 06 JAN 10 | LAW | Exchanging e-mail memoranda with A. Rousseau regarding possible trust claims by construction lien claimants and with I. Smith regarding instructions to contact solicitor for bank; further telephone call to and e-mail to H. Whitely; | .40 |
| 06 JAN 10 | AR | Emails to and from and discussion with M. German regarding Receiver's Certificate and real estate report on transaction; call with J. Lefurgey regarding pending motion of January 8th 2010 and position of Basic Drywall Inc. claimant regarding priority dispute with ICICI Bank and status of negotiations between lien claimants and ICICI Bank; emails to I. Smith, B. Smith and L. Wittlin regarding lien claimants' position and status of negotiations with ICICI Bank; call with court clerk regarding filing of documents and reduction of anticipated time of motion on January 8; draft letter to court regarding request for adjournment and rescheduling to 9:30 appt. | 1.20 |
| 07 JAN 10 | JB | Finalize reporting letter and organization of enclosures; letter to B. Smith regarding report; | 1.00 |
| 08 JAN 10 | LAW | Reviewing comments on draft letter proposed to be provided to service list; making revisions thereto and settling contents with A. Rousseau; | .40 |

| | | | |
|-----------|-----|--|------|
| 08 JAN 10 | AR | Attend 9:30 court appointment regarding adjournment of motion; draft letter to service list regarding adjournment, addressing negotiations between lien claimants and ICICI Bank and additional scheduling issues; emails to and from I. Smith, B. Smith and L. Wittlin regarding scheduling considerations regarding distribution motion; revise draft letter to service list regarding adjournment; call with P. Sullivan, counsel for Randy Legacy, regarding status of negotiations between ICICI Bank and lien claimants; leave voicemail for counsel for ICICI Bank and for counsel for lien claimants regarding conference call regarding resolution of priority dispute on January 11, 2010; | .90 |
| 11 JAN 10 | LAW | Reviewing memorandum by A. Rousseau reporting on the conference call among H. Whitely and several counsel for various lien claimants; reviewing e-mail memorandum from B. Smith regarding copy of contract with general contractor and location thereof; | .30 |
| 11 JAN 10 | AR | Conference call with H. Whitely and N. Abbott, counsel for ICICI Bank and counsel for various lien claimants regarding concerns and potential resolution of priority dispute between ICICI Bank and lien claimants; memo to I. Smith, B. Smith and L. Wittlin regarding progress of settlement discussions between ICICI Bank and lien claimants and document requests; emails to and from R. Weston, counsel for City of Hamilton, regarding January 8th motion date hearing and March 8th motion date; | 1.60 |
| 13 JAN 10 | AR | Review letter from H. Ganatra of debtor regarding concerns of impropriety by Receiver regarding date of motion for distribution; draft letter to H. Ganatra regarding same; email from B. Smith regarding contract between HEPP and debtor for fixed price completion of construction project; review contract; email to H. Whitley, N. Abbot, counsel for ICICI Bank, and P. Sullivan and J. Lefurgey, counsel for lien claimants regarding contract; | .80 |
| 14 JAN 10 | LAW | Receiving and reviewing e-mail memoranda from J. Lefurgey regarding details of construction lien claims and the resolution thereof; brief discussion with A. Rousseau; | .20 |

Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

Page 5

| | | | |
|-----------|-----|--|-----|
| 14 JAN 10 | AR | Emails from J. Lefurgey, counsel for lien claimant, regarding additional documents sought; emails to and from H. Whitely, counsel for ICICI Bank, regarding negotiations between ICICI Bank and lien claimants; email to B. Smith regarding document request from J. Lefurgey; | .10 |
| 15 JAN 10 | LAW | Reviewing memoranda from A. Rousseau and responding thereto; | .20 |
| 15 JAN 10 | AR | Email to J. Lefurgey, counsel for lien claimant, regarding additional contract documents relevant to lien claims; email from J. Lefurgey and emails to L. Smith, B. Smith and L. Wittlin regarding suggestion of payment of amounts into court; | .10 |
| 20 JAN 10 | AR | Review letter from J. Turingia, counsel for lien claimant, regarding service list inclusion, past correspondence, negotiations between bank and lien claimants and distribution motion; draft letter to J. Turingia; | .70 |
| 22 JAN 10 | LAW | Reviewing memorandum from A. Rousseau regarding communication with solicitor for bank; voice message to H. Whitely regarding next steps with lien claimants in order to resolve those issues; | .20 |

TOTAL TAXABLE HOURS

8.80

OUR FEE

\$ 3,676.00

TAXABLE DISBURSEMENTS

| | | |
|-----------|----|-------|
| Copies | \$ | 65.15 |
| Telephone | | 3.20 |
| Taxi | | 7.62 |
| Fax | | .75 |

TOTAL TAXABLE DISBURSEMENTS

76.72

Goods and Services Tax (5% of \$3,752.72)

187.64

TOTAL BALANCE DUE

\$ 3,940.36

Lang Michener LLP

Lawyers – Patent & Trade Mark Agents
TIME SUMMARY

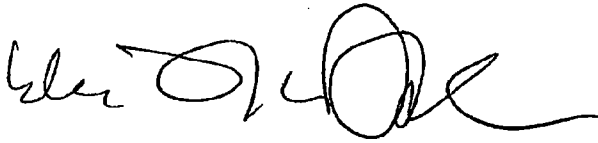
Page 6

| Lawyer/Staff | | Hours | Rate | Value |
|-------------------|-----|-------|--------|----------|
| Mary Ricci | MR | .10 | 235.00 | 23.50 |
| Janine Biener | JB | 1.00 | 235.00 | 235.00 |
| Matthew German | MRG | .20 | 375.00 | 75.00 |
| Leslie A. Wittlin | LAW | 2.00 | 750.00 | 1,500.00 |
| Aaron Rousseau | AR | 5.50 | 335.00 | 1,842.50 |

THIS IS OUR THIRTEENTH INTERIM BILL OF COSTS

LANG MICHENER LLP

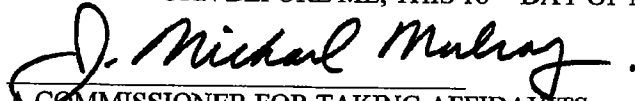
Per:



Leslie A. Wittlin

| | |
|--|---|
| <p>BETWEEN: ICICI BANK CANADA Applicant</p> | <p style="text-align: center;">- AND -</p> |
| <p style="text-align: center;">Court File No.: CV-08-7714-00CL</p> | |
| | <p style="text-align: right;">159304 ONTARIO INC. Respondent</p> |
| <p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) (PROCEEDING COMMENCED AT TORONTO)</p> | |
| <p style="text-align: center;">BILL OF COSTS</p> | |
| <p>LANG MICHENER LLP Barristers & Solicitors P.O. Box 747, Suite 2500 BCE Place, 181 Bay Street Toronto, Ontario M5J 2T7</p> <p>Leslie A. Wittlin LSUC No.: 14629M</p> <p>Telephone: (416) 307-4087 Facsimile: (416) 304-3855</p> | |

THIS IS EXHIBIT "E" REFERRED TO IN THE AFFIDAVIT OF AARON
ROUSSEAU SWORN BEFORE ME, THIS 16TH DAY OF MARCH, 2010


A COMMISSIONER FOR TAKING AFFIDAVITS

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

BETWEEN

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondents

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

FOR PROFESSIONAL SERVICES RENDERED as independent counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver") in its capacity as court appointed interim receiver and receiver and manager of 1539304 Ontario Inc., for the period from February 1, 2010 to February 28, 2010 as particularized in the Schedule of time docket entries annexed hereto;

| Professional | Year of Call | Rate | Total Time | Total Fees |
|---------------------|---------------------|-------------|-------------------|-------------------|
| Leslie A. Wittlin | 1974 | 750.00 | 1.10 | 825.00 |
| Aaron Rousseau | 2007 | 335.00 | 3.10 | 1,038.50 |

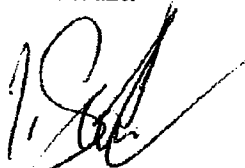
Fees and Disbursements \$1,892.75
GST on Fees and Disbursements 94.64
Total Fees and Disbursements \$1,987.39

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

Dated at Toronto, Ontario, this 12th day of March, 2010.

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

Per:



Ira Smith, President

**Schedule of time docket entries for the period
from February 1, 2010 to February 28, 2010**

| | | | |
|-----------|-----|--|------|
| 02 FEB 10 | LAW | Exchanging e-mail with B. Smith, A. Rousseau and I. Smith regarding resolving the difficulties with the Construction Lien claimants and the bank; | .30 |
| 02 FEB 10 | AR | Conference call with H. Whitley, counsel for ICICI Bank and L. Wittlin, regarding resolution discussions with lien claimants; | .40 |
| 03 FEB 10 | LAW | Exchanging further e-mail memoranda with B. Smith and I. Smith regarding resolving distribution issues; | .20 |
| 04 FEB 10 | LAW | Detailed memorandum from B. Smith regarding court reporting and dealing with the lien holders and claims by the city, the bank and the former principals of the insolvent company and responding thereto; | .30 |
| 04 FEB 10 | AR | Call with B. Smith regarding resolution efforts, distribution and termination of receivership; email from B. Smith regarding same; | .50 |
| 08 FEB 10 | AR | View email from P. Sullivan, counsel for lien claimant, regarding resolution discussions; | .10 |
| 17 FEB 10 | LAW | Reviewing draft reporting by the Receiver, conferring with A. Rousseau in respect thereof, reviewing advice letter to the lien claimants prepared by A. Rousseau and commenting in respect thereof; | .30 |
| 17 FEB 10 | AR | Review draft 4th report of Receiver; provide comments on draft 4th report to I. Smith, B. Smith and L. Wittlin; review letter from J. Lefurgy, counsel for Basic Drywall, regarding assignment court appearance; draft letter to J. Lefurgy regarding assignment court; draft letter to R. Westin, counsel for City of Hamilton, regarding position regarding priority in relation to mortgage of ICICI Bank Canada; draft letter to service list regarding motion for distribution, settlement discussions and termination of Receivership; | 1.60 |

18 FEB 10 AR Revise and send letter to J. Lefurgy, counsel for Basic Drywall, regarding assignment court; revise and send letter to all parties regarding motion for distribution; .50

TOTAL TAXABLE HOURS 4.20

OUR FEE \$ 1,863.50

TAXABLE DISBURSEMENTS

Copies \$ 29.25

TOTAL TAXABLE DISBURSEMENTS 29.25

Goods and Services Tax (5% of \$1,892.75) 94.64

TOTAL BALANCE DUE \$ 1,987.39


TIME SUMMARY

| Lawyer/Staff | | Hours | Rate | Value |
|-------------------|-----|-------|--------|----------|
| Leslie A. Wittlin | LAW | 1.10 | 750.00 | 825.00 |
| Aaron Rousseau | AR | 3.10 | 335.00 | 1,038.50 |

THIS IS OUR FOURTEENTH INTERIM BILL OF COSTS

LANG MICHENER LLP

Per:



Leslie A. Wittlin

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

BETWEEN:
ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.

Respondent

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

BILL OF COSTS

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

Leslie A. Wittlin
LSUC No.: 14629M

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

BETWEEN:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

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

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

AFFIDAVIT OF AARON ROUSSEAU

LANG MICHENER LLP

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

Leslie A. Wittlin

Law Society Registration #14629M
Tel: (416) 307-4087

Alex Ilchenko

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

Aaron Rousseau

Law Society Registration #53833E
Tel: (416) 307-4081
Fax: (416) 365-1719

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ICICI BANK CANADA

Applicants

- and -

1539304 ONTARIO INC.

Respondents

**AFFIDAVIT OF IRA SMITH
(Sworn March 17, 2010)**

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

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

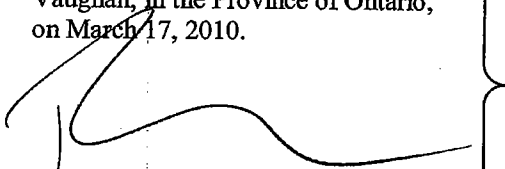
4. The Receiver has filed its Fourth Report with this Honourable Court, which outlines, among other things, the Receiver's overall actions and activities since the date of its First Report.

5. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a copy of the accounts rendered by Pelican Woodcliff Inc., consultant to the Receiver, for the period from September 1 to October 31, 2009. The total of the fee and disbursements of Pelican Woodcliff Inc. (excluding GST) is \$11,793.72.


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

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

SWORN BEFORE ME at the City of
Vaughan, in the Province of Ontario,
on March 17, 2010.



A Commissioner for taking affidavits



Ira Smith

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

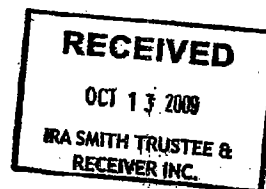
EXHIBIT "A"

**Pelican
Woodcliff** INC

7100 Woodbine Avenue
Suite 208
Markham, Ontario L3R 5J2
tel: (905) 477-4507
fax: (905) 477-4509

e-mail: pwi@pelicanwoodcliff.com

INVOICE NO. 120948



September 30, 2009

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

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

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

| | | |
|---------------------------|-------------|--------------------------|
| TOTAL FEES | As Attached | 6,375.00 |
| G.S.T. - 5% | | 318.75 |
| DISBURSEMENTS | As Attached | <u>987.12</u> |
| TOTAL THIS INVOICE | | <u>\$7,680.87</u> |

Terms: Net 30 Days
GST No. 868471244

This Exhibit A referred to in the
Affidavit of Ira Smith
Sworn before me this 17 day of Mar, 2010


A Commissioner, etc.

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

DISBURSEMENTS

PROJECT: 80 KING WILLIAM

DATE: SEPTEMBER 2009

| | | | <u>Sub-Total</u> | <u>GST</u> | <u>Total</u> |
|--------------|-------|----------------|------------------|----------------|-----------------|
| Courier | | | 10.25 | 0.51 | 10.76 |
| Parking | | | 3.10 | 0.15 | 3.25 |
| | | | 3.10 | 0.15 | 3.25 |
| | | | 3.10 | 0.15 | 3.25 |
| | | | 3.10 | 0.15 | 3.25 |
| | | | 3.10 | 0.15 | 3.25 |
| | | | 3.10 | 0.15 | 3.25 |
| 407 ETR | | August | 60.46 | 0.00 | 60.46 |
| | | September | 180.00 | 0.00 | 180.00 |
| Mileage | km | Rate | | | |
| | 1,194 | \$0.60 6 Trips | <u>682.29</u> | <u>34.11</u> | <u>716.40</u> |
| TOTAL | | | <u>\$951.60</u> | <u>\$35.52</u> | <u>\$987.12</u> |



7100 Woodbine Avenue
Suite 208
Markham, Ontario L3R 5J2

tel: (905) 477-4507
fax: (905) 477-4509

e-mail: pw@pelicanwoodcliff.com

INVOICE NO. 121019

October 9, 2009

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

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

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

| | | |
|---------------------------|--------------------------|--------------------------|
| TOTAL FEES | 3 Site Visits @ \$650.00 | 1,950.00 |
| G.S.T. - 5% | | 97.50 |
| DISBURSEMENTS | As Attached | <u>458.70</u> |
| TOTAL THIS INVOICE | | <u>\$2,506.20</u> |

Terms: Net 30 Days
GST No. 868471244

DISBURSEMENTS

PROJECT: 80 KING WILLIAM

DATE: OCTOBER 2009

| | | | <u>Sub-Total</u> | <u>GST</u> | <u>Total</u> |
|--------------|-----|--------|------------------------|-----------------------|------------------------|
| Parking | | | 3.33 | 0.17 | 3.50 |
| | | | 3.33 | 0.17 | 3.50 |
| | | | 3.33 | 0.17 | 3.50 |
| Mileage | km | Rate | | | |
| | 597 | \$0.60 | 341.14 | 17.06 | 358.20 |
| 407 ETR | | | <u>90.00</u> | <u>0.00</u> | <u>90.00</u> |
| TOTAL | | | <u>\$441.13</u> | <u>\$17.57</u> | <u>\$458.70</u> |

Pelican|INC
Woodcliff

7100 Woodbine Avenue
Suite 208
Markham, Ontario L3R 5J2
tel: (905) 477-4507
fax: (905) 477-4509

e-mail: pwi@pelicanwoodcliff.com

INVOICE NO. 121020

October 9, 2009

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

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

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

| | | |
|---------------------------|-------------|--------------------------|
| TOTAL FEES | As Attached | 1,870.00 |
| G.S.T. - 5% | | 93.50 |
| DISBURSEMENTS | As Attached | <u>152.90</u> |
| TOTAL THIS INVOICE | | <u>\$2,116.40</u> |

Terms: Net 30 Days
GST No. 868471244

DISBURSEMENTS

PROJECT: 80 KING WILLIAM

DATE: OCTOBER 2009

| | | | <u>Sub-Total</u> | <u>GST</u> | <u>Total</u> |
|---------|-----|--------|------------------|---------------|-----------------|
| Parking | | | 3.33 | 0.17 | 3.50 |
| Mileage | km | Rate | | | |
| | 199 | \$0.60 | 113.71 | 5.69 | 119.40 |
| 407 ETR | | | <u>30.00</u> | <u>0.00</u> | <u>30.00</u> |
| TOTAL | | | <u>\$147.04</u> | <u>\$5.86</u> | <u>\$152.90</u> |

ICICI BANK CANADA

1539304 ONTARIO INC.

And

Applicants

Respondents

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF IRA SMITH
(Sworn March 17, 2010)**

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

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

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

R. Srinivasan

Barrister & Solicitor

*Practicing in Association with:
Cimba & Associates*

*1615-25 Main Street West
Hamilton, Ontario L8P 1H1*

Tel: 905-522-1382

Fax: 905-522-4369

Email: vasan@bellsnet.ca

March 15, 2010

Sent By Fax (416)365-1719 (16 pages)

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

Attention: Aaron Rousseau

Dear Sir:

Re: 1539304 Ontario Inc. o/a Trinity Landing

Further to your letter dated March 11, 2010, I am pleased to attach herewith copies of the following:

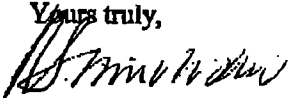
1. Copy of correspondence to Jeffrey Legris and attached cheque in the amount of \$1,005.41.
2. Copy of correspondence to Deidre Dixon and attached cheque in the amount of \$11,059.63;
3. Copy of correspondence addressed to Russell M. Allegra, solicitor for Dennis Vachon and attached cheque in the amount of \$1,005.41;
4. Copy of correspondence to Shirley Thai and attached cheque in the amount of \$1,005.41;
5. Copy of correspondence to Hema Raythatha and attached cheque in the amount of \$6,721.34;
6. Copy of correspondence to Norman Watson, solicitor for Bobby Turcotte and attached cheque in the amount of \$11,059.63.
7. Copy of correspondence to Charlotte Hell and attached cheque in the amount of \$1,005.21.

Since I am no longer with the former firm of Burns, Vasan, Argiropoulos I have requested Mr. Burns office to provide me with a copy of the trust ledger statement and when I receive same I shall

forward a copy to you. However, I do not expect the trust ledger statement to show anything other than the fact that these payments as set out above have been paid.

I trust this is satisfactory, and remain,

Yours truly,



R. Srinivasan
RSV:ms

Encl.

Burns, Vasani, Argiropoulos
Chartered Accountants

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.S.C., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38

Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. PAQUETTE B.A., LL.B.

June 26, 2009

Jeffrey Legris
13-34 Bow Valley Drive
Hamilton, Ontario
L8E 3L4

Dear Sir:

Re: Legris p/f 1539304 Ontario Inc. operating as Trinity Landing
105-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing. You will recall that when you entered into an Agreement of Purchase and Sale to purchase the above noted unit from our client, you gave an initial deposit payable to our firm in the sum of \$1,000.00.

Unfortunately, our client was put in Receivership pursuant to an Order of the Superior Court of Ontario and on the Application of the Receiver, the Court has now made an Order that we refund to every purchaser the amount of the deposits that were given to our firm.

We enclose herewith a copy of the said Order as well as our trust cheque payable to yourself in the sum of \$1,005.41.

The cheque includes a small amount that was earned for interest, less bank charges.

Yours truly,

R. Srinivasan
RSV:ms

Encl.

DATE : BURNS, VASAN, ARGIROPOULOS LLP
CHE # : 15242
AMOUNT : \$1,005.41
ACCOUNT: TRUST - 1
PAID TO: JEFFREY LEGRIS
05028803

T15242

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TD CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W9


T15242
15242

One Thousand Five ***** TRUST ***** 41/100

Jun '25/2009 \$1,005.41

PAY JEFFREY LEGRIS
TO THE ORDER OF 05028803

BURNS, VASAN, ARGIROPOULOS LLP BARRISTERS & SOLICITORS

PER  MP

PAYOUT AS PER COURT ORDER

⑈015242⑈ ⑆25122⑈004⑆ 0200⑈0337793⑈

Burns, Vasan, Argiropoulos LLP
Barristers & Solicitors

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.S.C., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38
Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. PAQUETTE B.A., LL.B.

June 26, 2009

Deirdre Dixon
1564 McClure Drive
London, Ontario
N6G 2L2

Dear Madam:

Re: Dixon p/f 1539304 Ontario Inc. operating as Trinity Landing
402-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing. You will recall that when you entered into an Agreement of Purchase and Sale to purchase the above noted unit from our client, you gave an initial deposit payable to our firm in the sum of \$11,000.00.

Unfortunately, our client was put in Receivership pursuant to an Order of the Superior Court of Ontario and on the Application of the Receiver, the Court has now made an Order that we refund to every purchaser the amount of the deposits that were given to our firm.

We enclose herewith a copy of the said Order as well as our trust cheque payable to yourself in the sum of \$11,059.63.

The cheque includes a small amount that was earned for interest, less bank charges.

Yours truly,

R. Srinivasan .
RSV:ms

Encl.

DATE : JUN 25 2009
CHE # : 15243
AMOUNT : \$11,059.63
ACCOUNT: TRUST - 1
PAID TO: DEIRDRE DIXON
05028803

T15243

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

THIS CHECK CONTAINS SECURITY FEATURES. SEE REVERSE. / CE CHECK CONTIENS DES CARACTÉRISTIQUES DE SÉCURITÉ. VOIR A L'ENVERS.

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TD CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W3

T15243

15243

Eleven Thousand Fifty Nine ***** TRUST ***** 63/100

Jun 25/2009 \$11,059.63

PAY DEIRDRE DIXON
TO THE 05028803
ORDER OF

BURNS, VASAN, ARGIROPOULOS LLP BARRISTERS & SOLICITORS

PER *A Burns* MP

PAYOUT AS PER COURT ORDER

⑈015243⑈ ⑆25122⑈004⑆ 0200⑈0337793⑈

Burns, Vasam, Argiropoulos LLP
Barristers & Solicitors

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.S.C., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38
Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. FAQUETTE B.A., LL.B.

June 26, 2009

Russell M. Allegra
Barrister & Solicitor
481 North Service Road West
Unit A-10
Oakville, Ontario
L6M 2V6

Dear Sir:

Re: Trinity Landing s/t Vachon/Kafka
205-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing.

Further to the Order of the Honourable Madam Justice Pepall dated June 11, 2009, a copy of which is enclosed herewith, please find our trust cheque in the amount of \$1,005.41 which represents the deposit paid in this matter plus accrued interest.

Yours truly,

R. Srinivasan
RSV^{ms}

Encl.

DATE : BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
CHE # : 15244
AMOUNT : \$1,005.41
ACCOUNT: TRUST - 1
PAID TO: DENNIS VACHON
05028803

T15244

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

THIS CHECK CONTAINS SECURITY FEATURES. SEE REVERSE FOR DETAILS. LE VÉRIFIÉZ LE DOS DE CE CHEQUE POUR LES CARACTÉRISTIQUES DE SÉCURITÉ. VOUS LE VÉRIFIÉZ LE

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TO CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W9

T15244

15244

One Thousand Five ***** TRUST ***** 41/100

Jun 25/2009 \$1,005.41

PAY DENNIS VACHON
TO THE ORDER OF 05028803

BURNS, VASAN, ARGIROPOULOS LLP BARRISTERS & SOLICITORS

PER A. Burns MP

PAYOUT AS PER COURT ORDER

⑈015244⑈ ⑆25122⑈004⑆ 0200⑈0337793⑈

Burns, Vasani, Argiropoulos LLP
Barristers & Solicitors

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.S.C., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38

Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. PAQUETTE B.A., LL.B.

June 26, 2009

Shirley Thai
574 Cannon Street East
Hamilton, Ontario
L8L 2G4

Dear Madam:

Re: Thai p/f 1539304 Ontario Inc. operating as Trinity Landing
107-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing. You will recall that when you entered into an Agreement of Purchase and Sale to purchase the above noted unit from our client, you gave an initial deposit payable to our firm in the sum of \$1,000.00.

Unfortunately, our client was put in Receivership pursuant to an Order of the Superior Court of Ontario and on the Application of the Receiver, the Court has now made an Order that we refund to every purchaser the amount of the deposits that were given to our firm.

We enclose herewith a copy of the said Order as well as our trust cheque payable to yourself in the sum of \$1,005.41.

The cheque includes a small amount that was earned for interest, less bank charges.

Yours truly,

R. Srinivasan
RSV:ms

Encl.

DATE : BURNS, VASAN, ARGIROPOULOS LLP
CHE # : JULIAN STEWART SOLICITORS
AMOUNT : \$1,005.41
ACCOUNT : TRUST - 1
PAID TO : SHIRLEY THAI
05028803

T15245

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TD CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W9

T15245

15245

One Thousand Five ***** TRUST ***** 41/100

Jun. 25/2009 \$1,005.41

PAY TO THE ORDER OF SHIRLEY THAI
05028803

BURNS, VASAN, ARGIROPOULOS LLP - BARRISTERS & SOLICITORS

PER [Signature] MP

PAYOUT AS PER COURT ORDER

⑈015245⑈ ⑆25122⑈004⑆ 0200⑈0337793⑈

Burns, Vasam, Argiropoulos LLP
Barristers & Solicitors

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.SC., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38
Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. PAQUETTE B.A., LL.B.

June 26, 2009

Hema Raythattha
82 Honeysuckle Crescent
Ancaster, Ontario
L9K 1B3

Dear Sir/Madam:

Re: Raythattha p/f 1539304 Ontario Inc. operating as Trinity Landing
111-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing. You will recall that when you entered into an Agreement of Purchase and Sale to purchase the above noted unit from our client, you gave an initial deposit payable to our firm in the sum of \$6,000.00.

Unfortunately, our client was put in Receivership pursuant to an Order of the Superior Court of Ontario and on the Application of the Receiver, the Court has now made an Order that we refund to every purchaser the amount of the deposits that were given to our firm.

We enclose herewith a copy of the said Order as well as our trust cheque payable to yourself in the sum of \$6,721.34.

The cheque includes a small amount that was earned for interest, less bank charges.

Yours truly,

R. Srinivasan
RSV:ms

Encl.

DATE : JUNE 25 2009
CHE # : 15246
AMOUNT : \$6,721.34
ACCOUNT: TRUST - 1
PAID TO: HEMA RAYTHATTHA
05028803

T15246

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

THIS CHECK CONTAINS SECURITY FEATURES. SEE REVERSE OR VISIT www.td.com FOR MORE INFORMATION.

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TD CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W8

T15246

15246

Six Thousand Seven Hundred Twenty One ^{TRUST} ***** 34/100

Jun. 25/2009 \$6,721.34

PAY TO THE ORDER OF HEMA RAYTHATTHA
05028803

BURNS, VASAN, ARGIROPOULOS LLP, BARRISTERS & SOLICITORS

PER: *[Signature]*
PER: *[Signature]*

PAYOUT AS PER COURT ORDER

⑈015246⑈ ⑆25122⑈004⑆ 0200⑈0337793⑈

Burns, Vasan, Argiropoulos LLP
Barristers & Solicitors

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.S.C., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38

Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. PAQUETTE B.A., LL.B.

June 26, 2009

Simpson, Wigle
Barristers & Solicitors
950 King Street West
Hamilton, Ontario
L8S 1K1

Attention: Norman Watson

Dear Sir:

Re: Trinity Landing s/t Turcotte/Davis
411-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing.

Further to the Order of the Honourable Madam Justice Pepall dated June 11, 2009, a copy of which is enclosed herewith, please find our trust cheque in the amount of \$11,059.63 which represents the deposit paid in this matter plus accrued interest.

Yours truly,

R. Srinivasan
RSV^{ms}

Encl.

DATE : JUN 25 2009
CHE # : 15247
AMOUNT : \$11,059.63
ACCOUNT: TRUST - 1
PAID TO: BOBBY TURCOTTE
05028803

T15247

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TD CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W8

T15247
15247

Eleven Thousand Fifty Nine ***** TRUST ***** 63/100

Jun 25/2009 \$11,059.63

PAY TO THE ORDER OF BOBBY TURCOTTE
05028803

BURNS, VASAN, ARGIROPOULOS LLP BARRISTERS & SOLICITORS

PER *[Signature]* MP
PER *[Signature]* MP

PAYOUT AS PER COURT ORDER

⑈015247⑈ ⑆25122⑈004⑆ 0200⑈0337793⑈

Burns, Vasam, Argiropoulos LLP
Barristers & Solicitors

A. DOUGLAS BURNS, B.A., LL.B.
R. SRINI VASAN, M.A., B.L.
CHRIS ARGIROPOULOS, B.A., LL.B.
DEVON M. RYERSE, B.N.S.C., LL.B., R.N.
SUKANTA SAHA, B. COMM., B.A., LL.B.

TELEPHONE (905) 522-1381
FACSIMILE (905) 526-1651

COMMERCE PLACE, SUITE 305
TWENTY-ONE KING STREET WEST, BOX 38

Hamilton, Ontario
L8P 4W7

COUNSEL:
MILTON J. LEWIS, Q.C.

COUNSEL IN CRIMINAL MATTERS:
DEAN D. PAQUETTE B.A., LL.B.

June 26, 2009

Charlotte Hell
1-90 Duke Street
Hamilton, Ontario
L8P 1X6

Dear Madam:

Re: Hell p/f 1539304 Ontario Inc. operating as Trinity Landing
203-80 King William Street, Hamilton

We are the solicitors for 1539304 Ontario Inc. operating as Trinity Landing. You will recall that when you entered into an Agreement of Purchase and Sale to purchase the above noted unit from our client, you gave an initial deposit payable to our firm in the sum of \$1,000.00.

Unfortunately, our client was put in Receivership pursuant to an Order of the Superior Court of Ontario and on the Application of the Receiver, the Court has now made an Order that we refund to every purchaser the amount of the deposits that were given to our firm.

We enclose herewith a copy of the said Order as well as our trust cheque payable to yourself in the sum of \$1,005.21.

The cheque includes a small amount that was earned for interest, less bank charges.

Yours truly,

R. Srinivasan
RSV:ms

Encl.

DATE : BURNS, VASAN, ARGIROPOULOS LLP
CHE # : 15248
AMOUNT : \$1,005.21
ACCOUNT: TRUST - 1
PAID TO: CHARLOTTE HELL
05028803

T15248

PAYOUT AS PER COURT ORDER

CLIENT: 148 - Trinity Landing
MATTER: 05028803

BURNS, VASAN, ARGIROPOULOS LLP
BARRISTERS & SOLICITORS
21 KING STREET WEST, SUITE 305
HAMILTON, ONTARIO L8P 4W7

TD CANADA TRUST
JACKSON SQUARE
100 KING STREET WEST
HAMILTON, ONTARIO L8P 4W9

T15248

15248

One Thousand Five ***** TRUST ***** 21/100

Jun 25/2009 \$1,005.21

PAY TO THE ORDER OF CHARLOTTE HELL
05028803

BURNS, VASAN, ARGIROPOULOS LLP BARRISTERS & SOLICITORS

PER [Signature] MP

PAYOUT AS PER COURT ORDER

015248 25122004 02000337793

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

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

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

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

**IN ITS CAPACITY AS
COURT-APPOINTED INTERIM RECEIVER AND RECEIVER AND MANAGER
OF 1539304 ONTARIO INC.
DATED MARCH 17, 2010**

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

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

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

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

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

MOTION RECORD

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