Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

MOTION RECORD
(returnable on November 12, 2021)

November 4, 2021

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Lawyers for First Capital Holdings (Ontario) Corporation

INDEX

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INDEX

TAB 1

Court File No.: CV-21-00669445-00CL

ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

AMENDED NOTICE OF MOTION

(returnable on November 12, 2021)

First Capital Holdings (Ontario) Corporation ("**First Capital**") will make a motion to a Judge presiding over the Commercial List (the "**Court**") on Friday, November 12, 2021 at 9 a.m., or as soon after that time as the motion can be heard, by judicial videoconference due to the COVID-19 emergency via Zoom conference coordinates to be provided.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THIS MOTION IS FOR an Order, including, amongst other things:

(a) if necessary, abridging the time for service and filing of this notice of motion and the corresponding motion record or, in the alternative, dispensing with same;

(b) to the extent that the within proceedings under the CCAA (as defined herein) have not been terminated prior to the hearing of this motion, either:

(i) terminating the within CCAA proceedings, including, without limitation, the stay of proceedings ordered by paragraphs 15 to and including 19 of the Amended and Restated Initial Order of The Honourable Mr. Chief Justice Morawetz made on October 7, 2021 in Court File No. CV-21-00669445-00CL (the "**CCAA Stay**"); or

(ii) in the alternative, and without terminating the within CCAA proceedings, lifting the CCAA Stay for the purpose of allowing this motion to proceed and the relief being sought hereunder to be granted and implemented;

(c) to the extent that the Debtor has become or will become bankrupt prior to the hearing of this motion, lifting the stay of proceedings provided by section 69.3(1) of the *Bankruptcy and Insolvency Act* (Ontario) (the "**BIA**") for the purpose of allowing this motion to proceed and the relief being sought hereunder to be granted and implemented;

(d) requiring that any attempt to disclaim the lease in respect of Yonge & Bloor (as defined below) be made on full and proper notice to First Capital;

(e) appointing Alvarez & Marsal Canada Inc. ("**A&M**"), or an alternative licensed insolvency trustee acceptable to this Court if A&M is not prepared to accept the mandate, as receiver (in such capacity, the "**Receiver**") of all the assets, properties and undertakings of McEwan Enterprises Inc. (the "**Debtor**") (including, without limitation, the Debtor's shares in 2860117 Ontario Inc.) pursuant to section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**"), for the substantive purpose of designing and implementing a Court-approved marketing and sale process for the Debtor's assets and/or business (including, without limitation, obtaining and providing the necessary materials to bidders for due diligence purposes) and authorizing the Receiver to bring a motion to this Court to approve the transaction contemplated by the best bid received thereunder; and

(f) such further and other relief as counsel may request and this Court may deem just, including, without limitation, costs in respect of the Debtor's motion that was heard on October 15, 2021, and was dismissed on November 1, 2021.

THE GROUNDS FOR THE MOTION ARE:

(a) the Debtor's business consists of a portfolio of high-end restaurants, grocery stores, food halls and catering services, and the Debtor has experienced financial difficulties since 2017;

(b) one of the Debtor's grocery locations since 2019 is at the intersection of Yonge and Bloor Streets in Toronto, Ontario ("**Yonge & Bloor**"), the landlord of which is First Capital;

(c) after having requested and received significant accommodations from First Capital and other landlords throughout the Covid-19 pandemic, the Debtor commenced proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") on September 28, 2021 with the express, substantive purpose of selling the Debtor's business to the Debtor's current shareholders (the "**Related Party Transaction**"), without offering the purchase opportunity to any third-party;

(d) as set out in the Second Report of A&M in its capacity as the Monitor of the Debtor (in such capacity, the "**Monitor**") dated October 14, 2021 (collectively, the "**Monitor's Second Report**"), First Capital submitted the following materials to the Monitor and its counsel on October 11, 2021 in support of an alternative arm's length transaction by First Capital (the "**First Capital Transaction**"):

(i) a debtor-in-possession term sheet (the "**DIP Term Sheet**") pursuant to which First Capital would provide interim financing during a 14-day due diligence period (the "**Due Diligence Period**"), as well as further financing consistent with what was proposed in the Related Party Transaction if due diligence were satisfied or waived by First Capital; and

(ii) the Yonge & Bloor Landlord's Purchase Agreement (as defined in the Monitor's Second Report), which is described in the Monitor's Second Report as being "*in substantially the same form*" as the Related Party Transaction's purchase agreement, subject to the following three "*Key substantive differences*:"

(A) "*the addition of the Yonge & Bloor Lease as a go forward operating location would appear to make the Yonge & Bloor Landlord's Purchase Agreement, on its face, financially superior*;"

(B) "*the potential for employee severance and termination claims to arise as a result of Mr. McEwan and potentially other employees not accepting new employment offers from the Yonge & Bloor Landlord, which may be material*;" and

(C) "*the inclusion of the Due Diligence Period*;"

(e) the Debtor brought a motion, which was heard on October 15, 2021, to approve the Related Party Transaction, which motion was dismissed by The Honourable Mr. Chief Justice Morawetz on November 1, 2021;

(f) featuring prominently in His Honour's decision to dismiss the motion to approve the Related Party Transaction was the Debtor's non-compliance with section 36(4) of the CCAA, which prohibits the Court from granting such a motion in a related-party context unless "*good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company*" and "*the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition*;"

(g) during oral submissions made to the Court during the hearing on October 15, 2021, counsel for the Debtor advised that the Debtor, through a bankruptcy, would attempt to consummate the Related Party Transaction if the Debtor's CCAA approval motion were denied;

(h) First Capital believes that the concerns expressed by the Court would not be addressed if the Related Party Transaction is completed in a bankruptcy (or any other insolvency process) without testing the market's interest in acquiring the Debtor's business and assets (and, in any event, the decision to recommend a transaction for Court approval in a bankruptcy and/or receivership resides with the Court-officer and not the Debtor);

(i) the Monitor has already confirmed that the arm's-length First Capital Transaction is, "*on its face*," the financially superior option of the two transactions that have been submitted for consideration;

(j) at least one party other than First Capital and the Debtor has also expressed an interest in acquiring the Debtor's business;

(k) First Capital, like any other arm's-length bidder, reasonably requires a brief due diligence period, which cannot occur in any meaningful fashion unless the Debtor or a Court-officer acting on its behalf provides the necessary materials for due diligence purposes;

(l) given the Debtor's past advice that it intends on bankrupting itself, there cannot be any credible impairment of the Debtor's goodwill arising from the marketing of the Debtor's business and assets, nor should concern about potential employee claims preclude the running of a marketing and sale process (given that all employees are terminated anyways by operation of law in a bankruptcy);

(m) good faith, which is statutorily mandated under both the CCAA and the BIA, requires in the context of this case that the purchase opportunity be marketed beyond the Debtor's insiders and not be withheld from bidders with an interest in the opportunity, including, without limitation, the superior third-party interest that First Capital has already expressed;

(n) unless the Debtor is now prepared to run a third-party CCAA sale process under the supervision of the Monitor, or to submit a CCAA plan of arrangement, it is just and convenient that a receiver be appointed for the substantive purposes described above;

(o) sections 18.6 and 36(4) of the CCAA;

(p) sections 4.2 and 69.3 of the BIA;

(q) section 101 of the CJA;

(r) rules 1.04, 2.03, 3.02, 37 and 41 of the *Rules of Civil Procedure* (Ontario); and

(s) such further grounds as are required and this Court may permit.

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

(a) the affidavits of Mark McEwan sworn September 27, 2021 and October 1, 2021, and the transcripts of (and undertakings and refusals from) the resulting cross-examinations of Mr. McEwan on these affidavits;

(b) the Monitor's Second Report;

(c) the consent to act of the proposed Receiver; and

(d) such further materials and grounds as are required and this Court may permit, including, without limitation, an affidavit by a representative of First Capital, to be sworn, and a bill of costs in respect of the Debtor's motion that was heard on October 15, 2021, and was dismissed on November 1, 2021.

November ~~2~~ 4, 2021

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Lawyers for First Capital Holdings (Ontario) Corporation

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No.: CV-21-00669445-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED NOTICE OF MOTION

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Lawyers for First Capital Holdings (Ontario) Corporation

TAB 2

Court File No.: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 12TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF DECEMBER, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

ORDER

(appointing Receiver and other transitional matters)

THIS MOTION, made by First Capital Holdings (Ontario) Corporation ("**First Capital**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") **[NTD: to be revised to Grant Thornton Limited if A&M is not prepared to accept the mandate]** as receiver (in such capacity, the "**Receiver**") without security, of all the assets, undertakings and properties of McEwen Enterprises Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via Zoom videoconference because of the Covid-19 pandemic.

ON READING the affidavits of Mark McEwan sworn September 27, 2021 and October 1, 2021, the transcripts of (and undertakings and refusals from) the resulting cross-examinations of Mr. McEwan on these affidavits, the Second Report of A&M in its capacity as the Monitor of the Debtor (in such capacity, the "**Monitor**") dated October 14, 2021 and the affidavit of Jordan Robins sworn November 4, 2021 and the exhibits thereto, and on hearing the submissions of counsel for First Capital and such other counsel as were present, no one appearing for any other

stakeholder although duly served as appears from the affidavit of service of <*> sworn November <*>, 2021, and on reading the consent of A&M to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the amended notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF CCAA PROCEEDINGS

2. **THIS COURT ORDERS** that the within proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA Proceedings**") be and are hereby terminated effective immediately (such that, for greater certainty, and without limiting the generality of the foregoing, the stay of proceedings ordered by paragraphs 15 to and including 19 of the Amended and Restated Initial Order of The Honourable Mr. Chief Justice Morawetz made on October 7, 2021 (the "**ARIO**") be and is hereby terminated).

3. **THIS COURT ORDERS** that the style of cause in the within proceedings (the "**Receivership Proceedings**") be and is hereby changed to the following:

Court File No.: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF MCEWAN ENTERPRISES INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

4. **THIS COURT ORDERS** that, subject to paragraph 6 of this Order, A&M be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the ARIO, any other Order of this Court in the CCAA Proceedings, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") or otherwise, provided however, that notwithstanding its discharge herein, the Monitor

shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the CCAA Proceedings.

5. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the ARIO, any other Order of this Court or reasons provided by this Court in the CCAA Proceedings or the CCAA, the Monitor shall not be liable for any act or omission on the part of the Monitor, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

6. **THIS COURT ORDERS** that the Monitor and its counsel be and are at liberty to bring a motion in the Receivership Proceedings to seek approval of the Monitor's reports (and activities therein) that were filed in the CCAA Proceedings and the fees and disbursements of the Monitor and its counsel that were incurred in the CCAA Proceedings.

7. **THIS COURT ORDERS** that the Administration Charge (as defined in the ARIO), the Directors' Charge (as defined in the ARIO) and the Interim Transaction Funding Lender's Charge (as defined in the Stay Extension and Interim Transaction Funding Approval Order of The Honourable Mr. Chief Justice Morawetz made on November 1, 2021) shall continue to bind the Property (as defined below) until further Order of the Court, and rank in priority in accordance with paragraphs 26, 29 and 30 of this Order.

APPOINTMENT

8. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all the assets, undertakings and properties of the Debtor (including, without limitation, the Debtor's shares in 2860117 Ontario Inc.) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**").

RECEIVER'S POWERS

9. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate and carry on the business of the Debtor, 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 Debtor;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(g) to settle, extend or compromise any indebtedness owing to the Debtor;

(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 Debtor, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) with the approval of the Court, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding $75,000.00, provided that the aggregate consideration for all such transactions does not exceed $250,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or such other equivalent statute in other jurisdictions, as the case may be, shall not be required;

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information (including, without limitation, such information that the Receiver believes would be helpful to facilitate due diligence of the Property by one or more potential purchasers), subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority (including, without limitation, the Alcohol and Gaming Commission of Ontario and/or the Liquor Licensing Board of Ontario) and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(p) to operate businesses and premises of the Debtor requiring licenses and permits issued to the Debtor by the Alcohol and Gaming Commission of Ontario and/or the Liquor Licensing Board of Ontario;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

10. **THIS COURT ORDERS** that (i) the Debtor and any trustee in bankruptcy appointed in respect of the Debtor, (ii) all of their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their respective 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.

11. **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 Debtor (including, without limitation, any such business or affairs resulting from the Debtor's ownership of 2860117 Ontario Inc.), 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 11 or in paragraph 12 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.

12. **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.

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

NO PROCEEDINGS AGAINST THE RECEIVER

14. **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 DEBTOR OR THE PROPERTY

15. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver or affecting the Property (including, without limitation, in respect of any lease between the Debtor and First Capital (the "**First Capital Lease**"), including, without limitation, any disclaimer thereof) are hereby stayed and suspended except with the written consent of the Receiver (and, in the case of the First Capital Lease, First Capital) or leave of this Court on full and proper notice to the applicable stakeholders, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Without limiting the generality of the foregoing, all licenses and permits issued to the Debtor by the Alcohol and Gaming Commission of Ontario and/or the Liquor Licensing Board of Ontario shall continue and remain in force and effect.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor'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 Debtor 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.

19. **THIS COURT ORDERS** that, without in any way limiting the generality of paragraph 18 of this Order, the Receiver shall be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Mark McEwan sworn September 27, 2021 or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Receiver of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Receiver, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the within receivership with regard to any valid claims or expenses it may suffer or incur in connection with the provision of the Cash Management System

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

21. **THIS COURT ORDERS** that [all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees.] **[NTD: bracketed language to be deleted in the event a bankruptcy occurs prior to the receivership]** The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA AND CANADA'S ANTI-SPAM LEGISLATION

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

23. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements

within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON ENVIRONMENTAL LIABILITIES

24. **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

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

RECEIVER'S ACCOUNTS

26. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge and the Administration Charge shall jointly form a first charge on the Property, ranking *pari passu* with one another, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (except Royal Bank of Canada), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their 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.

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

FUNDING OF THE RECEIVERSHIP

29. **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 $2,250,000 (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 (except Royal Bank of Canada), but subordinate in priority to

the Administration Charge, the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

30. **THIS COURT ORDERS** that, for greater certainty, the priorities of the Administration Charge, the Receiver's Charge, the Receiver's Borrowings Charge, the Directors' Charge and the Interim Transaction Funding Lender's Charge, as amongst them, shall be as follows:

(a) First – the Administration Charge and the Receiver's Charge, *pari passu* with one another;

(b) Second – the Receiver's Borrowings Charge;

(c) Third – the Directors' Charge; and

(d) Fourth – the Interim Transaction Funding Lender's Charge.

31. **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.

32. **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, including, without limitation, for any amount borrowed by it from First Capital.

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

SERVICE AND NOTICE

34. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: https://www.alvarezandmarsal.com/McEwanEnterprises.

35. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

36. **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.

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

38. **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.

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

40. **THIS COURT ORDERS** that First Capital shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

41. **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.

42. **THIS COURT ORDERS** that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.

_____

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the receiver (the "**Receiver**") of all the assets, undertakings and properties of McEwan Enterprises Inc. (the "**Debtor**") (including, without limitation, the Debtor's shares in 2860117 Ontario Inc.) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of November, 2021 (the "**Order**") made in a motion having Court file number CV-21-00669445-00CL, 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 $2,250,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the _____ day of _____, 20__.

Alvarez & Marsal Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(appointing Receiver and other transitional matters)

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Lawyers for First Capital Holdings (Ontario) Corporation

TAB 3

~~Revised: January 21, 2014~~
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. ~~———~~: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ~~—~~MR.	)	~~WEEKDAY~~FRIDAY, THE ~~#~~ 12TH
	)	
CHIEF JUSTICE ~~—~~MORAWETZ	)	DAY OF ~~MONTH~~DECEMBER,
		~~20YR~~2021

~~**PLAINTIFF**~~[1]

~~Plaintiff~~

~~– and –~~

~~**DEFENDANT**~~

~~Defendant~~

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

ORDER

(appointing Receiver and other transitional matters)

THIS MOTION, made by ~~the Plaintiff~~[2]First Capital Holdings (Ontario) Corporation ("**First Capital**") for an Order pursuant to section ~~243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section~~ 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing ~~[RECEIVER'S NAME~~Alvarez & Marsal Canada Inc. ("**A&M**") **[NTD: to be revised to Grant Thornton Limited if A&M is not prepared to accept the mandate]** as receiver ~~[and manager]~~ (in such ~~capacities~~capacity, the "**Receiver**") without security, of all ~~of~~ the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~McEwen Enterprises Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~via Zoom videoconference because of the Covid-19 pandemic.

ON READING the affidavits of Mark McEwan sworn September 27, 2021 and October 1, 2021, the transcripts of (and undertakings and refusals from) the resulting cross-examinations of Mr. McEwan on these affidavits, the Second Report of A&M in its capacity as the Monitor of the Debtor (in such capacity, the "**Monitor**") dated October 14, 2021 and the affidavit of ~~[NAME]~~Jordan Robins sworn ~~[DATE]~~November 4, 2021 and the ~~Exhibits~~exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES]~~First Capital and such other counsel as were present, no one appearing for ~~[NAME]~~any other stakeholder although duly served as appears from the affidavit of service of ~~[NAME]~~<*> sworn ~~[DATE]~~November <*>, 2021, and on reading the consent of ~~[RECEIVER'S NAME]~~A&M to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~amended notice of ~~Motion~~motion and the ~~Motion~~motion record is hereby abridged and validated[3] so that this motion is properly returnable today and hereby dispenses with further service thereof.

~~[2] Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

~~[3] If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

TERMINATION OF CCAA PROCEEDINGS

2. **THIS COURT ORDERS** that the within proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA Proceedings**") be and are hereby terminated effective immediately (such that, for greater certainty, and without limiting the generality of the foregoing, the stay of proceedings ordered by paragraphs 15 to and including 19 of the Amended and Restated Initial Order of The Honourable Mr. Chief Justice Morawetz made on October 7, 2021 (the "**ARIO**") be and is hereby terminated).

3. **THIS COURT ORDERS** that the style of cause in the within proceedings (the "**Receivership Proceedings**") be and is hereby changed to the following:

Court File No.: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF MCEWAN ENTERPRISES INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

4. **THIS COURT ORDERS** that, subject to paragraph 6 of this Order, A&M be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the ARIO, any other Order of this Court in the CCAA Proceedings, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") or otherwise, provided however, that notwithstanding its discharge herein, the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the CCAA Proceedings.

5. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the ARIO, any other Order of this Court or reasons provided by this Court in the CCAA Proceedings or the CCAA, the Monitor shall not be liable for any act or omission on the

part of the Monitor, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

6. **THIS COURT ORDERS** that the Monitor and its counsel be and are at liberty to bring a motion in the Receivership Proceedings to seek approval of the Monitor's reports (and activities therein) that were filed in the CCAA Proceedings and the fees and disbursements of the Monitor and its counsel that were incurred in the CCAA Proceedings.

7. **THIS COURT ORDERS** that the Administration Charge (as defined in the ARIO), the Directors' Charge (as defined in the ARIO) and the Interim Transaction Funding Lender's Charge (as defined in the Stay Extension and Interim Transaction Funding Approval Order of The Honourable Mr. Chief Justice Morawetz made on November 1, 2021) shall continue to bind the Property (as defined below) until further Order of the Court, and rank in priority in accordance with paragraphs 26, 29 and 30 of this Order.

APPOINTMENT

8. ~~2.~~ **THIS COURT ORDERS** that pursuant to section ~~243(1) of the BIA and section~~ 101 of the CJA, ~~[RECEIVER'S NAME]~~A&M is hereby appointed Receiver, without security, of all ~~of~~ the assets, undertakings and properties of the Debtor (including, without limitation, the Debtor's shares in 2860117 Ontario Inc.) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**").

RECEIVER'S POWERS

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

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve~~,~~ and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate~~,~~ and carry on the business of the Debtor, 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 Debtor;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(g) to settle, extend or compromise any indebtedness owing to the Debtor;

(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 Debtor, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.[4] The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) with the approval of the Court, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business~~,~~:

(i) without the approval of this Court in respect of any transaction not exceeding $~~_____~~75,000.00, provided that the aggregate consideration for all such transactions does not exceed $~~_____~~250,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*~~, [~~ or ~~section 31 of the Ontario *Mortgages Act*~~such other equivalent statute in other jurisdictions, as the case may

~~[4] This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

be,[5] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.;

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information (including, without limitation, such information that the Receiver believes would be helpful to facilitate due diligence of the Property by one or more potential purchasers), subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority (including, without limitation, the Alcohol and Gaming Commission of Ontario and/or the Liquor Licensing Board of Ontario) and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(p) to operate businesses and premises of the Debtor requiring licenses and permits issued to the Debtor by the Alcohol and Gaming Commission of Ontario and/or the Liquor Licensing Board of Ontario;

[5] If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

(q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(s) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations~~.~~,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

10. ~~4.~~ **THIS COURT ORDERS** that (i) the Debtor and any trustee in bankruptcy appointed in respect of the Debtor, (ii) all of ~~its~~their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on ~~its~~their respective 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.

11. ~~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 Debtor (including, without limitation, any such business or affairs resulting from the Debtor's ownership of 2860117 Ontario Inc.), 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~~11 or in paragraph ~~6~~12 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.

12. ~~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.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

15. ~~9.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver~~,~~ or affecting the Property~~,~~ (including, without limitation, in respect of any lease between the Debtor and First Capital (the "**First Capital Lease**"), including, without limitation, any disclaimer thereof) are hereby stayed and suspended except with the written consent of the Receiver (and, in the case of the First Capital Lease, First Capital) or leave of this Court on full and proper notice to the applicable stakeholders, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

17. ~~11.~~ **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Without limiting the generality of the foregoing, all licenses and

permits issued to the Debtor by the Alcohol and Gaming Commission of Ontario and/or the Liquor Licensing Board of Ontario shall continue and remain in force and effect.

CONTINUATION OF SERVICES

18. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor~~'~~'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 Debtor 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.

19. **THIS COURT ORDERS** that, without in any way limiting the generality of paragraph 18 of this Order, the Receiver shall be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Mark McEwan sworn September 27, 2021 or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Receiver of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Receiver, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected

creditor under the within receivership with regard to any valid claims or expenses it may suffer or incur in connection with the provision of the Cash Management System

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

21. ~~14.~~ **THIS COURT ORDERS** that [all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees.] **[NTD: bracketed language to be deleted in the event a bankruptcy occurs prior to the receivership]** The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA AND CANADA'S ANTI-SPAM LEGISLATION

22. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to

whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

23. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

25. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

26. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge and the Administration Charge shall jointly form a first charge on the Property, ranking *pari passu* with one another, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (except Royal Bank of Canada), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.[6]

27. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass ~~its~~their accounts from time to time, and for this purpose the accounts of the Receiver and its legal

[6] ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

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

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

FUNDING OF THE RECEIVERSHIP

29. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $~~———~~2,250,000 (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 (except Royal Bank of Canada), but subordinate in priority to the Administration Charge, the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

30. **THIS COURT ORDERS** that, for greater certainty, the priorities of the Administration Charge, the Receiver's Charge, the Receiver's Borrowings Charge, the Directors' Charge and the Interim Transaction Funding Lender's Charge, as amongst them, shall be as follows:

(a) First – the Administration Charge and the Receiver's Charge, *pari passu* with one another;

(b) Second – the Receiver's Borrowings Charge;

(c) Third – the Directors' Charge; and

(d) Fourth – the Interim Transaction Funding Lender's Charge.

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

32. ~~23.~~ **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, including, without limitation, for any amount borrowed by it from First Capital.

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

SERVICE AND NOTICE

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

35. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

40. ~~31.~~ **THIS COURT ORDERS** that ~~the Plaintiff~~First Capital shall have its costs of this motion, up to and including entry and service of this Order, ~~provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then~~ on a substantial indemnity basis to be paid by the Receiver from the Debtor~~'~~'s estate with such priority and at such time as this Court may determine.

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

42. **THIS COURT ORDERS** that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME]Alvarez & Marsal Canada Inc., the receiver (the "**Receiver**") of all the assets, undertakings and properties [DEBTOR'S NAME]of McEwan Enterprises Inc. (the "**Debtor**") (including, without limitation, the Debtor's shares in 2860117 Ontario Inc.) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of November, 20 2021 (the "**Order**") made in an actiona motion having Court file number CV-21-00669445-00CL, 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 $2,250,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the _____ day of _____, 20__.

~~[RECEIVER'S NAME]~~Alvarez & Marsal Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No. CV-21-00669445-00CL

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Document 2 ID	iManage://wsc.airdberlis.com/cm/46308091/3
Description	#46308091v3<wsc.airdberlis.com> - Draft Receivership Order (McEwan)
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TAB 4

Court File No. CV-21-00669445-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

AFFIDAVIT OF JORDAN ROBINS
(sworn November 4, 2021)

I, Jordan Robins, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the Executive Vice President and Chief Operating Officer of First Capital Real Estate Investment Trust ("**First Capital REIT**"), which, through its wholly-owned subsidiaries, is the parent of the moving party herein, First Capital Holdings (Ontario) Corporation (together with First Capital REIT and its subsidiaries, "**First Capital**"). As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I am swearing this affidavit in support of First Capital's motion seeking, most notably, the appointment of Alvarez & Marsal Canada Inc. ("**A&M**"), or an alternative licensed insolvency trustee acceptable to this Court, as receiver (in such capacity, the "**Receiver**") of all the assets, properties and undertakings of McEwan Enterprises Inc. (the "**Debtor**")

pursuant to section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**"), for the substantive purpose of designing and conducting a Court-approved marketing and sale process for the Debtor's assets and/or business (including, without limitation, obtaining and providing the necessary materials to bidders to perform due diligence) and authorizing the Receiver to bring a motion to this Court to approve the transaction contemplated by the best bid received thereunder.

I. FIRST CAPITAL AND THE DEBTOR

3. First Capital REIT is an unincorporated, open-ended real estate investment trust listed under the Toronto Stock Exchange under the symbol FCR.UN, with a current market capitalization of approximately $4 billion and an enterprise value in excess of $8 billion. As at December 31, 2020, First Capital REIT has 353 full-time employees.

4. First Capital is a leading owner, operator and developer of grocery-anchored and mixed-use real estate located in Canada's most densely populated cities. First Capital REIT's focus is on creating thriving urban neighbourhoods to generate value for businesses, residents, communities and its investors. As at December 31, 2020, First Capital REIT owns interests in 150 neighbourhoods, totalling approximately 22.8 million square feet of gross leasable area.

5. I joined First Capital in 2016 and have over 25 years of experience in retail real estate including development, leasing and acquisitions. Prior to joining First Capital, I was Senior Vice President, Planning and Development of RioCan REIT. My responsibilities at First Capital include overseeing various aspects of First Capital's activities, including leasing, acquisitions, dispositions, design and construction.

6. One of First Capital's holdings is the retail podium at 1 Bloor Street East, in Toronto (the "**Y&B Premises**"). A portion of the Y&B Premises is leased to the Debtor.

7. The Debtor operates a portfolio of high-end restaurants, grocery stores, food halls and catering services.

8. The Debtor's grocery store at the Y&B Premises opened in 2019. I understand from my review of the affidavits sworn in these proceedings by the Debtor's principal, Mark McEwan, that the Debtor has been experiencing financial difficulties since 2017. These financial difficulties were neither disclosed to First Capital when the Debtor entered into the underlying lease for this location, nor were they exposed upon completion of a customary credit check. To the contrary, Mr. McEwan appeared to be focused on growing his business and advised First Capital as much. He also advised that he had the backing of his financial partner, Fairfax (as defined below), which is known in the business community as a very well-funded investor.

II. THE Y&B PREMISES AND LEASE TO THE DEBTOR

9. The Y&B Premises consists of approximately 85,000 square feet of retail space at the intersection of Yonge and Bloor in Toronto, which is one of the City's most prestigious and prominent areas for shopping, dining and living, with numerous luxury condominiums and residences in the vicinity. Due to its location and proximity to public transportation, condominiums and office towers, the Y&B Premises attracts a substantial volume of daily vehicular and pedestrian traffic.

10. Pursuant to a retail lease dated April 27, 2018 between First Capital, as landlord, and the Debtor, as tenant (the "**Y&B Lease**"), the Debtor agreed to lease a total of approximately 18,293 square feet[1] of retail space from First Capital at the Y&B Premises (the "**Y&B Leased Premises**") for the purpose of operating a food hall-style grocery store with an integrated restaurant and catering business branded as "McEwan." A copy of the Y&B Lease is attached as **Exhibit A**.

11. The initial term of the Y&B Lease runs for a period of 15 years. The annual minimum rent in the first year was $1,097,124 (or $91,427 per month),[2] with annual increases of 1.5% thereafter. The additional rental obligations under the Y&B Lease associated with the cost of common area maintenance and realty taxes require additional annual payments of approximately $630,000, and, therefore, a gross annual rental obligation in excess of $1.7 million.

12. At the time of entering into the Y&B Lease, the Debtor was part owned by Northbridge Personal Insurance Company ("**Northbridge**"). In December 2018, the Debtor underwent a change of control whereby Fairfax (Barbados) International Corp. ("**Fairfax**") exercised options to acquire Northbridge's voting control of shares in the Debtor. That change of control was reflected in a Consent and Lease Amending Agreement dated December 21, 2018, a copy of which is attached as **Exhibit B**.

[1] Although the lease refers to 18,991 square feet, the final billable area was adjusted to reflect the certified area of 18,293 square feet, comprised of 17,116 square feet on the concourse level and 1,777 square feet on the first level.

[2] As set out in the lease, the Debtor was to pay minimum rent on the 17,116 square feet of the concourse level.

III. THE DEBTOR'S REQUESTS FOR ACCOMMODATIONS AND LEASE AMENDMENTS

13. From the outset, First Capital supported the Debtor's business. As an anchor tenant, the Debtor had an impact on the overall success of the Y&B Premises. The Debtor's minimum rent was set at below-market rates for a location of this nature, but First Capital could earn an additional percentage rent through an annual adjustment payment of 8% of the Debtor's gross revenues for the preceding lease year less the gross rent paid.

14. First Capital entered into this arrangement based on the confidence that First Capital had (and continues to have) in the location and the potential of the Debtor's business to operate from this location. By way of example, First Capital has been successful with having Whole Foods as an anchor grocery tenant in the concourse level at Yorkville Village (formerly Hazelton Lanes), which is walking distance from the Y&B Premises. First Capital is landlord to every major grocery store chain in Canada, and its portfolio includes leases with 126 grocery stores occupying 4.1 million square feet of 21% of First Capital's total gross leasable area. Given First Capital's experience with grocery store operations, First Capital anticipated (and continues to anticipate) that the McEwan brand would be highly profitable after its initial start-up period at the Y&B Leased Premises.

15. Following an initial fixturing period, the Debtor began operating at the Y&B Leased Premises on January 14, 2019. In the 28-month period thereafter, the Debtor sought and obtained four material financial accommodations from First Capital, which substantially reduced the Debtor's minimum rent obligations. These accommodations assisted the Debtor at its new location (and, as a result, more generally). The details of the leasing amendments at the Y&B Leased Premises are discussed in the following paragraphs.

16. As of April 2019, the Debtor was in arrears of $592,518.54 to First Capital. The Debtor requested, and First Capital agreed, upon payment of the arrears, to amend the Y&B Lease to lower the Debtor's annual minimum rental obligations for the remainder of the year. This included, for instance, reducing annual minimum rent for the first year to approximately $850,000 (a reduction of approximately $245,000). A copy of the Lease Amending Agreement dated April 22, 2019 is attached as **Exhibit C**.

17. In June 2019, the Debtor requested, and First Capital agreed, to further reduce minimum rent for the period between May 1 and December 31, 2019 to approximately $366,000 (being a further reduction of approximately $122,000, or an effective reduction of approximately $15,200 per month for the 8-month period). A copy of the Lease Amending Agreement dated June 7, 2019 is attached as **Exhibit D**.

18. The effects of the global COVID-19 pandemic (the "**Pandemic**") began to materialize in Ontario in March 2020. The provincial government implemented various lockdown measures for non-essential business, which particularly impacted the restaurant and hospitality industries.

19. Prior to and throughout the Pandemic, First Capital continuously engaged in good faith discussions with the Debtor to explore ways to ease its financial burden, notwithstanding that the grocery store at the Y&B Leased Premises remained open as an essential service during all lockdown periods. First Capital recognized, and continues to recognize, that many of the Debtor's other businesses were closed because of the Pandemic, and even those that remained open may have been (and may continue to be) impacted by Pandemic-caused low foot traffic.

20. In April 2020, shortly after the onset of the Pandemic in Ontario, the June 2019 rental accommodations expired. The Debtor requested, and First Capital agreed, to once again reduce the Debtor's ongoing rental obligations to First Capital. This included reducing rent for the period between January 1 and June 30, 2020 from approximately $580,000 to approximately $285,000 (a reduction of approximately $295,000). Pursuant to this amendment, the Debtor was obligated to invest the abated rent into marketing for the Y&B Leased Premises as a means to enhance its exposure and grow sales. I am not aware that any such monies were in fact directed to marketing for this location, as contemplated. A copy of the Lease Amending Agreement dated April 3, 2020 is attached as **Exhibit E**.

21. As the Pandemic continued, so too did discussions between the Debtor and First Capital to provide accommodations to the Debtor. These discussions culminated in a further amendment to the Y&B Lease in April 2021, whereby First Capital agreed to temporarily waive the Debtor's obligation to pay minimum rent for the period between November 2020 and April 30, 2021. Instead, the Debtor was only required to pay gross rent equivalent to 11.5% of the Debtor's gross revenue during that period. A copy of the Lease Amending Agreement dated April 2021 is attached as **Exhibit F**. While that amending agreement was not signed, I believe there is agreement between First Capital and the Debtor that it governs. In this regard, the Debtor paid percentage rent for the agreed upon period, and, in contravention of the amendment, continued to pay percentage rent only until September 2021 when the Debtor filed for CCAA protection.

IV. COMMENCEMENT AND PURPOSE OF CCAA PROCEEDINGS

22. Despite First Capital's significant accommodations, including assisting the Debtor manage its liquidity during the Pandemic, the Debtor continued to demand further concessions from First Capital.

23. First Capital continued, as it had done on many prior occasions, to engage in good faith discussions with the Debtor regarding potential options for the Y&B Leased Premises. Unlike the previous rounds of negotiations, many of which occurred during the heart of the Pandemic and resulted in First Capital providing significant concessions to the Debtor, the most recent negotiations were conducted during a phase of emergence from the Pandemic but did not advance to a resolution.

24. After having benefited from First Capital's many concessions prior to and during the worst phases of the Pandemic, the Debtor commenced proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") in late September 2021, without prior notice to First Capital. In effect, the primary purpose of the CCAA proceedings was to disclaim the Y&B Lease by seeking approval of a sale of substantially all the Debtor's business and assets to 2864785 Ontario Corp., the ownership of which mirrors the ownership of the Debtor (collectively, the "**Related Party Transaction**"), without conducting a sale process or otherwise making good faith efforts to sell or dispose of the assets to persons who are not related to the Debtor.

25. I say "*In effect ... to disclaim the Y&B Lease*," because, notwithstanding the commencement of the CCAA proceedings and Mr. McEwan's insistence that the Y&B Lease had to be disclaimed, the Debtor brought its motion to approve the Related Party Transaction without actually disclaiming the Y&B Lease.

V. TRANSFER OF INTEREST IN ONE RESTAURANT

26. Immediately prior to commencing the CCAA proceedings, while First Capital and the Debtor were still engaged in ongoing discussions regarding the Y&B Lease, the Debtor effected a transfer of one of its other businesses to a subsidiary company. This transferred business is the Debtor's 50% interest in a luxury restaurant located at The Hazelton Hotel in Yorkville, called ONE Restaurant.

27. I first learned about this transfer from the Debtor when it filed for CCAA protection. To the best of my knowledge, the reasons for this transfer have not been explained in the CCAA proceedings. While the Monitor advised in its Second Report that the transfer was "*undertaken for legitimate business and corporate purposes*," these purposes have not been disclosed or explained to First Capital or the Court.

28. First Capital owns a 100% interest in the hotel property from which ONE Restaurant operates. Based on annual sales revenue data provided to First Capital in its capacity as landlord of ONE Restaurant, First Capital understands that this location is highly profitable for ONE Restaurant. To the best of my knowledge, this location-specific financial information has not been made available by the Debtor to others in these CCAA proceedings, nor has any other material information about ONE Restaurant been made available by the Debtor to First Capital or others in these CCAA proceedings.

29. Similarly, the Debtor has not provided other material financial information related to the performance of its other business segments.

30. I believe that the lack of information provided by the Debtor regarding: (i) its business generally; (ii) ONE Restaurant specifically; and (iii) the reasons for the transfer of its interest in ONE Restaurant, all impedes the ability to market these assets to the public, and appears to be consistent with the Debtor's efforts to retain the Debtor's overall business for itself.

VI. THE DEBTOR'S INITIAL ATTEMPTS TO APPROVE THE RELATED PARTY TRANSACTION

31. The Debtor's motion to approve the Related Party Transaction in the CCAA proceedings was dismissed by The Honourable Mr. Chief Justice Morawetz pursuant to reasons dated November 1 , 2021, a copy of which is attached as **Exhibit G**. Featuring prominently in His Honour's reasons is the Debtor's non-compliance with section 36(4) of the CCAA, which prohibits the Court from granting such a motion in a related-party context unless, amongst other things, "*good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company*" and "*the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition*."

32. Prior to His Honour's decision being released, the Debtor's counsel advised at the hearing (which I attended virtually) that the Debtor's alternative plan was to proceed through a bankruptcy process to seek approval of the Related Party Transaction, again without running a sale process. At the hearing, I recall the Debtor's counsel: (i) offering to obtain an undertaking that the Debtor would become bankrupt in the event it lost its motion; and (ii) describing First Capital as a gambler if it thought the Debtor would not follow-through with the bankruptcy.

33. Following the release of His Honour's decision dismissing the Debtor's motion, First Capital served notice of the within receivership motion. I understand and verily believe from First Capital's counsel, Mr. Graff, that the Debtor's counsel requested a case conference for November 2, 2021, at which case conference the Debtor's counsel described the within receivership motion as "*premature*."

34. First Capital's preference from the very outset has not been that these CCAA proceedings fail. At the comeback hearing on October 7, 2021, First Capital requested that the Related Party Transaction motion be adjourned until a satisfactory sale process is implemented and completed. I understand and verily believe from Mr. Graff that the Debtor opposed such an adjournment.

35. Even though the Debtor has now lost its Related Party Transaction motion, First Capital is still prepared to support the continuation of the CCAA proceedings if a satisfactory sale process is implemented and completed under the supervision of the Monitor, as stated on the face of First Capital's motion.

36. First Capital hopes that the Debtor will finally agree to run a satisfactory sale process, but, if it does not, I would hardly describe First Capital's receivership motion as "*premature*."

VII. THE DEBTOR'S SELF-SERVING OPPOSITION TO A SALE PROCESS

37. To date, the Debtor has vigorously opposed any suggestion of a strategic sale process, and has not been interested in exploring any potential alternatives to the Related Party Transaction, in complete disregard of: (i) First Capital's interests as a significant creditor and stakeholder; (ii) First Capital's financially superior offer submitted earlier in these proceedings (as discussed below); and (iii) the unsolicited expression of interest from a third-party represented by Miller Thomson LLP.

38. It is also unfair for the Debtor to raise concerns about third-party offers being contingent on due diligence, while, at the same time, the Debtor is preventing third-parties from performing due diligence because an entity with ownership identical to the Debtor is seeking to acquire its business and assets without conducting any form of strategic process or other good faith disposition efforts.

39. I believe that the Debtor's reasons for opposing a strategic sale process are self-serving and not supported by any meaningful facts.

40. For example, in his affidavits filed in the CCAA proceedings, Mr. McEwan stated that no strategic process was contemplated because "*The Business, without the support of myself, the Company's management team and Fairfax, would not be the same business and the interests of, and recoveries to, stakeholders could be materially negatively affected*."

41. Mr. McEwan's comments presume, or perhaps signal, that his continued involvement in the business is essential, which is nothing more than a self-serving statement to preserve the business for himself and Fairfax.

42. To begin with, there is a difference between Mr. McEwan's personal involvement in the business and the continuation of the McEwan brand within the business. While there could be certain benefits associated with the involvement of Mr. McEwan in the business, this need not be a condition of any purchase offer (and, indeed, is **not** a condition of the offer made by First Capital, as discussed below). I note from the documentation filed by the Debtor with the Court (and confirmed by intellectual property searches) that the Debtor's intellectual property, including the McEwan brand, is an asset of the Debtor, such that the McEwan brand could continue even if Mr. McEwan decides not to continue personally with the business.

43. Moreover, I question why Mr. McEwan would premise his continued involvement in the business on Fairfax's ongoing involvement, given Mr. McEwan's admission on cross-examination that he only became involved with Fairfax in the first place because it "*basically knocked on my door and asked if I would be interested in – in selling a piece of my business*." To the best of my knowledge, Fairfax is primarily a provider of capital.

44. Mr. McEwan has also made comments to the effect that the Y&B Leased Premises is not a viable location at which the Debtor can continue to operate its business. Those comments, again, are self-serving and are not based in fact or evidence.

45. It is difficult to accept Mr. McEwan's comments at face value, particularly considering that: (i) the Debtor is only in the third year of a 15 year lease term; (ii) two of these three years have been affected by the Pandemic; (iii) the Debtor's operations at the Y&B Leased Premises were only in start-up mode within limited period before the onset of the Pandemic; and (iv) Mr. McEwan has not disclosed (or, according to his cross-examination transcript, even prepared) any formal pro forma financial models or business plans reflecting the Debtor's anticipated future profitability, whether at the Y&B Leased Premises or at any of the Debtor's other locations.

46. Attached as **Exhibit H** is short list of questions about the Debtor's actual business performance since the commencement of the CCAA proceedings, which First Capital's consultant, KSV Advisory Inc., sent to the Monitor on November 3, 2021, together with the Monitor's response received on November 4, 2021.

VIII. FIRST CAPITAL'S INTEREST IN PURCHASING THE BUSINESS

47. First Capital believes in the Debtor's business, and believes that marketing it in good faith to third-party prospective purchasers would generate real economic benefit. Even without considering other offers that may be submitted, First Capital has the resources necessary to acquire and operate the business, and has already indicated that it is prepared to do so pending its satisfaction of a short due diligence process.

48. On October 11, 2021, First Capital's counsel submitted the following materials to the Monitor and its counsel, in support of a purchase transaction by First Capital (the "**First Capital Transaction**"):

(a) a cover email, a copy of which is attached as **Exhibit I**;

(b) a debtor-in-possession term sheet (the "**DIP Term Sheet**") pursuant to which First Capital would provide interim financing to the Debtor during a 14-day due diligence period (the "**Due Diligence Period**"), as well as further financing consistent with what was proposed in the Related Party Transaction if due diligence were satisfied or waived by First Capital. A copy of the DIP Term Sheet is attached as **Exhibit J**;

(c) the purchase agreement proposed by First Capital (the "**First Capital Purchase Agreement**"), which was described by the Monitor in its Second Report as being financially superior "*on its face*" and "*in substantially the same form*" as the Related Party Transaction's purchase agreement (the "**Related Party Purchase Agreement**"), with three "*Key substantive differences*":

(i) "*the addition of the Y&B Lease as a go forward operating location would appear to make the Yonge & Bloor Landlord's Purchase Agreement, on its face, financially superior,*"

(ii) "*the potential for employee severance and termination claims to arise as a result of Mr. McEwan and potentially other employees not accepting new employment offers from the Yonge & Bloor Landlord, which may be material;*" and

(iii) "*the inclusion of the Due Diligence Period*;" and

(d) a blackline comparison, showing the minimal changes between the First Capital Purchase Agreement and the Related Party Purchase Agreement. A copy of the blackline comparison is attached as **Exhibit K**.

A copy of the Monitor's Second Report dated October 14, 2021 is attached, without appendices, as **Exhibit L**.

49. As the Monitor noted, the First Capital Purchase Agreement is financially superior to the Related Party Purchase Agreement. At its core, First Capital recognizes, and seeks to maximize, not only the value in the Y&B Lease by assuming it in its current form and economic terms (which the Debtor wishes to disclaim), but also the Debtor's overall business, none of which has been put to the market. First Capital believes that it is only fair and appropriate that interested parties be given the opportunity to bid on (and therefore speak to the value of) the Debtor's business.

50. First Capital is flexible as to how it participates as a bidder: (i) it is prepared to submit an offer akin to the First Capital Transaction in a traditional sale process; (ii) it is prepared to be a stalking horse in a sale process; and (iii) it is prepared to acquire the business without a sale process on the terms presented in the First Capital Purchase Agreement.

51. To facilitate the First Capital Transaction, First Capital and its advisors have also engaged in discussions with high-profile chefs, restauranteurs and national food retailers who are interested in the opportunity but who have expressed reservations about "going public" with their interest in the absence of a sale process (or, alternatively, confirmation that First Capital has already purchased the business). This is in addition to an independent expression of interest that I understand was delivered to the Monitor by Miller Thomson LLP on behalf of its client.

52. Like any arm's-length bidder, First Capital reasonably requires a due diligence period to evaluate the Debtor's business, and First Capital has proposed to provide the necessary interim financing during the Due Diligence Period, as set out in the DIP Term Sheet. First Capital is also prepared to provide additional interim financing for the duration of a broader sale process. As all parties are aware, First Capital has never seen any of the documentation governing the Debtor's operations, other than the limited financial information filed with the Court in the CCAA proceedings and the sales information provided to First Capital as landlord of the ONE Restaurant. First Capital has never had the opportunity to review the joint venture documentation relating to the ONE Restaurant, or the lease documentation relating to the Debtor's other businesses.

53. Up to this point, it is clear from its actions and stated objectives that the Debtor has had no interest, nor has been prepared to engage, in a fair, transparent and open sale process that may result in a transaction that is financially superior to the Related Party Transaction. In resisting a sale process, the Debtor has indicated that it wishes to deny anyone other than its own insiders the opportunity, thereby precluding any means of valuing the business based on market interest.

IX. CONCLUSION

54. Considering that the Debtor has already indicated its intention to proceed with a bankruptcy, I do not believe that the appointment of the Receiver to carry-out similar independent duties to maximize stakeholder value should be offensive to the Debtor.

55. At this stage, with the Debtor having been given every reasonable opportunity to propose and implement a satisfactory sale process, First Capital believes that the appointment of the Receiver represents the reasonable and prudent path forward. The Debtor has already indicated its intention to relinquish control by proceeding with a bankruptcy (and/or a receivership), and I believe that it is just and convenient that any sale of the Debtor's assets/business and associated process be conducted under the Court's jurisdiction and supervision.

56. Conversely, I do not believe that it is just or convenient for the Debtor to *pretend* that it is relinquishing control via a bankruptcy and/or receivership, while, in substance, dictating that such step be conditional on the pre-approval of the Related Party Transaction, without the business and assets being exposed to the market (particularly given the third-party interest in the opportunity that has already been expressed).

57. I swear this affidavit in support of First Capital's within motion, and for no other or improper purpose.

SWORN BEFORE ME over videoconference by Jordan Robins stated as being located in the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on November 4, 2021, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely

A Commissioner for taking affidavits
Name:

Jordan Robins

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No.: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

AFFIDAVIT OF JORDAN ROBINS
(sworn November 4, 2021)

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Lawyers for First Capital Holdings (Ontario) Corporation

46305562.8

TAB A

Attached is Exhibit “A”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

RETAIL LEASE

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION

LANDLORD

- AND -

MCEWAN ENTERPRISES INC.

O/A "MCEWAN"

TENANT

PROJECT: 1 BLOOR STREET EAST, TORONTO, ONTARIO
DATE: APRIL 27, 2018
LEASE CODE: *

TABLE OF CONTENTS

THIS LEASE is dated **April 27, 2018**, and is made between:

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION

("Landlord")

OF THE FIRST PART

-and-

MCEWAN ENTERPRISES INC.

("Tenant")

OF THE SECOND PART

ARTICLE 1 - BASIC TERMS

The following provisions form part of this Lease.

1.1	**LANDLORD'S ADDRESS FOR NOTICE**	**85 Hanna Avenue, Suite 400, Toronto, Ontario, M6K 3S3, Attention: Senior Vice-President, Leasing, with a copy to: Vice-President, National Legal Affairs, at the same address** (Section 19.6)
1.2	**TENANT'S ADDRESS FOR NOTICE**	At the Premises**, with a copy to 38 Karl Fraser Road, Toronto, Ontario, M3C 0H7**. (Section 19.6)
1.3	**INDEMNIFIER'S ADDRESS**	**Intentionally deleted**
1.4	**DEVELOPMENT**	**1 Bloor Street East, Toronto, Ontario.** (Schedule "I")
1.5	**PREMISES**	Collectively: (i) Unit No. *******, to be determined, as shown hatched on Schedule "B" ("Premises I"); and (ii) Unit No. *****,** to be determined, as shown in yellow on Schedule "B-1" ("Premises II"). (Section 3.1)
1.6	**GLA OF THE PREMISES**	Approximately **Eighteen Thousand Nine Hundred and Ninety One (18,991)** square feet, comprised of: (i) with respect to Premises II, approximately One Thousand One Hundred and Sixty One (1161) square feet on the ground floor of the Retail Component; and (ii) with respect to Premises I, approximately Seventeen Thousand Eight Hundred and Thirty (17,830) square feet on the lower level of the Retail Component, all subject to measurement. (Schedule "I" and Section 4.3)
1.7	**USE**	Solely for the **principal** purpose of **the operation of an upscale food supermarket with integrated restaurant and catering business, and as ancillary thereto, the operation of a restaurant or café (which restaurant or café may, subject to Tenant obtaining the necessary licenses and permits and being in compliance with all Applicable Laws, serve alcoholic beverages, and may include a seating area) not to exceed Two Thousand (2,000) square feet of the total GLA of the Premises, and the**

		preparation and provision of hot and/or chilled prepared foods for catering services being provided by Tenant on the Premises or elsewhere, and for no other purpose. (Section 9.1)
1.8	**TRADE NAME**	**McEwan** (Section 9.1)
1.9	**RADIUS**	**One (1**) **kilometre** (Section 9.6)
1.10	**POSSESSION DATE**	**March 30, 2018**. (Section 0)
1.11	**FIXTURING PERIOD**	Commencing on the Possession Date and expiring on the date which is the earlier of the following: (i) **Three Hundred (300)** days after the Fixturing Period began; and (ii) the day immediately preceding the date Tenant begins carrying on business in any part of the Premises. (Section 0)
1.12	**TERM**	Approximately **Fifteen (15)** years commencing on the Commencement Date and expiring on the Expiry Date. (Section 3.1)
1.13	**COMMENCEMENT DATE**	The day following expiry of the Fixturing Period. (Section 3.1)
1.14	**EXPIRY DATE**	**Fifteen (15)** years (plus the number of days from the Commencement Date to the last day of the calendar month in which the Commencement Date occurs, if not the first day of a calendar month) after the Commencement Date. (Section 3.1)
1.15	**MINIMUM RENT**	**Starting on the Commencement Date, for the first year of the initial Term, an amount equal to One Million One Hundred and Forty-Two Thousand Nine Hundred and Three Dollars ($1,142,903)** per annum, payable in equal monthly instalments of **Ninety-Five Thousand Two Hundred and Forty-One Dollars and Ninety-Two Cents ($95,241.92)**, and based on a rate of **Sixty-Four Dollars and Ten Cents ($64.10)** per square foot of the GLA of Premises I. **For the second year of the initial Term, Tenant shall pay Minimum Rent equal to the amount of Minimum Rent paid for the first year of the initial Term, plus a fixed 1.5% annual increase. For each year subsequent to the second year of the initial Term, the Minimum Rent shall continue to be increased to 101.5% of the Minimum Rent for the preceding year. Tenant shall not be obliged to pay Minimum Rent on Premises II for so long as Premises II are used solely as an entry area. Minimum Rent shall be payable on all of Premises II if Premises II is used for one or more the purposes set forth in Section 1.7 of this Lease.** (Section 6.1)
1.16	**PERCENTAGE RENT RATE**	**Eight Percent (8%)** (Section 6.3)
1.17	**GROSS CAM**	Total of Minimum Rent, Tenant's Proportionate Share of Operating Costs and Tenant's Proportionate Share of Taxes for each Lease Year. (Section 6.3)

1.18	**PREPAID RENT**	**N/A** (Section 6.2)
1.19	**SECURITY DEPOSIT**	**N/A** (Section 17.12)
1.20	**LETTER OF CREDIT**	**N/A** (Section 17.13)
1.21	**CHARGES**	Charges shall comprise:

Taxes	**$31.74**	Section 7.2
Operating Costs	**$8.91**	Section 7.3
Basic HVAC Charge	**$1.00**	Schedule "D-1"

Tenant acknowledges and agrees that Landlord shall not be bound by the foregoing estimates; the Charges stipulated in this Section 1.21 are provisional as of the date of this Lease and may be adjusted prior to the Commencement Date, and thereafter from time to time, in accordance with this Lease.

1.22 **SCHEDULES** Schedules "A" to "I" are included as part of this Lease.

ARTICLE 2 - DEFINITIONS

Defined terms are set out in Schedule "I".

ARTICLE 3 - GRANT AND TERM

3.1 **DEMISE** – Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, to have and to hold for the Term, unless sooner terminated. Tenant has the non-exclusive and non-transferable (except to a Transferee approved by Landlord in accordance with Article 12 of this Lease) right, in common with others entitled to do so, to use those portions of the Shared Facilities and the Common Retail Facilities which are intended for use by tenants of the Retail Component for the purposes for which they are intended, subject to the terms of this Lease.

3.2 **QUIET ENJOYMENT** – Tenant may hold and use the Premises without interference by Landlord or any other Person claiming by, through or under Landlord, subject to the terms of this Lease.

3.3 **ACCEPTANCE OF LEASE – INTENTIONALLY DELETED**

ARTICLE 4 - DELIVERY, CONSTRUCTION AND ACCEPTANCE OF PREMISES

4.1 Landlord has delivered the Premises to Tenant on Possession Date with Landlord's Work substantially completed to the extent that would reasonably allow Tenant to commence its Tenant's Work, subject to any joint occupancy or other arrangements to be made between Landlord and Tenant. Tenant will advise Landlord in writing of specific defects or deficiencies in Landlord's Work within 60 days following Possession Date, failing which Tenant is deemed to have accepted Landlord's Work and the Premises in all respects, subject to latent defects and Landlord's repair obligations contained in this Lease.

4.2 **CONSTRUCTION OF THE PREMISES** – Tenant shall, within 15 days after execution of this Lease by both parties, provide all information requested by the Project Manager required in order to enable Landlord to complete Landlord's Work, and if Tenant delivers such information after the expiry of the 15 day period,

then the Fixturing Period will be reduced by the length of the delay. Tenant will take possession of the Premises on the Possession Date to perform Tenant's Work and all other work necessary to prepare the Premises to be open for business to the public by the Commencement Date for the purpose set out in Section 1.7. If Landlord and Tenant agree that during the Fixturing Period there will be joint occupancy of the Premises then each party will cooperate and cause their respective contractors, sub-contractors and tradespeople to cooperate with each other so that all work may be completed as expeditiously as possible. During the Fixturing Period, Tenant shall be entitled to occupy the Premises in accordance with all terms and conditions of this Lease (including Tenant's obligations to obtain insurance and pay for all Utilities), but shall not be obligated to pay Minimum Rent, Percentage Rent, or Charges.

4.3 **CERTIFICATION OF THE PREMISES** – If the GLA of the Premises is certified by the Expert, then such GLA will apply and Rent will be adjusted, which adjustment will be retroactive to the Commencement Date.

ARTICLE 5 - GENERAL RENTAL PROVISIONS

5.1 **NET LEASE** – It is the intention of the parties that, except as expressly stipulated in this Lease, Landlord will not be liable to contribute to any costs, charges or expenses of any kind regarding the Premises and Tenant will pay all charges, impositions, costs and expenses of any and every nature and kind relating to the Premises.

5.2 **PLACE AND MANNER OF PAYMENT**

5.2.1 Tenant shall pay Rent throughout the Term to Landlord or as Landlord may direct at the address stipulated in Section 1.1, or such other place Landlord designates from time to time.

5.2.2 Tenant shall pay all required amounts in Canadian currency without prior demand therefor, and without any deduction, abatement, diminution, set-off or compensation whatsoever except as specifically provided for in this Lease.

5.3 **PAYMENT DATES** – All Minimum Rent and Charges will be payable in equal and consecutive monthly instalments in advance on the first day of each calendar month during the Term. Any other Additional Rent shall be payable on the 10th day following receipt of Landlord's request for payment, unless Landlord designates otherwise.

5.4 **IRREGULAR PERIODS** – All amounts payable to Landlord shall be deemed to accrue on a daily basis. Any sums payable during broken periods will be pro-rated on a daily basis over a period of 365 days.

5.5 **SURVIVAL OF RIGHTS, REMEDIES AND OBLIGATIONS** – Any obligations of Landlord or Tenant to make any payments to or make any readjustments on account of Rent will survive the expiration or earlier termination of this Lease. Every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease or in any of Tenant's insurance policies shall survive the expiration or termination of this Lease.

5.6 **ACCORD AND SATISFACTION/IMPUTATION OF PAYMENTS** – No payment by Tenant or receipt by Landlord of a lesser amount than the monthly payment of any Rent stipulated is deemed to be other than on account of the earliest stipulated Rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgment of full payment or accord and satisfaction, and Landlord may accept and cash any cheque or payment notwithstanding any such endorsement or inscription without prejudice to Landlord's right to recover the balance of the Rent due or to pursue any other remedy provided in this Lease. Landlord may impute any payments against payment of any sum which has become due under this Lease regardless of any designation or imputation by Tenant, and regardless of who has made such payment.

5.7 **METHOD FOR PAYMENT OF RENT** – Tenant will permit Landlord or its bankers to automatically debit Tenant's bank account on the first day of each calendar month by an amount representing the monthly

Minimum Rent and Charges payable under this Lease. Concurrently upon execution of this Lease, Tenant will sign the application forms presented by Landlord to activate automatic debiting and thereafter within five days of request sign whatever documents are required by Landlord from time to time to maintain automatic debiting. Amounts not payable by pre-authorized debit shall be payable by cheque. If any payment is returned unpaid, Tenant shall pay to Landlord a processing fee equal to the greater of: (i) $50.00 per payment; and (ii) the amount Landlord actually incurs as a result of any such default of payment. This processing fee is charged as Additional Rent, and not as a penalty or interest, for the purpose of defraying Landlord's expenses incidental to the processing of any such overdue payments. Notwithstanding the foregoing but only for so long as Tenant is not in default under this Lease, Tenant may pay the monthly Minimum Rent and Charges by post-dated cheque and to effect such method of payment, Tenant agrees to deliver to Landlord postdated cheques for the upcoming calendar year, to be received by Landlord on or prior to the Commencement Date for the balance of that calendar year, and thereafter 12 post-dated cheques prior to January 1 of each calendar year.

5.8 **INTEREST ON OVERDUE AMOUNTS**

5.8.1 If Tenant fails to pay any amount it is obliged to pay under this Lease when due, each unpaid amount will bear interest at the Stipulated Rate from its due date until the actual date of payment, calculated and compounded monthly. Notwithstanding anything else in this Lease, such interest will not be considered to be Rent but Landlord will have all of the same remedies for, and rights of recovery with respect to such amounts, as it has for non-payment of Rent.

5.8.2 In addition to interest charges as set out in Section 5.8.1, Tenant will pay Landlord, as Additional Rent, a charge of $150.00 in respect of each late payment representing Landlord's overhead and administration fees, the whole without prejudice to any rights or recourses which Landlord may have pursuant to this Lease or at law.

5.8.3 Tenant covenants and agrees that Landlord is entitled to require that any payment be made by way of certified cheque or draft of a Canadian chartered bank.

ARTICLE 6 - MINIMUM RENT, PREPAID RENT AND PERCENTAGE RENT

6.1 **MINIMUM RENT** – Tenant shall pay to Landlord Minimum Rent equal to the amount(s) stipulated in Section 1.15.

6.2 **PREPAID RENT** – Intentionally deleted.

6.3 **PERCENTAGE RENT** – Tenant will pay to Landlord in each Lease Year an annual adjustment payment in respect of Gross Revenue (“Percentage Rent”), such payment calculated as following: the percentage stipulated in Section 1.16 of Gross Revenue in the immediately preceding Lease Year less the amount stipulated as Gross CAM in Section 1.17. If such annual adjustment payment is a negative amount, Tenant shall have no obligation to make any payment pursuant to this Section 6.3.

6.4 **PAYMENT OF PERCENTAGE RENT**

6.4.1 Percentage Rent is payable annually in arrears, and without demand to be delivered along with the Annual Statement and a statement showing the calculation of Percentage Rent certified by the Tenant’s CFO

6.5 **REPORTS** – Tenant will submit to Landlord:

6.5.1 within ten (10) days after the end of each calendar month, a monthly statement of Gross Revenue ("Monthly Statement") in such detail and form as Landlord reasonably determines for each calendar month during the Term; and

6.5.2 within 60 days after the expiry of each Lease Year, an audited annual statement ("Annual Statement") prepared by an Auditor which Annual Statement will: (i) state that the Auditor has examined the report of Gross Revenue for the immediately preceding Lease Year and has conducted a general review of Tenant's accounting procedures and tests of Tenant's Controls and other supporting evidence as the Auditor considered necessary in the circumstances; (ii) state that the Gross Revenue as shown in the Annual Statement is in accordance with the definition of Gross Revenue in Schedule "I" of this Lease; (iii) contain a certification that the Annual Statement is true and correct; and (iv) show month by month the amount of Gross Revenue during the preceding Lease Year.

6.6 **TENANT'S RECORDS**

6.6.1 Tenant will prepare and keep at the Premises, or at Tenant's principal office in the Province as advised by Tenant by written notice to Landlord, for at least six years following the end of each Lease Year, all Controls. Tenant and all other Persons conducting business from the Premises will use such Controls as are required and approved by Landlord, acting reasonably.

6.6.2 The receipt or use by Landlord of any statement of Gross Revenue from Tenant or payment of Percentage Rent, if any, based thereon, shall neither constitute acceptance of such statement or of the Percentage Rent, if any, payable with respect to any period, nor constitute a waiver by Landlord of any obligation of Tenant hereunder, and shall be without prejudice to Landlord's rights pursuant to Section 6.7 to an examination of Tenant's books and records relating to the Gross Revenue and inventories of merchandise at the Premises and at Tenant's principal office in the Province.

6.7 **EXAMINATION AND AUDIT**

6.7.1 Landlord may: (i) on five (5) days prior written notice to Tenant, place a representative on the Premises at any time to check and calculate Gross Revenue, provided such representative uses commercially reasonable efforts to minimize any interference with Tenant’s business at the Premises; and (ii) have any Controls affecting the determination of Gross Revenue audited or examined by an Auditor designated by Landlord. Tenant will pay to Landlord any deficiency of Percentage Rent, with interest at the Stipulated Rate from the date the Annual Statement was due, within 10 days of receiving a copy of the Auditor's report, and Landlord will credit any excess against any amounts due or to become due by Tenant under this Lease. If the Auditor reports that the Controls it was able to inspect were insufficient to permit an accurate determination of Gross Revenue for the period in question, or that no Controls were made available, Landlord may estimate Gross Revenue for the period, and Tenant will pay any deficiency in Percentage Rent resulting from Landlord's estimate with interest at the Stipulated Rate from the date the Annual Statement was due within 10 days of the date of Landlord's estimate. Tenant will implement all recommendations of the Auditor regarding any practices or procedures which Tenant is or should be implementing regarding the proper control and recording of Gross Revenue, at Tenant's expense within the reasonable period Landlord gives Tenant to do so.

6.7.2 Tenant will pay the cost of the Audit if the Audit discloses that Gross Revenue was understated by 3% or more, and/or the Auditor reports either that the Controls it was able to inspect were insufficient to accurately determine Gross Revenue or that no Controls were made available, without prejudice to all other rights and recourses of Landlord. The Auditor's report shall be final and binding on the parties.

ARTICLE 7 - TAXES AND OPERATING COSTS

7.1 **TAXES PAYABLE BY LANDLORD** – Landlord will pay or cause to be paid all Taxes payable to the relevant taxing Authorities. Landlord may, without being obliged to do so, defer, contest or appeal any Taxes, assessment or any decision of any taxing authority, and to prosecute, suspend, settle or otherwise deal with any deferment, contestation or appeal as it deems appropriate, in each case without having to obtain Tenant's consent. Nothing whatsoever related directly or indirectly to any deferment, contestation or appeal will entitle Tenant to withhold or defer payment of any Taxes it is obliged to pay either to Landlord or to any taxing authority. Tenant shall have no right to contest or appeal any governmental assessment or

determination of the value of the Retail Component or any portion of the Retail Component whether or not the assessment or determination affects the amount of Taxes or other taxes, rates, duties, levies or assessments to be paid by Tenant.

7.2 **TAXES PAYABLE BY TENANT**

7.2.1 Subject to Section 7.2.2, if applicable, for each Tax Year Tenant will pay to Landlord or to any Person designated by Landlord, a Proportionate Share of Taxes in the manner stipulated in Section 7.4. Tenant acknowledges that all rebates, credits, tax reductions and other amounts received by or credited to Landlord from the taxing authority in respect of vacant space will belong solely to Landlord and Tenant will have no right to any portion of any such amounts.

7.2.2 If (i) the Premises are separately assessed for the purpose of real estate taxation, or (ii) assessor's working papers are available which indicate a separate assessment or valuation for the Premises, or (iii) assessor's working papers are available which indicate a separate valuation or apportionment of the total Retail Component valuation in respect of the Premises, or (iv) the Premises are not separately assessed, valued or apportioned and Landlord reasonably attributes value to the Premises as set out in Section 7.2.2.1, Tenant will pay to Landlord for each Tax Year, at Landlord's option in its sole discretion, either a Proportionate Share of Taxes under Section 7.2.1 or the aggregate of:

7.2.2.1 the Taxes separately assessed, valued or apportioned against the Premises, or failing a separate assessment, valuation or apportionment, the portion of Taxes Landlord reasonably attributes to the Premises based on a reasonable breakdown of value by Landlord;

7.2.2.2 a Proportionate Share of Taxes separately assessed, valued or apportioned against the Common Retail Facilities, or failing a separate assessment, valuation or apportionment, the portion of Taxes Landlord reasonably attributes to the Common Retail Facilities (after deducting any Taxes that are allocated by Landlord to the Rentable Premises not included in the GLA of the Retail Component); and

7.2.2.3 a Proportionate Share of Taxes which are allocated to the Retail Component in respect of the Shared Facilities.

7.2.3 Tenant will furnish Landlord with all separate assessment notices and/or tax bills it receives immediately upon receipt, and Tenant shall be responsible for all interest and charges for late payment of Taxes where Tenant fails to diligently furnish Landlord with copies of such separate assessment notices and/or tax bills. If Landlord identifies any portion of the taxable assessment as being attributable to any improvements to the Premises, Tenant will pay the full amount of the Taxes resulting therefrom to Landlord.

7.3 **OPERATING COSTS** – During each Lease Year or partial Lease Year (or other period Landlord designates), Tenant will pay to Landlord a Proportionate Share of Operating Costs in the manner stipulated in Section 7.4.

7.4 **PAYMENT OF TAXES AND OPERATING COSTS BY TENANT**

7.4.1 Tenant will pay all sums required by Sections 7.2 and 7.3 provisionally on the basis of Landlord's estimates to be furnished prior to the beginning of the period for which the estimate is intended to apply or as soon as reasonably practical thereafter.

7.4.2 Until Landlord furnishes the estimates for the first Lease Year, the amounts set out provisionally in Section 1.21, if any, as the Proportionate Share of Taxes and Operating Costs shall apply in lieu thereof. Thereafter, the last previous existing estimate shall apply until replaced by another.

7.4.3 Within a reasonable time after the end of the period for which the estimated payments apply, Landlord will furnish Tenant with a statement (the "Statement") showing the actual amount of

Tenant's required contribution for Taxes and Operating Costs for each respective period in question. If Tenant has underpaid any amount provisionally, it will pay the difference to Landlord within 15 days following the date Landlord sends its invoice. If Tenant has overpaid any amount provisionally, Landlord will credit the overpayment against any sums due or to become due by Tenant under this Lease.

7.4.4 If bills for or other information concerning Taxes or Operating Costs are received during the course of a Lease Year and the costs incurred by Landlord according to such bills or other information exceed the amounts previously estimated by Landlord, then Landlord may, from time to time during the Lease Year, re-estimate Tenant's Proportionate Share of Taxes and Operating Costs payable by Tenant for the balance of the Lease Year. Notwithstanding the foregoing and any other provisions of this Lease and Applicable Laws to the contrary, the fact that Landlord has not provided an evaluation, estimate, statement of account, adjustment or re-adjustment, cannot be setup to prevent, in any manner whatsoever, Landlord's right to provide same at any time. No claim for any readjustment in respect of any payment made by Tenant under Section 7.4 may be made by Tenant unless claimed by Tenant in writing prior to the expiration of six months from the date of delivery of the Statement to Tenant.

7.5 **BUSINESS TAXES AND SALES TAXES**

7.5.1 Tenant shall pay promptly and directly to the lawful taxing authority, and/or to Landlord if Landlord is invoiced directly by the taxing authority, all Business Taxes and Tenant will indemnify and save harmless Landlord from and against all losses, costs, charges and expenses occasioned by or arising from the foregoing. If there is not a separate bill issued by the relevant authority for Business Taxes, Tenant will pay its Proportionate Share of the Business Taxes with respect to the entire Retail Component. Landlord will remit amounts that it collects for Business Taxes to the relevant authority.

7.5.2 Tenant will, together with the Rent, pay to Landlord all Sales Taxes. In the event of a failure by Tenant to pay any Sales Taxes, Landlord shall have the same rights and remedies as it has in the event of a failure by Tenant to pay Rent.

7.6 **ADDITIONAL SERVICES** – Tenant shall pay to Landlord, as Additional Rent, the cost of all such services provided by Landlord at Tenant's request and which are not included in Common Retail Facilities Operating Costs and/or Shared Facilities Costs, as the case may be, plus an administration fee equal to 15%.

ARTICLE 8 - PREMISES UTILITIES AND HEATING, VENTILATING AND AIR CONDITIONING

8.1 **PREMISES UTILITIES**

8.1.1 Tenant shall be solely responsible for and shall promptly pay the cost of all Utilities used or consumed in or from the Premises directly to the utility supplier or as Landlord may otherwise direct. Within 10 days of written request by Landlord, Tenant shall provide confirmation that all charges for Utilities consumed in or from the Premises have been paid.

8.1.2 If the Premises are not separately metered by the utility supplier, then Tenant will pay: (i) an unmetered charge for supplying Utilities to the Premises in the amount stipulated in Section 1.21, if any, and an administration fee of 15%. For greater certainty, no administration fee is payable for amounts billed directly to Tenant by a utility supplier and paid by Tenant directly to the supplier. The unmetered charge for Utilities stipulated in Section 1.21, if any, shall increase or decrease on a pro rata basis as the rates for Utilities Landlord uses to initially calculate the unmetered charge increase or decrease; or (ii) the costs incurred by Landlord for Utilities used in or for the Premises or allocated to the Premises by Landlord, acting equitably, if an unmetered charge for Utilities is not stipulated in Section 1.21. In the case of an estimate, charges for Utilities will be adjusted by Landlord following the period for which the estimated payments apply.

8.1.3 Each time the unmetered charge for supplying Utilities is adjusted, the amount stipulated in Section 1.21, if any, will be deemed replaced by the adjusted amount.

8.1.4 At Landlord's request Tenant will install at its expense a check meter in the Premises to measure consumption of Utilities in or from the Premises in accordance with Schedule "C-1", in which case payment of utility consumption shall be made in accordance with Schedule "C-1".

8.1.5 Tenant will not install or use any equipment or electrical arrangement which may overload the electrical or other service facilities available unless it first obtains the prior written consent of Landlord, and if necessary, at its own expense, makes whatever changes are necessary to comply with the reasonable requirements of Landlord, Landlord's insurance underwriters and all Applicable Laws.

8.1.6 Landlord is not liable for interruption or cessation, or failure in the supply of Utilities, services or systems in, to or serving the Retail Component or the Premises, whether they are supplied by Landlord or others, and whether or not the interruption or cessation is caused by Landlord's negligence, including, but without limitation, economic losses and consequential damages.

8.2 **HEATING, VENTILATING AND AIR-CONDITIONING**

8.2.1 The parties acknowledge that the Landlord owns the HVAC System. Tenant shall regulate those parts of the HVAC System within the Premises (including the distribution system for the Premises) that are not part of the Common Retail Facilities so as to maintain reasonable conditions of temperature and humidity within the Premises and to avoid direct or indirect appropriation of heating, ventilating and air-conditioning from the balance of the Retail Component. Landlord shall be responsible for operating, maintaining, repairing and replacing the HVAC System including entering into such maintenance and service contract(s) as are necessary for operation, maintenance, repair and replacement of the HVAC System and Tenant shall pay the costs and expenses of such maintenance and service contract(s). If the heating, ventilating and air-conditioning system serving the Premises is a Shared HVAC System, then subject to the Condominium Documents and the Shared Facilities Agreement, Landlord will assume the responsibility of operating, maintaining, repairing and replacing the Shared HVAC System, including entering into such maintenance and service contract(s) as are necessary for operation, maintenance, repair and replacement and the costs and expenses thereof will be equitably allocated by Landlord amongst tenants (including Tenant) being served by the Shared HVAC System and Tenant shall pay its share of Landlord's costs and expenses of all repairs and replacements to, and maintenance and operation of, the Shared HVAC System.

8.2.2 In consideration of the fact that Landlord supplies heating, ventilating and air-conditioning for the Retail Component, Tenant shall pay its share of the HVAC Operating Costs as defined and determined in accordance with Schedule "D-1" herein.

8.3 **SPECIAL SERVICES** – If Tenant requests interior climate control services, electricity, sewage disposal, water or other utility services of a type or in quantities that exceed normal use by tenants in the Retail Component, as determined by Landlord, acting reasonably, Tenant will pay to Landlord all costs, both non-recurring and recurring, of providing all such services. Such costs shall be determined by Landlord in a reasonable manner and in accordance with Schedule "D-1", as the case may be, which may include installation, at Tenant's expense, of separate meters or other measuring devices in the Premises or elsewhere or Landlord may use an Expert to assist in determining such costs.

ARTICLE 9 - TENANT'S USE AND OPERATION OF THE PREMISES

9.1 **USE AND TRADE NAME** – The Premises will only be used for the purpose stipulated in Section 1.7 and such business will be operated only under the name stipulated in Section 1.8. Tenant will not change or permit the change of that name without the prior written consent of Landlord. Notwithstanding the foregoing, Landlord makes no representations or warranties that Tenant is lawfully entitled to use the name stipulated in Section 1.8. Tenant acknowledges that it has undertaken all necessary steps and

investigations to ensure that Tenant is lawfully entitled to use the name stipulated in Section 1.8. Tenant acknowledges that Landlord has granted exclusive and restrictive covenants and may grant other exclusive and restrictive covenants to other tenants of the Retail Component or any other party and accordingly, Tenant is strictly prohibited from contravening any of the exclusive and restrictive covenants granted now or in the future to other tenants of the Retail Component or any other party, provided such future exclusive and restrictive covenants do not restrict Tenant's Use stipulated in Section 1.7. The existing exclusive and restrictive covenants granted by Landlord are attached hereto as Schedule "G".

9.2 **OBLIGATION TO OPERATE** – Tenant shall take possession and open for business in the whole of the Premises on the Commencement Date. Throughout the Term, Tenant will continuously, actively and diligently conduct its business in the whole of the Premises in a proper, reputable and efficient manner in keeping with a first class p and the general image Landlord has established for the Retail Component. Tenant will operate its business in the Premises only during those hours Landlord designates for the majority of retail tenants in the Retail Component unless prohibited from doing so under Applicable Laws. Should Tenant wish to operate during additional hours it shall require Landlord's prior written consent, which consent will not be unreasonably withheld. Landlord's consent will be subject to any financial or non-financial conditions or restrictions Landlord may impose and will be subject to Tenant paying all expenses Landlord incurs due to the additional hours in accordance with Section 7.6. Tenant shall install and maintain at all times displays of merchandise in the display windows, if any, of the Premises which comply with Landlord's requirements and are consistent with the character, quality and general image Landlord has established for the Retail Component from time to time. All such display windows will be suitably illuminated in such manner and at such times as Landlord may reasonably require. Tenant will abide by the Rules and Regulations. Landlord reserves the right from time to time to amend or supplement the Rules and Regulations applicable to the Premises or the Retail Component as in Landlord's judgment, acting reasonably, are from time to time needed for the safety, care, cleanliness and efficient operation of the Retail Component.

9.3 **PROHIBITED ACTIVITIES** – Tenant shall not, at any time during the Term, conduct or carry on in the Premises any of the following activities or businesses: (i) any manufacturing operation; (ii) any mail order, internet order, or catalogue business except of merchandise that Tenant is permitted to sell under Section 1.7; (iii) a store conducted principally or in part for the sale of second hand goods, war surplus articles, insurance salvage stock, or fire sale stock; (iv) a store conducted, promoted and/or represented in whole or in part as a discount operation; (v) a pawn shop; (vi) fraudulent or deceptive advertising or selling procedures; (vii) an auction or bulk sale; (viii) the sale of firecrackers or fireworks of any kind; (ix) an establishment to carry on the business of an automotive service centre or a service station or to dispense directly into motor vehicles any kinds of gasoline or lubricants or other petroleum products or a store selling automobile tires, batteries and auto accessories; (x) a warehouse sale; (xi) a sale of Tenant's trade fixtures from the Premises; (xii) a non-therapeutic massage parlour; (xiii) a facility for the sale, consumption or display of marijuana, cannabis or illicit drugs or of any paraphernalia commonly associated with or used for such products or substances; (xiv) any business engaged in the sale of adult goods or services; and (xv) any other business which because of the merchandise likely to be sold or the merchandising or pricing methods likely to be used would tend to lower the character, quality, image or reputation of the Retail Component. Tenant shall not conduct on the Premises any "distress sale", "bankruptcy sale", "going out of business sale", "moving sale", "liquidation sale" or "fire sale" nor any other type of sale designed to convey to the public that business operations are to be discontinued or will be moved elsewhere than in the Retail Component.

9.4 **IMPORTANCE OF CONTINUOUS OPERATION**

9.4.1 Tenant acknowledges and agrees that under no circumstances during the Term may Tenant close its Premises for business to the public without the prior written consent of Landlord, which may be arbitrarily withheld, and that Landlord shall sustain losses, including intangible damages, by reason of Tenant's failure to be open for business as and when required by this Lease. The intangible damages that shall be sustained by Landlord include, but are not limited to: decreased customer traffic at the Retail Component available for other tenants, negative impact on gross sales in respect of percentage rent paid by other tenants, negative impact on attracting new tenants to the Retail Component, negative public

perception as to the desirability of the Retail Component as a shopping destination, and negative impact on Landlord's financing opportunities.

9.4.2 If Tenant defaults in any of its obligations stipulated in this Article 9, then in each such event (and in addition to all other amounts payable under this Lease) for each day or partial day during which the default occurs, Tenant will pay to Landlord an amount equal to $500.00 as liquidated damages representing the minimum damages that Landlord is considered to have suffered as a result of Tenant's default.

9.5 **OBSERVANCE OF APPLICABLE LAWS** – Tenant will, at its expense, comply with all Applicable Laws which now or hereafter pertain to or affect the Premises and/or the Retail Component or Tenant's use or occupancy thereof, and obtain and maintain all necessary permits, licenses and approvals relating to the use and occupancy of the Premises and the conduct of business therein.

9.6 **RADIUS** – Tenant agrees that throughout the Term it shall not, nor shall it suffer or permit any Person under its control or connected or affiliated with it, to engage directly or indirectly in the operation of an upscale food supermarket within the radius stipulated in Section 1.9 from any point of the Development.

ARTICLE 10 - LANDLORD'S OPERATION OF THE RETAIL COMPONENT

10.1 **MANAGEMENT OBLIGATION** – Landlord shall operate the Retail Component in a proper and reputable manner as would a prudent landlord of a similar shopping centre, having regard to the size, age, nature, location and trade area of the Retail Component, the type of clientele the Retail Component services, as well as the character, quality and general image Landlord has established for the Retail Component from time to time.

10.2 **MANAGEMENT AND CONTROL OF RETAIL COMPONENT**

10.2.1 The Common Retail Facilities and other portions of the Retail Component which are not leased to tenants shall be under Landlord's exclusive supervision and control.

10.2.2 Landlord may, at any time before or during the Term

10.2.2.1 change the area, level, location, arrangement or use of any portion of the Retail Component it considers advisable, other than the Premises;

10.2.2.2 construct other structures or improvements and make alterations, additions, subtractions or rearrangements to any of the foregoing;

10.2.2.3 modify, alter, expand, reduce or eliminate the Common Retail Facilities or any portion of the Retail Component;

10.2.2.4 temporarily obstruct, close off or shut down parts of the Retail Component and/or temporarily suspend services for the purpose of inspection, maintenance, repair, alteration, construction or safety reasons;

10.2.2.5 place any installations within or on the Common Retail Facilities, including without limitation, kiosks, planters, benches and promotional displays or activities;

10.2.2.6 close all or part of the Retail Component to the public outside of regular business hours, Sundays and holidays included;

10.2.2.7 close parts of the Common Retail Facilities to prevent their dedication or the accrual of rights in them in favour of Persons or the public; grant, modify and terminate easements and other agreements pertaining to the use and operation of the Retail Component or any part of

it;

10.2.2.8 restrict areas of the Retail Component available for employee parking, and/or prohibit employees from parking anywhere on the Retail Component;

10.2.2.9 impose reasonable charges for parking on such basis as Landlord determines;

10.2.2.10 designate the areas and entrances and the times in, through and at which loading and unloading of merchandise, supplies and fixtures shall be carried out and, in relation thereto, Tenant hereby covenants and agrees to coordinate with, and follow the direction of, the dockmaster in the shared loading dock;

10.2.2.11 designate and specify the kind of container to be used for garbage and refuse and the manner and the times and places at which same is to be placed for collection. If Landlord provides or designates a commercial service for the pickup and disposal of refuse and garbage instead of or in addition to the service provided by the municipality, Tenant shall use same at Tenant's cost. Tenant shall pay the charges for pick up and disposal of any of Tenant's refuse or rubbish;

10.2.2.12 re-design all or any part of the tenant mix, both with respect to kinds of uses which may be included from time to time, as well as change the physical location of any one or more tenants existing at the time of the change;

10.2.2.13 erect its signage (whether its logo, name of Retail Component and other signage) on the Retail Component, and may change the name of the Retail Component;

10.2.2.14 do all work Landlord considers advisable to install new, and/or maintain, adapt, repair or replace existing utility lines, pipes, roof drainage pipes, conduits, wires, ductwork and other matters through ceiling space, column space or other parts of the Premises and do any other work in the Premises to preserve and/or support and/or reinforce any structural walls or foundations of the Premises or the Retail Component, or other matters Landlord deems advisable including, without limitation, such work as may be required for an expansion or an alteration of all or part of the Retail Component; and

10.2.2.15 do and perform such other acts in and to the Retail Component as, in the use of good business judgment, Landlord determines to be advisable for the more efficient and proper operation of the Retail Component.

10.2.3 Landlord agrees that in operating the Retail Component it will use reasonable commercial efforts to ensure that access to or egress from the Premises is not detrimentally materially interfered with during the course of any of Landlord's operations.

10.2.4 The sole purpose of the site plan attached hereto as Schedule "B" is to show the approximate location of the Premises only and the contents thereof are not intended as a representation of any kind including that any other tenant has leased, or will continue to lease, premises in the Retail Component, or as to the precise size or dimensions of the Premises or any other aspect of the Retail Component.

10.3 **LANDLORD'S RELOCATION RIGHT – INTENTIONALLY DELETED**

10.4 **LANDLORD'S TERMINATION RIGHT – INTENTIONALLY DELETED**

10.5 **LANDLORD'S RIGHT TO ENTER THE PREMISES** – Tenant shall permit Landlord to enter the Premises at all reasonable times to (i) examine or inspect the Premises, (ii) show the Premises to Persons considering purchasing or financing the Retail Component, and during the last six months of the Term, to Persons

considering leasing the Premises, (iii) provide services or make repairs, replacements, changes or alterations to the Premises, adjoining premises, the Common Retail Facilities or other parts of the Retail Component (including without limitation performing any of the activities stipulated in Section 10.2.2), and (iv) take such steps as Landlord may reasonably determine necessary for the safety, improvement and preservation of the Premises and the Retail Component. Except in an emergency, Landlord shall whenever reasonably possible consult with or give reasonable notice to Tenant prior to such an entry, provided that in all cases Landlord shall take all reasonable steps to minimize interference with Tenant's ordinary business operations at the Premises.

10.6 **ENTRY, ETC. NOT A BREACH** – Despite anything else in this Lease, the exercise by Landlord of any of its rights under Article 10 shall not constitute a breach by Landlord of any of its obligations under this Lease nor shall the exercise of any such rights be deemed to be a constructive or actual eviction, or a breach of the covenant for quiet enjoyment.

10.7 **GARBAGE AND STORAGE ROOMS**

10.7.1 Landlord shall determine a location (the "garbage room") within the ground floor of Common Retail Facilities for tenants, including the Tenant, to store their garbage. Tenant's rights to access and store its garbage within the garbage room shall not be exclusive and the Tenant shall pay its share of costs of such garbage room as part of Tenant's Operating Costs, such share to be a fraction the numerator of which is the square footage of the garbage room used by the Tenant, the denominator being the total square footage of such garbage room, but Tenant shall not be required to pay Minimum Rent or Taxes on such garbage room.

10.7.2 Tenant shall be entitled to use a portion of the Common Retail Garbage Room located on P1 and indicated as such on Schedule B attached hereto, such portion to be designated by Landlord, for its refrigerator condensing unit. Tenant shall pay its share of costs of such Common Retail Garbage Room as part of Tenant's Operating Costs, such share to be a fraction the numerator of which is the square footage of the Common Retail Garbage Room designated for Tenant, the denominator being the total square footage of such Common Retail Garbage Room,, but Tenant shall not be required to pay Minimum Rent or Taxes on such Common Retail Garbage Room.

ARTICLE 11 - PROMOTIONS AND ADVERTISING

11.1 **MERCHANTS' ASSOCIATION – INTENTIONALLY DELETED.**

11.2 **LANDLORD'S PROMOTIONS, PROMOTION FUND AND PROMOTION CHARGE**

11.2.1 Landlord will promote and advertise the Retail Component in a manner and to an extent as it reasonably considers appropriate, taking into account the nature, size, age, character and location of the Retail Component as well as the general image Landlord has established for the Retail Component from time to time.

11.2.2 If and when Landlord establishes a Promotion Fund, Tenant will pay to Landlord in equal consecutive monthly instalments during each Lease Year a Promotion Charge as per written notice from the Landlord, such Promotion Charge to be similar to that charged by landlords of similar shopping centres at the relevant time.

11.2.3 Landlord will not be obliged to segregate Promotion Fund monies from its general funds, nor will Landlord be considered a trustee or other type of fiduciary of Promotion Fund monies.

11.3 **TENANT'S PROMOTIONS** – Tenant agrees to promote and advertise its business from the Premises in an up- to-date professional manner at its expense. Tenant will endeavour to promote the name and/or any logo or emblem of the Retail Component in any of its promotions or advertising. Tenant will not acquire any rights to the Retail Component name, logo or emblem.

ARTICLE 12 - TRANSFERS

12.1 **TRANSFERS REQUIRING CONSENT**

12.1.1 No Transfer may be effected to any Person without obtaining Landlord's prior written consent, which consent will not be unreasonably withheld or delayed. In no event shall Tenant be released from any obligations, liabilities or covenants under this Lease and shall continue to remain responsible.

12.1.2 Landlord may consider such factors as it, in its sole and unfettered discretion, deems relevant or material to the proposed Transfer and the best interest of the Retail Component operations. Without limiting the generality of the foregoing, Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent if:

12.1.2.1 Landlord has reasonable grounds to believe that Transferee: (i) intends to change the permitted use of the Premises stipulated in Section 1.7; or (ii) does not have sufficient business experience to operate the Premises for the permitted use stipulated in Section 1.7 within a shopping centre context; or (iii) does not have a good credit rating and a net worth sufficient, in Landlord's reasonable opinion, to finance the business to be operated in the Premises; or (iv) has a history of defaults under commercial leases either by Transferee or by companies or partnerships in which Transferee or any of its shareholders or partners was a principal shareholder or partner at the time of the defaults;

12.1.2.2 Landlord has reasonable grounds to believe that the Transfer would adversely affect the reputation of the Retail Component, or would result in a reduction of Gross Revenue;

12.1.2.3 the Transfer would take effect within the last 12 months of the Term;

12.1.2.4 the Transfer relates to a part of the Premises only;

12.1.2.5 Landlord has not obtained the consent of any Mortgagee, any Major Tenant or any other Person who may have the right to approve the Transfer; or

12.1.2.6 Landlord does not receive sufficient information from Tenant or Transferee to enable it to make a determination concerning the matters set out above or does not receive its fees under Section 12.2.

12.1.3 Landlord shall not be liable for any claims or actions by, or any damages, liabilities, losses or expenses of, Tenant or any proposed Transferee arising out of Landlord unreasonably withholding its consent to any Transfer.

12.1.4 Section 12.1.1 does not apply to a Transfer to: (a) a holding body corporate, subsidiary body corporate or affiliate of Tenant (as those terms are defined in the *Canada Business Corporations Act*), however, consent in accordance with Section 12.1.1 will be required in connection with a subsequent Transfer unless the original and subsequent Transferee remains a holding body corporate, subsidiary body corporate or affiliate of Tenant. In the case of any such Transfer, (b) a purchaser of all or substantially all of the assets of the Tenant, or of the business operated by the Tenant in the Premises but only with Landlord's prior written consent; (c) a sublet of up to 20% of the square footage of the GLA of the Premises to another person, provided such person continues to operate a business at the Premises which is similar to the business operated by the Tenant and/or which is appropriate and suitable for the Premises given its existing location and operating businesses; and (d) the acquisition of voting control of the Tenant by Fairfax (Barbados) International Corp. or by an affiliate of Fairfax (Barbados) International Corp., provided in each case Tenant will provide Landlord with at least 30 days prior written notice and all provisions of Sections 12.2 and 12.3 (except Section 12.3.1) will apply.

12.2 **TENANT TO FURNISH INFORMATION** – Tenant shall make written application to Landlord at least

60 days prior to the proposed effective date of such Transfer, which application shall contain the following: (i) the name, address and local telephone number of each proposed Transferee; (ii) bank and other credit references, financial statements if available and such other information Landlord may reasonably require to assess the business or financial responsibility and standing of the proposed Transferee; (iii) a certified cheque or draft of a Canadian chartered bank payable to First Capital Asset Management ULC, for an amount equal to Landlord's then prevailing Transfer processing fee, in addition to Tenant's undertaking to reimburse Landlord for any out of pocket expenses and disbursements including, without limitation, the costs set out in Section 12.3.2.5; and (iv) details of the transaction of the Transfer between Tenant and the proposed Transferee and all relevant documents and additional information with respect thereto, including, without limitation, a copy of any agreement of purchase and sale between Tenant and the proposed Transferee.

12.3 **LANDLORD'S RIGHTS**

12.3.1 Landlord shall, within 45 days following receipt of the last of all of the documentation, information and the processing fee required by Section 12.2, notify Tenant in writing either: (i) that it does not consent to the proposed Transfer; or (ii) that it consents to the proposed Transfer.

12.3.2 Landlord's consent shall be subject to the following conditions:

12.3.2.1 consent by Landlord is not a waiver of the requirement for consent to subsequent Transfers;

12.3.2.2 no acceptance by Landlord of Rent or other payments by a Transferee is: (i) a waiver of the requirement for Landlord to consent to the Transfer; (ii) the acceptance of Transferee as Tenant; or (iii) a release of Tenant from its obligations under this Lease;

12.3.2.3 Tenant, Transferee, any future indemnifier and any other Person liable under this Lease will be jointly and severally liable to Landlord to fulfill all Tenant's obligations under this Lease (as well as any obligations Landlord imposes by way of a special condition under Section 12.3.3), during the Term, the whole without novation or derogation of any kind, and without benefit of division or discussion;

12.3.2.4 Landlord may apply amounts collected from Transferee to any unpaid Rent;

12.3.2.5 Transferee will execute an agreement directly with Landlord agreeing to be bound by this Lease as if Transferee had originally executed this Lease as Tenant, but Transferor will remain jointly and severally responsible with Transferee for the fulfilment of all obligations to be performed after the Transfer by Transferee and, if required by Landlord, Transferor will execute an indemnity on Landlord's standard form, to give full force and effect to the foregoing. This obligation of Transferor will survive any termination, repudiation, disaffirmation, disclaimer or surrender (except with the consent of Landlord) of this Lease by any trustee in bankruptcy or by a court representative. All costs of processing the application of consent (including any credit reports, and preparation and negotiation of any documentation by Landlord or its attorneys) will be paid by Tenant prior to the date Transferee commences to occupy the Premises or that part of the Premises to which the Transfer applies;

12.3.2.6 Intentionally deleted;

12.3.2.7 on a Transfer which is a subletting of the Premises by virtue of which Tenant receives a rent in the form of cash, goods or services from Transferee which is greater than the Rent payable hereunder to Landlord, Tenant will pay any such excess to Landlord in addition to all Rent payable under this Lease, and such excess rent shall be deemed to be Additional Rent;

12.3.2.8 if Transferee pays or gives to Transferor money or other value that is reasonably

attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by Landlord or for which Landlord has paid in whole or in part, as determined by an Expert, then at Landlord's option, Transferor will pay to Landlord such money or other value in addition to all Rent payable under this Lease and such amounts shall be deemed to be Additional Rent. In order for the Expert to make an accurate determination of any amounts owing by Tenant to Landlord under this Section 12.3.2.8, Tenant shall forward all necessary documentation and information required by Landlord or its Expert within five days of request;

12.3.2.9 if Landlord is holding any Prepaid Rent and/or Security Deposit, it will automatically be transferred to the account of Transferee; and

12.3.2.10 in the event of a sublease, Transferee, by accepting the Transfer of this Lease, agrees to waive any rights it may have under any Applicable Laws, including, without limitation, under the *Commercial Tenancies Act* (Ontario), to apply to a court or to otherwise elect to: (i) retain the unexpired Term of this Lease or the unexpired sublease term; (ii) obtain any right to enter into any lease or other agreement directly with Landlord for the Premises; or (iii) otherwise remain in possession of any portion of the sublet premises or the Premises; in any case where this Lease is terminated, surrendered or otherwise cancelled, including a disclaimer of this Lease by a trustee in bankruptcy of Tenant. Tenant and Transferee shall promptly execute any agreement required by Landlord to give effect to the foregoing terms.

12.3.3 If Landlord consents to a Transfer, it may impose such special conditions as it deems reasonable in the circumstances, such as, without limitation, imposing an obligation on Transferee to renovate the Premises upon terms and conditions Landlord considers appropriate acting reasonably, further restrictions on use of the Premises and/or furnishing Landlord with security such as indemnities or additional indemnities, security deposits or other security devices Landlord deems appropriate, acting reasonably.

12.4 **NO ADVERTISING OF THE PREMISES** – Tenant will not offer or advertise the whole or any part of the Premises or this Lease for the purpose of a Transfer and will not permit a broker or other Persons to do so.

12.5 **TRANSFER BY LANDLORD** – Upon a sale, lease or any other disposition by Landlord of its ownership of all or part of the Retail Component, Landlord will, to the extent that the purchaser or transferee agrees in writing with Landlord to assume Landlord's obligations under this Lease, thereupon and without further agreement, be released from all further liability and any claims arising with respect to Landlord's covenants and obligations contained in this Lease in respect of any parts so disposed of.

ARTICLE 13 - STATUS STATEMENT, SUBORDINATION AND ATTORNMENT

13.1 **STATUS STATEMENT** – Within 15 days after written request by Landlord, Tenant will deliver in a form supplied by Landlord, a status statement or a certificate to any proposed purchaser, assignee, lessor or Mortgagee of the Retail Component, or to Landlord, which will be presented by Landlord and will specify: (i) that this Lease is in full force and effect, except only for any modifications as set out; (ii) the Commencement Date and Expiry Date of the Lease; (iii) the date to which Rent has been paid under this Lease and the amount of any Prepaid Rent or any Security Deposit held by Landlord; (iv) the Rent then accruing under this Lease or the dates on which each of these will start accruing; (v) that the Premises are free from any construction deficiencies, or if there are such deficiencies, the certificate will state the particulars; (vi) that there is no uncured default on the part of Landlord or if there is a default, the certificate will state the particulars; (vii) whether there are any set offs, defences or counter claims against enforcement of the obligations to be performed by Tenant under this Lease; (viii) with reasonable particularity, details concerning Tenant's and Indemnifier's financial standing and corporate organization; and (ix) any other information or statement Landlord may require.

13.2 **SUBORDINATION AND ATTORNMENT** – This Lease and Tenant's rights hereunder are subordinate to Encumbrances. Upon request, Tenant will enter into a subordination agreement in such form as Landlord requires to any Encumbrance, cede priority of registration in favour of the holder of the Encumbrance, and,

if requested, Tenant will acknowledge and recognize the holder of the Encumbrance. Tenant will, if possession is taken under, or any proceedings are brought for possession under and/or any taking of possession is exercised by a Mortgagee, or in the event of the exercise of the power of sale under, any Encumbrance, acknowledge and recognize the Mortgagee or the purchaser upon any such sale or other proceeding and recognize the Mortgagee or the purchaser as Landlord under this Lease.

ARTICLE 14 - MAINTENANCE, REPAIRS AND ALTERATIONS

14.1 LANDLORD'S OBLIGATIONS TO REPAIR AND MAINTAIN

14.1.1 Subject to the Condominium Documents and the Shared Facilities Agreement, Landlord will maintain and repair the Retail Component, including the foundations, any exterior weather walls, and all structural portions of the Premises and the Common Retail Facilities, as would a prudent landlord of a similar retail development, having regard to the size, age, nature and location of the Retail Component subject to the following exceptions: (i) any obligation of Tenant to maintain, repair or replace; (ii) intentionally deleted; (iii) damage or injury caused by any act, neglect, omission, fault or default of Tenant; (iv) damage, destruction or expropriation in circumstances where this Lease will terminate; and (v) Landlord's obligations under the Condominium Documents and/or the Shared Facilities Agreement. The cost of the foregoing maintenance and repairs will be included in Operating Costs. If Landlord is required, due to the business carried on by Tenant, to make structural repairs or replacements by reason of the application of laws, ordinances or other regulations of any governmental body, or by reason of any act, omission or default of Tenant or those Persons under Tenant's control, then Tenant will be liable for the total cost of those repairs or replacements plus an administration fee of 15%.

14.1.2 Tenant shall, when it becomes aware or should become aware of same, notify Landlord of any damage to, or deficiency or defect in any part of the Retail Component, including the Premises, any equipment or utility systems.

14.2 MAINTENANCE AND ALTERATION OF SHARED FACILITIES

14.2.1 Tenant acknowledges that, subject to Tenant's obligations under this Lease, responsibility for the operation, maintenance, repair and replacement of the Shared Facilities shall be determined in accordance with the Shared Facilities Agreement.

14.2.2 Notwithstanding anything contained in this Lease, it is understood and agreed that if, for any reason, the Shared Facilities are diminished, altered, expanded or reduced, Tenant hereby acknowledges and agrees that Landlord shall not be subject to any liability, and Tenant shall not be entitled to any compensation, diminution or abatement of Basic Rent or Additional Rent, nor is any alteration or diminution of the Shared Facilities, the Building, the Retail Component or the Premises deemed a breach of any covenant for quiet enjoyment contained in this Lease or implied by law.

14.3 TENANT'S OBLIGATION TO MAINTAIN AND REPAIR

14.3.1 Tenant will maintain, repair, replace, modify and keep the Premises together with all improvements, fixtures and equipment located in or exclusively serving the Premises in a state of repair and appearance as would a prudent tenant of similar premises. In addition, Tenant will promptly do all work required to have the Premises comply with all Applicable Laws and insurance requirements applicable from time to time during the Term. These obligations will extend, without limitation, to all glass and plate glass and all electrical, mechanical, plumbing, sprinkler and other systems as well as periodic painting and redecorating, all as Landlord reasonably requires from time to time and/or as may be necessary to maintain the physical appearance of the Premises according to Landlord's design criteria for the Retail Component as it exists from time to time and shall be subject to the following exceptions: (i) reasonable normal wear and tear; (ii) repairs or replacements to the Premises caused from structural defects or weaknesses or design defects in Landlord's Work; (iii) damage, destruction or expropriation in circumstances where this Lease will terminate; and (iv) Landlord's obligations under Section 14.1.

14.3.2 Tenant will install and maintain first-class trade fixtures and furniture appropriate for Tenant's business and the general character of the Retail Component. Only new and unused trade fixtures will be installed and Tenant agrees to obtain the prior written approval (which will not be unreasonably withheld) of Landlord as to the nature of the trade fixtures and the layout of them in the Premises before they are installed, failing which, Landlord may require modification to the trade fixtures and/or the layout. The movable trade fixtures installed by Tenant in the Premises shall not be removed from the Premises during the Term except in the usual or normal course of Tenant's business. Tenant shall, at its sole cost and expense, adequately seal all gaps in its demising walls and ceiling to prevent odours from penetrating the Common Retail Facilities, the Shared Facilities and/or other tenants' premises. Tenant shall, at its sole cost and expense, install and maintain adequate equipment, including, without limitation, an ecologizer, adequate exhaust fans and duct work in connection therewith and any other ventilation system for the Premises so as to keep any odours from entering the Common Retail Facilities, the Shared Facilities and/or other tenants' premises; such equipment shall be subject to Landlord's prior written approval with respect to manufacture, design, installation, and maintenance and shall comply with all Applicable Laws and Lease requirements. However, Tenant acknowledges that Landlord's approval of such equipment does not include approval of the adequacy of the equipment for this purpose, and if any unusual or objectionable odours emanate from the Premises, as determined by Landlord in its sole and subjective opinion, then Tenant shall immediately upon written notice from Landlord, install any supplementary or alternative ventilation and make-up air equipment, including, without limitation, an ecologizer, as may be required by Landlord to eliminate this condition.

14.4 **ALTERATIONS BY TENANT** – All Tenant's Work requires Landlord's prior written approval, which approval will not be unreasonably withheld if: (i) Tenant's Work will equal or exceed the then-current standard for the Retail Component; (ii) adequate plans and specifications are provided to Landlord; and (iii) Tenant has obtained all requisite consents, permits and other governmental approvals. All Tenant's Work will be performed, by competent workmen whose labour union affiliations are compatible with others employed by Landlord and its contractors, in a good and workmanlike manner, in accordance with the plans and specifications first approved by Landlord, in writing, and in accordance with Landlord's reasonable requirements. Tenant will pay to Landlord, on demand, Landlord's costs in connection with the approval and supervision of Tenant's Work including, without limitation, architectural and engineering consultants' fees plus an administration fee of 15%. Landlord may require that any Tenant's Work be performed by Landlord at Tenant's cost if it affects the structure of, or any base building systems in, the Premises, the Common Retail Facilities, or any part of the Retail Component outside the Premises. On completion of Tenant's Work, Tenant will pay to Landlord, on demand, Landlord's costs including, without limitation, architectural and engineering consultants' fees plus an administration fee of 15%.

14.5 **LIENS OR OTHER ENCUMBRANCES** – Tenant will ensure that no Secured Claim is registered or filed against: (i) the Retail Component or any part of it; or (ii) Landlord's interest in the Retail Component or any part of it; or (iii) Tenant's interest in the Premises, by any Person claiming by, through, under, or against Tenant or its contractors or subcontractors. If Tenant defaults under this Section 14.5, Landlord may, in addition to its remedies contained in Article 17 of this Lease, discharge the Secured Claim by paying the amount claimed to be due into court, and the amount paid, as well as all of Landlord's costs and expenses (including actual legal fees, disbursements and Sales Taxes) including the discharge of the Secured Claim, will be paid by Tenant to Landlord on demand.

14.6 **PERFORMANCE OF TENANT'S OBLIGATIONS BY LANDLORD** – Landlord may (without being obliged to do so), at its option, perform any work Tenant is obliged to do at Tenant's cost plus an administration fee of 15%, if such work is required: (i) due to an apparent emergency, (ii) if the Retail Component or any part of it requires repair, replacement or alteration: (a) because of the negligence, fault, omission, act or misconduct of Tenant or its directors, officers, agents, employees, contractors, licensees or invitees; (b) due to the requirements of any Applicable Laws relating to Tenant's business or conduct of business; or (c) as a result of Tenant damaging the heating apparatus, water pipes, drainage pipes or other equipment or facilities or parts of the Retail Component. Notwithstanding anything contained in this Lease to the contrary, Landlord will not incur any liability of any nature whatsoever to Tenant or any other Person claiming through Tenant as a result of any work contemplated by this Section 14.6 and/or any consequences of any such work.

14.7 **SIGNAGE**

14.7.1 Tenant shall not erect or place any exterior/outward facing sign, decal, lettering or design of any nature whatsoever without first obtaining Landlord's written consent in each instance as to the specifications, design, location and method of installation. All such signs shall conform with all Applicable Laws and Landlord's sign criteria existing from time to time for the Retail Component. Tenant will, at its sole expense, comply with all of Landlord's requirements, and in the case of the removal of any sign, will repair any damage to the Retail Component caused by the installation or removal of the sign in question. Tenant acknowledges that Landlord may at any time during the Term either require that Tenant install and maintain a suitable sign or other advertising material on the exterior of the Premises at Tenant's expense and/or replace at Tenant's expense any of its existing signs to conform to Landlord's sign criteria as may exist from time to time, subject to the foregoing provisions of this Section 14.7.1.

14.7.2 Any failure by Tenant to comply with the provisions of Section 14.7 will entitle Landlord to remove or replace all signs, decals and lettering which have not received Landlord's approval, without prejudice to all other rights and recourses which Landlord may have pursuant to this Lease or at law.

14.7.3 The Landlord agrees to provide the Tenant with signage on Bloor Street and on Yonge Street, subject to municipal approvals, compliance with Condominium Documents and the Shared Facilities Agreement and compliance with Landlord's signage programme for the Retail Component.

14.8 **REMOVAL AND RESTORATION BY TENANT**

14.8.1 Upon the expiry of the Term or earlier termination of this Lease, Tenant shall deliver to Landlord vacant possession of the Premises in the condition which Tenant is required to maintain, repair and replace them. At the same date, Tenant shall return all keys for the Premises to the Management Company and shall inform Landlord of all combinations of locks, safes and vaults, if any, in the Premises. All signs, changes, decorations, alterations, additions, equipment and leasehold improvements made or installed upon or in the Premises (save for Tenant's movable trade fixtures) which in any manner are attached in, to or under the floors, walls or ceilings, including, without limitation: (i) any component of any heating, ventilating, air-conditioning, sprinkler, plumbing or electrical equipment or other systems installed within or servicing the Premises; (ii) all light fixtures; (iii) all floor finishes of whatever nature placed upon the concrete floor of the Premises; and (iv) all storefronts, internal stairways, doors and/or partitions, shall become Landlord's property at the time they are installed, and will be surrendered to Landlord at the expiry of the Term or sooner termination of this Lease without any compensation payable to Tenant whatsoever.

14.8.2 Notwithstanding Section 14.8.1, prior to the expiry of the Term or earlier termination of this Lease, Tenant will remove from the Premises any changes, decorations, alterations, additions, or leasehold improvements designated for removal by Landlord, together with any wiring, cabling and signs so designated, whether located in the Premises or elsewhere in the Retail Component, and all Tenant's personal property, inventory and, if specified for removal by Landlord trade fixtures, all at Tenant's cost and expense. In addition, Tenant shall remove all safes and vaults, unless otherwise approved in writing by Landlord. Tenant shall at its own expense repair any damage caused to the Premises or the Retail Component by any removal, installation or restoration of its trade fixtures. If any property of Tenant which Tenant is entitled to remove remains on the Premises 5 Business Days following the expiry of the Term or earlier termination of this Lease, then the ownership will be deemed to have been abandoned to Landlord who may use it, provide it to a replacement tenant with or without compensation, or otherwise dispose of it as Landlord determines in its sole and unfettered discretion, the whole without compensation payable to Tenant and without incurring any liability to Tenant and Tenant will pay to Landlord on demand all costs incurred by Landlord in connection therewith, plus an administration fee of 15%.

ARTICLE 15 - INSURANCE AND LIABILITY

15.1 **LANDLORD'S INSURANCE**

15.1.1 Landlord will maintain throughout the Term: (i) all risks property insurance on the Retail Component (excluding the foundations and excavations) and boiler and machinery insurance for equipment contained in it and owned by Landlord (except any property or equipment that Tenant and other tenants are required to insure); (ii) commercial general liability insurance with respect to Landlord's operations in the Retail Component; and (iii) whatever other forms of insurance Landlord or Mortgagee reasonably consider advisable. Landlord's insurance policies will be in amounts, and be subject to other terms and conditions that Landlord, acting prudently, or a Mortgagee, requires from time to time. In all events where there may otherwise be overlapping insurance coverage between policies purchased by Landlord and Tenant, it is agreed the intent of insuring obligations under this Lease is for Tenant's policies to respond first in priority and regardless of any term in any policy to the contrary.

15.1.2 Notwithstanding Landlord's covenant and Tenant's contribution to the cost of Landlord's insurance premiums: (i) Tenant shall not be relieved of any liability arising from or contributed to by its fault or the fault of Persons under its control or by things under its care; (ii) no insurable interest or other benefit shall be conferred upon Tenant under Landlord's insurance policies; and (iii) Tenant shall have no right to receive proceeds from Landlord's insurance policies.

15.2 **TENANT'S INSURANCE**

15.2.1 Tenant will maintain the insurance described below throughout the Term and any period when it is in possession of the Premises, and each policy of that insurance will name Tenant as first named insured responsible for all primary obligations to the insurer, and Landlord, Management Company, First Capital Realty Inc., and each corporation, partnership and trust controlled by it, and Mortgagee all as additional insureds for all purposes (but without liability for premiums). The insurance which Tenant is required to maintain is as follows:

15.2.1.1 all risks (including flood, earthquake and on-site and off-site power outages) property insurance in an amount equal to the full replacement cost insuring: (i) all property owned by Tenant, or for which Tenant is legally liable, or installed by or on behalf of Tenant, and located within the Retail Component including, but not limited to, fittings, installations, alterations, additions, partitions, and all other leasehold improvements, and (ii) Tenant's inventory, furniture and movable trade fixtures and equipment;

15.2.1.2 boiler and machinery insurance for equipment contained in the Premises or owned or operated by Tenant on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of all leasehold improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus contained in the Premises or owned or operated by Tenant or by others (except for Landlord) on behalf of Tenant in the Premises, or relating to, or serving the Premises;

15.2.1.3 business interruption insurance in an amount that will reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against under Sections 15.2.1.1 and 15.2.1.2 and other perils commonly insured against by prudent tenants, or attributable to prevention of access to the Premises or the Retail Component as a result of those perils, including, without limitation, on-site and off-site power outages;

15.2.1.4 commercial general liability insurance including tenant's legal liability, contractual liability, non-owned automobile liability, employers liability, and owners' and contractors' protective insurance coverage, with respect to the Premises and Tenant's use of the Common Retail Facilities and the Shared Facilities, with coverage including the activities and operations conducted by Tenant and any other Person on the Premises and by Tenant and any other Person performing work on behalf of Tenant, in any other part of the Retail Component. These policies will: (i) have per occurrence limits of at least $5,000,000.00 (but Landlord, acting reasonably, may require higher limits from time to time), (ii) not have an aggregate maximum limit less than $10,000,000.00, and (iii) contain a severability of interests and cross liability clauses;

15.2.1.5 if applicable, standard owners' form automobile insurance providing third party liability insurance with $1,000,000.00 inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of Tenant; and

15.2.1.6 any other form of insurance and with whatever higher limits Landlord, acting reasonably, or Mortgagee requires from time to time, in form, in amounts and for risks against which a prudent tenant would insure.

15.2.2 The policies specified under Section 15.2.1.1 will contain Mortgagee's standard mortgage clause. For all insurance purchased by Tenant, it is understood and agreed that there shall be no right by Tenant's insurers to subrogate in Tenant's name (or otherwise pursue recovery of amounts paid out) and shall where appropriate contain a waiver of subrogation and recovery rights which Tenant's insurers may have against the Released Persons and those for whom they are in law responsible, or a permitted prior release clause achieving the same effect, in either case whether or not the damage is caused by their act, omission or negligence.

15.2.3 All policies will: (i) be taken out with insurers and in a form acceptable to Landlord; (ii) contain reasonable deductibles which amounts, for the purpose of this Lease, shall be treated as insurance; (iii) be non-contributing with, and will apply only as primary and not excess to any other insurance available to all and any of the Released Persons; (iv) not be invalidated with respect to the interests of all and any of the Released Persons by reason of any Tenant breach or violation of warranties, representations, declarations or conditions contained in the policies; and (v) contain an undertaking by the insurers to notify the Released Persons in writing not less than 30 days before any material change, cancellation, or termination. Tenant will deliver to Landlord certificates of insurance (or other proof as reasonably required by Landlord) prior to entering the Premises for any purpose and thereafter each year on the anniversary of the Commencement Date or within 24 hours of written request, in a form acceptable to Landlord, duly executed by Tenant's insurers. No acceptance or approval of any insurance certificate by Landlord derogates from or diminishes Landlord's rights under this Lease. If any insurance policy in respect of the Retail Component is cancelled or threatened to be cancelled and if Tenant fails to remedy the condition giving rise to cancellation or threatened cancellation immediately after notice by Landlord, Landlord may, at its option, either: (A) exercise its rights of termination under Article 17; or (B) at Tenant's expense, enter upon the Premises and remedy the condition giving rise to the cancellation or threatened cancellation. If Tenant fails to deliver proof of insurance pursuant to this Section 15.2.3 or take out or keep in force any insurance required under Section 15.2, Landlord may, at its option, either: (1) exercise its rights of termination under Article 17; or (2) take out or keep in force any such insurance and to pay the premium therefor and in such event, Tenant shall repay to Landlord the amounts so paid as premium, plus an administration fee of 15%, which repayment shall be deemed to be Additional Rent and shall be payable on demand.

15.3 **COMPLIANCE WITH LANDLORD'S INSURERS' REQUIREMENTS** – Tenant will promptly comply, at its expense, with all requests of Landlord's insurers or any advisory body regarding the Premises or the Retail Component. Tenant will pay to Landlord on demand as Additional Rent any increase in the cost of Landlord's insurance resulting from Tenant's use or occupation of the Premises.

15.4 **LOSS OR DAMAGE**

15.4.1 The Released Persons shall not be liable for any Damage, howsoever caused. The intent of this Section 15.4.1 is that Tenant (and all other Persons having business with Tenant) is to look solely to its resources, including any available insurance, to satisfy any claim, and otherwise release and hold the Released Persons harmless from all damages, losses and other liabilities which may arise on account of Damage irrespective of its cause.

15.4.2 Notwithstanding the provisions of Section 15.4.1 or the other provisions of this Lease, Landlord shall be responsible to Tenant for Damage to the extent caused or contributed to by the Gross Negligence of Landlord or those for whom Landlord is in law responsible, but only to the extent that: (i) the Damage would not have been covered by insurance which Tenant is obligated to maintain under

Section 15.2; and (ii) the Damage is not otherwise covered by insurance actually maintained by Tenant, in each case without taking into account any deductible or co-insurance provisions or clauses contained in Tenant's policy or policies.

15.5 **TENANT'S INDEMNITY** –Tenant will indemnify the Released Persons and save them harmless from and against all loss (including loss of Rent), claims, actions, damages, costs, liability and expense in connection with Damage, or any occurrence in the Premises, or Tenant's occupancy of the Premises or occasioned wholly or in part by any act or omission of Tenant or by anyone permitted to be on the Premises or the Retail Component by Tenant. If the Released Persons are, without fault on their part, made a party to any litigation commenced against Tenant, then Tenant will protect, indemnify and hold the Released Persons harmless and pay all expenses and actual legal fees, disbursements and Sales Taxes the Released Persons pay to their legal counsel in connection with the litigation, whether described as being costs on a substantial indemnity basis, solicitor and its own client costs or other terminology as may be determined by the courts from time to time. In addition, if any of the Released Persons are made a party to any litigation by Tenant, any subtenant, or any associated or affiliated company or by its officers, directors, agents or those for whom Tenant is in law responsible, and Tenant is not ultimately successful in obtaining a Court judgment against the Released Persons in the final instance, then Tenant will pay all expenses and actual legal fees, disbursements and Sales Taxes incurred by the Released Persons in connection with the litigation whether described as being costs on a substantial indemnity basis, solicitor and its own client costs or other terminology as may be determined by the courts from time to time, together with an amount equal to 15% of such expenses and fees on account of the Released Persons' overhead and administration costs. Tenant confirms that the foregoing is reasonable and may be pleaded by the Released Persons as a full estoppel to any claim by Tenant or otherwise.

ARTICLE 16 - DAMAGE, DESTRUCTION AND EXPROPRIATION

16.1 **DAMAGE OR DESTRUCTION OF THE PREMISES**

16.1.1 If the Premises are at any time destroyed or damaged as a result of fire or other casualty, then, subject to Section 16.2, the following provisions will apply:

16.1.1.1 if the Premises are not rendered untenantable in whole or in part, this Lease shall continue in full force and effect without abatement or diminution of any Rent;

16.1.1.2 if the Premises are rendered partly or wholly untenantable, this Lease shall continue in full force and effect, except that Minimum Rent and Charges will abate to the extent the Expert determines that the Premises cannot reasonably be used for their intended purposes but such abatement shall only apply so long as the damage or destruction was not caused by Tenant or those for whom Tenant is responsible in law;

16.1.1.3 all abatements will occur from the date of the damage or destruction until the date that Tenant is obliged to complete Tenant's Work within the Premises pursuant to Section 16.1.2; and

16.1.1.4 Landlord will commence and proceed diligently to reconstruct, rebuild or repair any damage to the Premises to the extent only of Landlord's Work stipulated in Section 1.2 of Schedule "C", which Landlord may modify to be consistent with the plans, specifications and design criteria chosen by Landlord, acting reasonably. Landlord will be under no obligation to restore the Premises to exactly the same condition and state as they existed before any damage or destruction.

16.1.2 Following Landlord's written notice that Landlord's Work has been substantially completed, Tenant will diligently complete all Tenant's Work required to fully restore the Premises for business and Tenant shall re-open the Premises in conformity with Section 9.2 no later than 90 days after Landlord notifies Tenant that the Premises are available for it to start Tenant's Work. Tenant shall recommence payment of all Minimum Rent and Charges on the earlier of the date Tenant opens for business or the

expiry of the 30 day period. Tenant shall use the proceeds of any recovery on Tenant's insurance policies for restoration of improvements made by Tenant to the Premises, and for restoration and/or replacement of Tenant's equipment, trade fixtures and inventory, and to cover any business interruption loss. Tenant shall not be entitled to any allowance, inducement, payment or other consideration from Landlord in connection with Tenant's Work even if such allowance, inducement, payment or other consideration was made at the time of original construction of the Premises. Tenant further acknowledges and agrees that any reconstruction, rebuilding or repair which relates to the Shared Facilities within the Residential Component shall be subject to the Condominium Documents and the Shared Facilities Agreement.

16.2 **DAMAGE OR DESTRUCTION OF RETAIL COMPONENT**

16.2.1 Despite any contrary provision in this Lease and specifically, but without limitation, Section 16.1, if the Retail Component is totally or partially damaged or destroyed as a result of fire or other casualty (whether the Premises are affected or not), and

16.2.1.1 in the Expert's opinion, the damaged or destroyed portions cannot reasonably be repaired, restored or rebuilt within 12 months following the occurrence; or

16.2.1.2 if the Premises are damaged and destroyed and Tenant is not operating its business at the time the damage occurred; or the cost as estimated by the Expert of repairing, restoring or rebuilding the damaged or destroyed portions will exceed the proceeds of insurance available to Landlord for such purpose; or

16.2.1.3 the damage or destruction was caused by an uninsured peril; or

16.2.1.4 25% or more of the GLA of the Retail Component is damaged or destroyed; or

16.2.1.5 25% or more of the Common Retail Facilities and/or the Shared Facilities is damaged or destroyed; or

16.2.1.6 any premises with a Major Tenant are damaged or destroyed; or

16.2.1.7 as at the date of the damage or destruction less than 2 years remains during the Term,

then in any of the above cases, Landlord may, at its option (to be exercised by written notice to Tenant within 90 days following any such occurrence) terminate this Lease and on the date specified in such notice, this Lease shall terminate. Tenant shall have no right or recourse of any nature whatsoever against Landlord resulting from the exercise by Landlord of its right to terminate this Lease.

16.2.2 If the Retail Component is totally or partially damaged or destroyed and Landlord does not elect to terminate this Lease, then this Lease shall continue in full force and effect and, subject to Section 16.2.3, Landlord shall reconstruct, rebuild or repair, as necessary, those portions of the Retail Component which have been so damaged or destroyed to the extent only of Landlord's responsibilities pursuant to the terms of the various leases for premises in the Retail Component and exclusive of any tenant's responsibilities. Furthermore, if the Premises are being repaired, rebuilt or reconstructed, the provisions of Section 16.1 will apply.

16.2.3 Tenant acknowledges and agrees that if Landlord does any reconstruction, rebuilding or repairing, Landlord may use plans, specifications and working drawings for the Retail Component which differ from those existing prior to the damage or destruction.

16.3 **EXPROPRIATION** – Landlord and Tenant agree to cooperate with each other in respect of any expropriation of all or any part of the Premises or any other part of the Retail Component, so that each may receive the maximum award to which each is respectively entitled by law. Tenant agrees that, to the extent

any portion of the Retail Component other than the Premises is expropriated, the full proceeds accruing therefrom or awarded as a result thereof shall belong solely to Landlord. Tenant will execute such documents as in the reasonable opinion of Landlord are or may be necessary to give effect to the foregoing. If at any time during the Term, any part of the Retail Component Landlord considers necessary to continue operations is acquired or expropriated by any lawful expropriating authority, or if access to the Premises is materially affected by any such acquisition or expropriation, then Landlord may terminate this Lease on written notice to Tenant, which termination will take effect on the date of acquisition or expropriation. Whether this Lease is terminated or not, Tenant shall have no claim against Landlord as a result of or arising from the expropriation of all or any part of the Retail Component or from the resultant termination, if any.

ARTICLE 17 - DEFAULT, RECOURSES AND SECURITY

17.1 **EVENT OF DEFAULT**

17.1.1 The occurrence of any of the following shall constitute an Event of Default under this Lease:

17.1.1.1 Tenant fails to pay Rent within 5 days from when due under this Lease; or

17.1.1.2 Tenant fails to fulfill any of its obligations under this Lease (other than those referred to in Sections 17.1.1.1 and 17.1.1.3 to 17.1.1.12 inclusive), and the default is not rectified within the earlier of: (i) 15 business days after written notice of default to Tenant stating with reasonable particularity the nature of such default (or such longer period as may be necessary to cure the default if the default is not reasonably capable of being cured within such 15 business day delay, provided Tenant has commenced to cure such default within said 15 business day delay and proceeds to cure same with all due diligence); or (ii) any period stipulated in any specific provision of this Lease; or

17.1.1.3 Tenant or any Person carrying on business in the Premises or any part thereof, becomes bankrupt or insolvent (as those terms are defined in the *Bankruptcy and Insolvency Act*) or takes the benefit of any law now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes an assignment for the benefit of its creditors or any arrangement or compromise; or

17.1.1.4 Tenant abandons or attempts to abandon the Premises or expresses its intent to abandon the Premises or its intent not to fulfill any of its obligations under this Lease; or

17.1.1.5 the Premises become and remain vacant or are not open for business for a period of 3 consecutive days; or

17.1.1.6 any of the property in the Premises is being seized before or after judgment and main levée or release of the seizure is not obtained within 15 days of the seizure being practised; or

17.1.1.7 a Transfer is effected or purported to be effected or any Tenant Security is granted in any manner other than as permitted by this Lease; or

17.1.1.8 a receiver or a receiver and manager is appointed for all or a part of the property of Tenant, or of another Person carrying on business in the Premises; or

17.1.1.9 steps are taken or proceedings are instituted or effected for the dissolution, winding up or other termination of Tenant's existence or for the liquidation of their respective assets; or

17.1.1.10 Tenant makes or attempts to make a bulk sale of any of its assets regardless of where they are situated (except for a bulk sale made to a Transferee when the Transfer has been

consented to by Landlord) or moves or commences, attempts or threatens to move its goods, chattels, property, affairs or revenues of Tenant (other than in the normal course of its business); or

17.1.1.11 Tenant falsifies any Controls or statements including but not limited to Monthly Statements and Annual Statements, or if Tenant has not followed the recommendations of the Auditor as required by Section 6.7.1; or

17.1.1.12 Tenant fails to deliver any statement or certificate within the time provided in Section 13.1 and such failure remains unremedied for a period of 5 days after the Tenant is in receipt of written notice of such failure from the Landlord.

17.1.2 Upon the occurrence of an Event of Default, this Lease shall, at Landlord's option, exercisable by written notice to Tenant, ipso facto terminate, without prejudice to all other rights and recourses of Landlord, and Tenant shall immediately vacate and surrender to Landlord the Premises, and Landlord may without notice or any form of legal process forthwith re-enter upon and take possession of the Premises, remove or cause to be removed therefrom any Person occupying same together with any property therein and/or may bolt the Premises or change the locks thereon, despite Applicable Laws to the contrary and notwithstanding Section 14.8, at Landlord's sole option to be exercised in its discretion, Landlord may retain such of Tenant's movable fixtures (such as stoves, refrigerators, freezers and other equipment) as Landlord sees fit.

17.2 **RIGHT TO RELET** – Upon the occurrence of an Event of Default, without prejudice to all the rights and recourses of Landlord specified herein and without diminishing or extinguishing the liability of Indemnifier, Landlord shall have the right, upon written notice to Tenant, to repossess the Premises without terminating this Lease and then Landlord may, from time to time, make such alterations and repairs as are necessary in order to relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rent and upon such other terms and conditions as Landlord in its sole and unfettered discretion considers advisable. If the amounts received from any third party as rental from any such reletting during any month is less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency which shall be paid monthly in advance on or before the first day of each and every month.

17.3 **CONSEQUENCES OF DEFAULT** – Upon the occurrence of an Event of Default by Tenant, Landlord shall be immediately entitled to payment of the equivalent of Minimum Rent, Percentage Rent, and Charges for the then current month and for the next succeeding three months as accelerated rent, and Landlord may immediately claim the same together with any arrears then unpaid and any other amounts owing to Landlord by Tenant, under reserve of and without prejudice to the rights of Landlord to recover: (i) arrears of Rent or damages for any antecedent Event of Default by Tenant of its obligations under this Lease; and (ii) damages for loss of Rent suffered by reason of this Lease having been prematurely terminated.

17.4 **DAMAGES** – If Landlord terminates this Lease for an Event of Default, it may recover from Tenant damages it incurs by reason of the Event of Default, including, without limitation, the cost of recovering the Premises, reasonable legal fees, disbursements and Sales Taxes Landlord pays to its legal counsel, whether described as being costs on a substantial indemnity basis, solicitor and its own client costs or other terminology as may be determined by the courts from time to time, and the full amount of Rent for that part of the Term that would have remained, but for the termination of this Lease, all of which amounts will be due immediately and payable by Tenant to Landlord.

17.5 **RIGHT OF LANDLORD TO SEIZE** – Tenant waives and renounces the benefit of any present or future law taking away or limiting Landlord's rights against the property of Tenant and, notwithstanding any such law, Landlord may seize and sell all Tenant's goods and property in the Premises and apply the proceeds of such sale to the Rent and all other amounts outstanding and to the costs of the seizure and sale in the same manner as might have been done if such law had not been passed. Tenant further agrees that if it leaves the Premises leaving any Rent or other amounts provided to be paid under this Lease unpaid, Landlord, in addition to any remedy otherwise provided by law, may seize and sell the goods and chattels

of Tenant formerly in the Prremises at any place to which Tenant or any other Person may have removed them, in the same manner as if such goods and chattels had remained upon the Premises.

17.6 **ADDITIONAL REMEDIES**

17.6.1 Whenever an Event of Default occurs, Landlord may perform any such obligation for the account of Tenant and may enter upon the Premises for that purpose without notice unless the contrary is specified in this Lease. Tenant shall pay to Landlord on demand, the amount of all costs, charges and expenses incurred by Landlord in connection with such Event of Default or in curing or attempting to cure such Event of Default plus an administration fee of 15%.

17.6.2 If there has been an Event of Default, then in addition to and without prejudice to any other rights or recourses of Landlord which Landlord may have pursuant to this Lease or at law, Landlord may suspend any services (including, without limitation, electrical service) being supplied to Tenant at the time.

17.7 **NON-WAIVER** – No waiver shall be inferred from or implied by anything done or omitted to be done by Landlord or Tenant unless such waiver is expressed in writing. No delivery by Tenant or acceptance by Landlord of any keys shall be deemed to be or construed as a surrender or other termination of this Lease or Landlord's acceptance of a surrender or termination.

17.8 **WAIVER** – If there has been an Event of Default and Landlord has instituted proceedings to cancel, terminate or confirm its cancellation or termination of this Lease, notwithstanding any law or custom to the contrary, Tenant shall not have any right to prevent such cancellation or termination by remedying such default subsequent to the institution of such legal proceedings or steps.

17.9 **LEGAL FEES AND OTHER AMOUNTS PAYABLE BY TENANT**

17.9.1 Whenever Landlord retains the services of legal counsel to enforce the fulfilment by Tenant of any of its obligations under this Lease, in addition to any other fee or charge payable under this Lease, Tenant shall pay to Landlord on demand, in addition to and without prejudice to legal costs otherwise payable by Tenant and whether or not legal proceedings are in fact instituted, an amount equal to the actual costs incurred by Landlord.

17.9.2 In addition to any fee, charge or interest, if there has been an Event of Default due to the simple delay in performance of such obligation, Tenant will pay to Landlord on demand the sum of $100.00 per day or partial day, per Event of Default, until such default is remedied, the whole without prejudice to any rights or recourses of Landlord. Tenant hereby renounces the right to have this amount reduced, even if the obligation for which the amount is being imposed has been performed in part.

17.10 **REMEDIES GENERALLY** – The remedies under this Lease are cumulative. No remedy is exclusive or dependent upon any other remedy. Mention of any particular remedy shall not preclude Landlord from any other remedy in law or in equity.

17.11 **LIMITATION** – Tenant covenants that it will not object to any applications to: (i) amend the Official Plan or other designation(s) of the Retail Component or any adjacent or contiguous lands owned by Landlord or an affiliate; (ii) amend the zoning by-law(s) applicable to the Retail Component or any adjacent or contiguous lands owned by Landlord or any affiliate; (iii) obtain minor variances or committee of adjustment consents or any consent or permit pertaining to the Retail Component or any adjacent or contiguous lands owned by Landlord or any affiliate; or (iv) amend the site plan or site plan agreement(s) or any agreements pertaining to the Retail Component or any adjacent or contiguous lands owned by Landlord or any affiliate. A breach by Tenant of the covenant contained in this Section 17.11 shall be an Event of Default under this Lease entitling Landlord to exercise all remedies provided for herein.

17.12 **SECURITY DEPOSIT – INTENTIONALLY DELETED**

17.13 **LETTER OF CREDIT – INTENTIONALLY DELETED**

17.14 **TENANT SECURITY** – Tenant warrants that under no circumstances will this Lease, the Premises, the Retail Component, or any part of any of the foregoing, ever become encumbered or otherwise affected by any Tenant Security. Tenant warrants that no property, movable or immovable, located within the Premises will become encumbered or otherwise affected by any Tenant Security without the prior written consent of Landlord, which may be unreasonably withheld or delayed and in Landlord's sole and unfettered discretion, such consent may be granted upon such conditions as Landlord chooses to impose. Without limitation, Landlord will be deemed reasonable in refusing its consent if Tenant encumbers or otherwise affects any property which is or may become Landlord's pursuant to the terms of this Lease, whether Section 17.1.2 or otherwise. Tenant shall accompany its request for Landlord's consent to grant Tenant Security contemplated by this Section 17.14 with a copy of all documentation to be executed by Tenant and/or the creditor of such Tenant Security (or mandatary or trustee acting on the creditor's behalf) in relation to the said Tenant Security for Landlord's examination, and Tenant will pay on demand Landlord's reasonable legal expenses attributable to examining such documentation in addition to a processing fee of $300.00. This amount will be non-refundable, whether or not the consent is obtained. Tenant and the creditor of such security (or mandatary or trustee acting on the creditor's behalf), shall enter into an agreement prepared by Landlord in the form attached hereto as Schedule "H" to give effect to the provisions of this Section 17.14 at Tenant's sole cost.

ARTICLE 18 - HAZARDOUS SUBSTANCES

18.1 **ENVIRONMENTAL**

18.1.1 Tenant will use the sanitary drains and sewers only for liquid that is not a Hazardous Substance and which may be lawfully and safely discharged into the municipal sewer system. All wastes (including Ordinary Municipal Waste and waste that is, or contains, a Hazardous Substance) will be disposed of or kept at the Retail Component by Tenant at its expense as is required by Applicable Laws and as directed by Landlord. Tenant will comply with all Applicable Laws pertaining to waste reduction (including, if applicable, reuse and recycling) in connection with the Premises and Tenant's conduct of business. Without limiting this requirement, Tenant will: (i) perform all waste audits and waste reduction work plans; (ii) implement all waste reduction work plans; and (iii) provide to Landlord, within 15 days of Landlord's request in each case, copies of all evidence that Landlord requires concerning compliance. Tenant will also do whatever else is reasonably requested by Landlord in connection with any waste audits, waste reports, and waste reduction work plans that Landlord prepares. To the extent responsibility in connection with any waste related matters is imposed by Applicable Laws so as to appear to overlap or duplicate responsibilities among Landlord, Management Company, Tenant, or any other party, Landlord may allocate responsibility to Tenant in whole or in part by notice to Tenant particularizing the responsibilities which Tenant will assume.

18.1.2 Tenant will not authorize, cause or permit to be brought on or into the Premises, or the Retail Component, any Hazardous Substance, except in strict compliance with Applicable Laws and in a manner that will not result in harm or damage to the Premises or the Retail Component or result in costs or liability to Landlord. Without limiting the foregoing, Tenant shall not cause or permit any condition to exist or be created in the Premises or at the Retail Component that results or may result in a Hazardous Condition. Tenant will not authorize, cause, permit, or suffer any Hazardous Substance to be Discharged except for such matters that are insignificant and part of Tenant's ordinary business. Landlord may, but is not required to, at any time and from time to time, perform an audit, investigation or assessment of any Discharge or Hazardous Condition. Where a Discharge or Hazardous Condition occurs or may occur, Tenant will immediately notify Landlord and all Authorities and Tenant will immediately stop the Discharge and the Hazardous Condition, as the case may be, and clean up the Discharge and Hazardous Condition, all at Tenant's expense. Tenant will also take all steps to remediate the effects of the Discharge and the Hazardous Condition, including to restore the environment affected by the Discharge or the Hazardous Condition to the satisfaction of the Authorities and Landlord, all in accordance with Applicable Laws and a work plan prepared by an Expert, such that the Premises and the Retail Component are returned to the condition existing prior to the Discharge or the creation of the Hazardous Condition. Tenant will further

provide Landlord, in a timely manner, with a certificate from the Expert confirming that the clean up, remediation and restoration have been conducted and completed in accordance the terms of this Lease described above. For the purpose of liability Tenant, and not Landlord, is the owner and Person in care, management and control of any Hazardous Substance or Hazardous Condition that Tenant authorizes, causes or permits to be present, spilled, leaked, discharged or otherwise released at, in, onto, over, under, to or from the Premises or the Retail Component. If Tenant fails or refuses to promptly clean up, remediate and restore the environment as required above, or if, in Landlord's reasonable opinion, Tenant is not competent to do so or has failed to do so properly in a reasonable or timely manner, Landlord may, but is not required to, upon notice to Tenant as may be appropriate in the circumstances, carry out the whole or any part of the clean-up, remediation and restoration and Tenant will pay to Landlord all costs incurred by Landlord in so doing plus an administration fee of 15%. Tenant will fully comply with any orders, directives or other requirements (collectively, the "Orders") of all Authorities concerning the presence, spill, leak, discharge or other release of Hazardous Substances, or the existence of a Hazardous Condition, authorized, caused, permitted or suffered by Tenant or any other party on or at the Premises or the Retail Component, pollution control and environmental clean-ups, remediation and restoration of the Premises or the Retail Component, and if Landlord is required by the Authorities to do anything in relation to an environmental problem authorized, permitted, caused or suffered by Tenant or any other party on the Premises, Tenant will, upon receipt of notice from Landlord, carry out the Orders at Tenant's expense. Tenant will perform or cause to be performed at its cost, in accordance with Landlord's request, any tests, assessments, inspections or work that any environmental assessment, study or audit recommends or that any Authorities request or require in connection with the Premises or Tenant's conduct of business in the Premises or the Retail Component and will provide whatever reports, data or other information that Landlord reasonably requires. Landlord may instead, but is not required, on written notice to Tenant as may be appropriate in the circumstances, have the tests, assessments, inspections, reports and work performed by an Expert at Tenant's expense. Tenant will take all proactive and preventative steps that may be imposed or recommended under any of the Applicable Laws or that a prudent tenant acting reasonably would take in order to minimize risk pertaining to Hazardous Substances, Hazardous Conditions or any of the other matters referred to in Section 18.1.

18.2 **SPECIAL INDEMNITY** – Tenant will indemnify the Released Persons and save them harmless from every loss, cost, claim, expense, damage, penalty, fine and liability whether imposed by Applicable Laws, or otherwise arising from or in any way related to Hazardous Substances or Applicable Laws (including but not limited to environmental legislation, waste reduction legislation and workplace health and safety legislation) that relate to or affect the Premises, Tenant's use of the Premises or Tenant's conduct of business in the Premises or the Retail Component, including, without limitation, any Hazardous Substances or Hazardous Conditions in or upon the Retail Component caused, or contributed to, by any party on the Premises other than the Released Persons. In particular, without limiting what is set out above, Tenant will indemnify the Released Persons and save them harmless in respect of any breach of Applicable Laws by the Tenant or of any of the obligations set out in Section 18.1 and this indemnity will survive expiration or earlier termination of this Lease.

ARTICLE 19 - MISCELLANEOUS

19.1 **UNAVOIDABLE DELAY** – If any party hereto is bona fide delayed or hindered in or prevented from the performance of any term, obligation or act required hereunder by reason of Unavoidable Delay, then performance of such term, obligation or act is excused for the period of the delay. However, the provisions of this Section 19.1 shall not operate to excuse Tenant from the prompt payment of Rent.

19.2 **NO PARTNERSHIP** – Nothing contained in this Lease or as a result of any acts of the parties hereto shall be deemed to create any partnership, joint venture or any other relationship between the parties other than the relationship of landlord, tenant, and indemnifier.

19.3 **TIME OF ESSENCE** – Time shall be of the essence of this Lease.

19.4 **REGISTRATION** – Tenant will not register or permit the registration of this Lease or any assignment or sublease or other document evidencing an interest of Tenant or anyone claiming through or under Tenant

in this Lease or the Premises except that Tenant may, at its sole cost and expense, register a short form of lease or caveat or notice describing the parties, the Term and any options to extend the Term, but there shall be no mention or reference to any of the financial terms of this Lease. Upon the expiration or termination of the Term, Tenant shall immediately discharge or otherwise vacate any such registration or caveat.

19.5 **ENTIRE AGREEMENT** – This Lease constitutes the entire agreement between the parties and supercedes and replaces the Letter of Intent dated May 25, 2017 executed by the parties. Tenant acknowledges that there are no promises, representations, agreements, conditions or understandings (whether oral or written, implied or expressed) between the parties other than as are expressly herein set forth.

19.6 **NOTICES** – Any notice, demand or request, to be given by any party to the other shall be given by registered or certified mail or delivered by hand or by courier. Any notice, demand or request, sent by registered or certified mail will be deemed to have been received three Business Days following the date of mailing, and any notice delivered by hand or by courier will be deemed to have been received on the day it is delivered. However, invoices or other requests for payment may be sent by electronic mail in lieu of or in addition to any of the foregoing methods and Landlord's notification to Tenant that the Premises are ready to commence Tenant's Work may be sent by electronic mail in lieu of or in addition to any of the foregoing methods and such invoices, other requests for payment or notifications will be deemed to have been received on the first Business Day following the date of transmission. Any party may change its address for notice by advising the other party in writing of such change.

19.7 **COMPLIANCE WITH PLANNING ACT** – It is an express condition of this Lease that the subdivision control provisions of the *Planning Act* (Ontario), as amended, and any successor or replacement legislation and any similar legislation in the Province, be complied with, if necessary. If such compliance is necessary, Tenant covenants and agrees to diligently proceed, at its own expense, to obtain the required consent and Landlord agrees to co-operate with Tenant in bringing such application. Until such time as the necessary consent is obtained, the Term shall be a maximum of 21 years less one day.

19.8 **GENERAL MATTERS OF INTENT AND INTERPRETATION** – The captions appearing in this Lease have been inserted as a matter of convenience and for reference only. This Lease will be construed in accordance with the laws of the Province and the laws of Canada applicable therein. The use of the neuter singular pronoun to refer to Landlord or Tenant is a proper reference even though Landlord or Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The grammatical changes needed to make the provisions of this Lease apply in the plural sense when there is more than one Landlord or Tenant and to corporations, associations, partnerships or individuals, males or females, are implied. Each obligation or agreement of Landlord or Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes. If for any reason whatsoever, any term, obligation or condition of this Lease, or the application thereof to any Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, obligation or condition: shall be deemed to be independent of the remainder of this Lease and to be severable and divisible therefrom; and the remainder of this Lease shall not be affected, impaired or invalidated and will continue to be applicable and enforceable to the fullest extent permitted by law.

19.9 **OVERHOLDING** – Despite any present or future legislation to the contrary, neither this Lease nor the Term shall be subject to tacit renewal. Should Tenant remain in possession of the Premises after the expiry of the Term or earlier termination of this Lease without having exercised its option to extend pursuant to Section 2 of Schedule E, then despite any statutory provision or legal presumption to the contrary, Tenant will be deemed to be occupying the Premises as a tenant from month to month which tenancy may be terminated by either party upon 30 consecutive days written notice and not one clear month, during which the monthly Minimum Rent will be equal to one-twelfth of two times the aggregate of the Minimum Rent, Percentage Rent and Additional Rent payable in the last 12 month period of the Term, and otherwise upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of Charges and all other Additional Rent) so far as these are applicable to a monthly tenancy.

19.10 **BROKERAGE FEES** – All brokerage fees or leasing commissions payable in connection with this Lease shall be paid solely by Landlord. Tenant represents and warrants that it has not engaged any real estate broker or agent to act on its behalf with respect to this lease transaction, other than **DWSV Remax Ultimate Realty Inc.**

19.11 **INTENTIONALLY DELETED**

19.12 **BINDING ON SUCCESSORS AND ASSIGNS** – The rights and obligations under this Lease extend to and bind the successors and assigns of Landlord and, if Section 12.1 is complied with, the permitted successors and permitted assigns of Tenant. If there is more than one Person comprising Tenant, each is bound jointly and severally by this Lease.

19.13 **ACT RESPECTING THE PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR** – Tenant authorizes and gives permission to Landlord to conduct a search of all financial or credit information (and constitute a file, if it so desires) or other information that Landlord may require and which are pertinent to the conclusion or to the execution of these presents, concerning Tenant. In this regard, any Person, notably, the credit bureaus, banks, suppliers, landlords, business relations, etc. are, by these presents, authorized to fully disclose all information requested by Landlord, during all of the Term of this Lease and subsequently, if necessary. Tenant recognizes having been informed of the specific objective of constituting a file or having a file constituted by Landlord on itself, as well as the use which could be made of the said information and recognizes that these objectives are of a serious and legitimate nature and that the said use is necessary for the conclusion and execution of these presents.

19.14 **HST REGISTRATION NUMBERS**

19.14.1 Landlord confirms that its HST registration number is **87120 9139 RT0001**.

19.14.2 Tenant confirms that its HST registration number is **83723 3816 RT0001**.

19.15 **CONFIDENTIALITY, PERSONAL INFORMATION** – Tenant shall keep confidential all financial information with respect to this Lease, provided that it may disclose such information to its auditors, consultants and professional advisors so long as they have first agreed to respect such confidentiality. Any Tenant that is an individual hereby consents to the collection and use of their personal information, as provided directly or collected from third parties, for the purposes of Landlord considering Tenant's offer to lease and determining the suitability of Tenant (both initially and on an on-going basis) including the disclosure of such information to existing and potential lenders, investors, and purchasers.

19.16 **LANDLORD CONDITION TO LEASE – INTENTIONALLY DELETED**

19.17 **TENANT CONDITION TO LEASE – INTENTIONALLY DELETED**

19.18 **RECRUITMENT** – Tenant hereby confirms that it is free to enter into this Lease. Tenant acknowledges and agrees that Landlord has not made any representations or warranties as to any existing contractual or other arrangement with any existing landlord. Tenant acknowledges Landlord's recommendation to obtain legal or other advice as to entering into this Lease. Tenant further acknowledges that such advice was sought and received, or alternately, considered and a decision made to forego such advice.

19.19 **COUNTERPART** – This Lease may be executed in counterpart, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same document.

19.20 **CONDOMINIUM**

19.20.1 Tenant acknowledges that: (i) certain portions of the Development may be registered as one or more separate condominiums under the Act or may be retained in fee simple or transferred, sold or leased, in whole or in part, to third parties; (ii) in the event there is more than one condominium created at

the Development, the "Condominium" and the "Condominium Corporation " shall be deemed to refer to all of the condominium corporations located in the Development; and (iii) Landlord may enter into agreements with the Residential Component with respect to the use of the Shared Facilities and operating, maintaining, repairing and replacing the Shared Facilities. In the conduct of Tenant's business and provided such do not conflict with the terms of this Lease, Tenant will comply with all applicable provisions of the Condominium Documents including, without limitation, any Shared Facilities Agreement, and not do or permit anything to be done which would constitute a breach of Landlord's obligations or undertakings under the Condominium Documents, the Shared Facilities Agreement, or as owner of the Retail Component. Tenant acknowledges that, in such circumstances: (i) it shall be bound by and will respect the provisions of the Act and the Condominium Documents; and (ii) it will execute and deliver whatever documents may be required of it pursuant to the Act and the Condominium Documents as and when required.

19.21 **TORONTO TRANSIT COMMISSION**

Tenant specifically acknowledges and agrees that the Retail Component is subject to the terms of certain agreements entered into between Landlord and the Toronto Transit Commission (the "**TTC**") that, among other things, provides rights to the general public over portions of the Common Retail Facilities for the purposes of providing access to and from the TTC's subway system located within the vicinity of the Development (collectively, the "**TTC Agreements**"). In the conduct of Tenant's business, Tenant will comply with all applicable provisions of the TTC Agreements, and Tenant shall not do or permit anything to be done which would constitute a breach of Landlord's obligations or undertakings under the TTC Agreements. Tenant further acknowledges and agrees that neither Landlord nor the Released Persons shall be liable or responsible in any way for any claims, losses, judgments, actions, injury or death of any persons, or loss or damage to any property at any time in, on or about the Premises or any property owned by or being the responsibility of Tenant or any of its servants, agents, customers, contractors or persons for whom Tenant is in law responsible, or for any disturbance to Tenant's business operations caused or contributed to by the observance by Landlord of its obligations pursuant to the TTC Agreements, and Tenant shall indemnify Landlord and the Released Persons and save them harmless from same.

[SIGNATURES ON NEXT PAGE]

LANDLORD AND TENANT HAVE SIGNED BELOW, to confirm the terms of this Lease.

TENANT HAS EXECUTED THIS LEASE THE 27th DAY OF APRIL, 2018

MCEWAN ENTERPRISES INC.
(Tenant)

By: _____
(authorized signature)
Name: Mark McEwan
Title: President

I have authority to bind the Corporation.

LANDLORD HAS EXECUTED THIS LEASE THE _____ DAY OF APRIL, 2018

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

By: _____
Name: Jordan Robins
Title: Executive VP and COO

By: _____
Name: Marta O Lewycky
Title: VP, National Legal Affairs

We have authority to bind the Corporation

LANDLORD AND TENANT HAVE SIGNED BELOW, to confirm the terms of this Lease.

TENANT HAS EXECUTED THIS LEASE THE _____ DAY OF APRIL, 2018.

MCEWAN ENTERPRISES INC.
(Tenant)

By: _____
(authorized signature)
Name: Mark McEwan
Title: President

I have authority to bind the Corporation.

LANDLORD HAS EXECUTED THIS LEASE THE 30th DAY OF APRIL, 2018.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

By: _____
Name: Jordan Robins
Title: Executive VP and COO

By: _____
Name: Marta O Lewycky
Title: VP, National Legal Affairs

We have authority to bind the Corporation.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE RETAIL COMPONENT

PIN 21108-0259 (LT)

PART PARKLT 8 AND PART OF PARKLT 8, KNOWN AS ROY'S SQUARE STOPPED UP AND CLOSED BY BY-LAW 47-2005, INST. AT771854, CON 1 FTB TORONTO ; AND PART OF LOTS 1 AND 2 N/S OF HAYDEN STREET AND PART LOTS 1, 2 AND 3 AND PART OF AN UNNAMED ROAD EAST OF YONGE STREET CLOSED BY BY-LAW 562-2009, INST. AT2118062, PLAN 163, DESIGNATED AS PTS 1, 10, 12, 14, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 31, 32, 33 AND 34 ON PLAN 66R29128; TORONTO; TOGETHER WITH AN EASEMENT AS IN AT2777354; SUBJECT TO AN EASEMENT OVER PARTS 10 AND 12 PLAN 66R28245 IN FAVOUR OF PART OF PARK LOT 8, CONC. 1 FTB & PART LOTS 1-4 N/S HAYDEN STREET PLAN 163, DESIGNATED AS PARTS 1-5 ON PLAN 63R4472 AS IN AT2777293; PARTIAL RELEASE PTS 12,14,28,30 AND 31 66R29128 AT4503481; TOGETHER WITH AN EASEMENT OVER PART LOT 3, EYS, AND PT LTS 1 AND 2 N/S HAYDEN ST. PLAN 163 TORONTO DESIGNATED AS PARTS 10, 11 AND 12, PLAN 66R26897, AS IN AT3523611;; SUBJECT TO AN EASEMENT OVER PART PARKLT 8 AND PART OF PARKLT 8, KNOWN AS ROY'S SQUARE DESIGNATED AS PART 10 ON 66R28245 IN FAVOUR OF PARTS 2, 3, 4, 5, 6, 7, 8, 9 & 11 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; TOGETHER WITH AN EASEMENT OVER PARTS 2, 3, 4, 9 & 11 ON 66R28245 AS IN AT4326703; TOGETHER WITH AN EASEMENT OVER PART 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT OVER PART 26, PLAN 66R29128 IN FAVOUR OF PARTS 1,2,3,4,5 PLAN 63R4472 AS IN AT4503582; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; SUBJECT TO AN EASEMENT OVER PARTS 20, 21, 24, 25, 26 & 27 ON 66R29128 IN FAVOUR OF PARTS 5, 6 & 9 ON 66R29128 AS IN AT4734973; CITY OF TORONTO

PIN 21108-0260 (LT)

PART PARKLT 8 AND PART OF PARKLT 8, KNOWN AS ROY'S SQUARE STOPPED UP AND CLOSED BY BY-LAW 47-2005, INST. AT771854, CON 1 FTB TORONTO; DESIGNATED AS PART 5 ON PLAN 66R29128; TORONTO; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVERT PART LOT 3, EYS, AND PT LTS 1 AND 2 N/S HAYDEN ST. PLAN 163 TORONTO DESIGNATED AS PARTS 10, 11 AND 12, PLAN 66R26897, AS IN AT3523611; TOGETHER WITH AN EASEMENT OVER PARTS 2, 3, 4, & 11 ON 66R28245 AS IN AT4326704; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; TOGETHER WITH AN EASEMENT OVER PARTS 20, 21, 24, 25, 26 & 27 ON 66R29128 AS IN AT4734973; TOGETHER WITH AN EASEMENT OVER PARTS 15 & 29 ON PLAN 66R29128 AS IN AT4734974; CITY OF TORONTO

PIN 21108-0261 (LT)

PART PARKLT 8 AND PART OF PARKLT 8, KNOWN AS ROY'S SQUARE STOPPED UP AND CLOSED BY BY-LAW 47-2005, INST. AT771854, CON 1 FTB; DESIGNATED AS PART 6 ON PLAN 66R29128; TORONTO; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVERT PART LOT 3, EYS, AND PT LTS 1 AND 2 N/S HAYDEN ST. PLAN 163 TORONTO DESIGNATED AS PARTS 10, 11 AND 12, PLAN 66R26897, AS IN AT3523611; TOGETHER WITH AN EASEMENT OVER PARTS 2, 3, 4, & 11 ON 66R28245 AS IN AT4326704; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; TOGETHER WITH AN EASEMENT OVER PARTS 20, 21, 24, 25, 26 & 27 ON 66R29128 AS IN AT4734973; TOGETHER WITH AN EASEMENT OVER PARTS 15 & 29 ON PLAN 66R29128 AS IN AT4734974; CITY OF TORONTO

PIN 21108-0262 (LT)

PART PARKLT 8 AND PART OF PARKLT 8, KNOWN AS ROY'S SQUARE STOPPED UP AND CLOSED BY BY-LAW 47-2005, INST. AT771854, CON 1 FTB TORONTO; AND PART OF LOT 1 N/S OF HAYDEN STREET AND PART LOTS 1, 2 AND 3 AND PART OF AN UNNAMED ROAD EAST OF YONGE STREET CLOSED BY BY-LAW 562-2009, INST. NO. AT2118062, PLAN 163, DESIGNATED AS PART 9 ON PLAN 66R29128; TORONTO; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVERT PART LOT 3, EYS, AND PT LTS 1 AND 2 N/S HAYDEN ST. PLAN 163 TORONTO DESIGNATED AS PARTS 10, 11 AND 12, PLAN 66R26897, AS IN AT3523611; SUBJECT TO AN EASEMENT OVER PART 9 ON 66R28245 IN FAVOUR OF PARTS 1, 2, 3, 4, 7, 8, 10, 11 & 12 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT OVER PART 9 ON 66R28245 IN FAVOUR OF PARTS 1, 10 & 12 ON 66R28245 AS IN AT4326703; TOGETHER WITH AN EASEMENT OVER PARTS 2, 3, 4, & 11 ON 66R28245 AS IN AT4326704; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; TOGETHER WITH AN EASEMENT OVER PARTS 20, 21, 24, 25, 26 & 27 ON 66R29128 AS IN AT4734973; TOGETHER WITH AN EASEMENT OVER PARTS 15 & 29 ON PLAN 66R29128 AS IN AT4734974; CITY OF TORONTO

PIN 21108-0264 (LT)

PT PARKLT 8 CON 1 FTB TWP YORK, DESIGNATED AS PART 13 ON PLAN 66R29128; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVER PARTS 10, 11 AND 12 ON PLAN 66R-26897 AS IN AT3523611; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; TOGETHER WITH AN EASEMENT OVER PART 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT AS IN AT4479042; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; CITY OF TORONTO

PIN 21108-0265 (LT)

PT PARKLT 8 CON 1 FTB TWP YORK, DESIGNATED AS PART 17 ON PLAN 66R29128; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVER PARTS 10, 11 AND 12 ON PLAN 66R-26897 AS IN AT3523611; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; TOGETHER WITH AN EASEMENT OVER PART 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT AS IN AT4479042; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; CITY OF TORONTO

PIN 21108-0266 (LT)

PT PARKLT 8 CON 1 FTB TWP YORK; PT OF PARK LT 8, CON 1 FTB KNOWN AS ROY'S SQUARE, STOPPED UP AND CLOSED BY BY-LAW 47-2005, INSTR. AT771854, DESIGNATED AS PARTS 15 & 29 ON PLAN 66R29128; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVER PARTS 10, 11 AND 12 ON PLAN 66R-26897 AS IN AT3523611; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; TOGETHER WITH AN EASEMENT OVER PART 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT OVER PARTS 15 & 29 ON PLAN 66R29128 IN FAVOUR OF PARTS 1, 10 & 12 ON 66R28245 AS IN AT4326703; SUBJECT TO AN EASEMENT OVER PARTS 15 & 29 ON PLAN 66R29128 IN FAVOUR OF PARTS 5, 6 & 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT AS IN AT4479042; SUBJECT TO AN EASEMENT OVER PART 29, PLAN 66R29128 IN FAVOUR OF PARTS 1,2,3,4,5 PLAN 63R4472 AS IN AT4503582; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; SUBJECT TO AN EASEMENT OVER PART 15 ON PLAN 66R29128 AS IN AT2777293; SUBJECT TO AN EASEMENT OVER PARTS 15 & 29 ON PLAN 66R29128 IN FAVOUR OF PARTS 5, 6 & 9 ON PLAN 66R29128 AS IN AT4734974; CITY OF TORONTO

PIN 21108-0267 (LT)

PT PARKLT 8 CON 1 FTB TWP YORK; PT OF PARK LT 8, CON 1 FTB KNOWN AS ROY'S SQUARE, STOPPED UP AND CLOSED BY BY-LAW 47-2005, INSTR. AT771854, DESIGNATED AS PART 36 ON PLAN 66R29128; TOGETHER WITH AN EASEMENT AS IN AT2777354; TOGETHER WITH AN EASEMENT OVER PARTS 10, 11 AND 12 ON PLAN 66R-26897 AS IN AT3523611; TOGETHER WITH AN EASEMENT OVER PART 10 ON 66R28245 AS IN AT4326703 PARTIAL RELEASE AS TO PT 23, 66R29128 AS IN AT4503480; TOGETHER WITH AN EASEMENT OVER PART 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT OVER PART 36 ON PLAN 66R29128 IN FAVOUR OF PARTS 1, 10 & 12 ON 66R28245 AS IN AT4326703; SUBJECT TO AN EASEMENT OVER PART 36 ON PLAN 66R29128 IN FAVOUR OF PARTS 5, 6 & 9 ON 66R28245 AS IN AT4326704; SUBJECT TO AN EASEMENT AS IN AT4479042; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4510796; CITY OF TORONTO

SCHEDULE "B"

SITE PLAN OF THE PREMISES AND RETAIL COMPONENT

The sole purpose of this site plan is to show the approximate location of the Premises only and the contents thereof are not intended as a representation of any kind including that any other tenant has leased, or will continue to lease, premises in the Retail Component, or as to the precise size or dimensions of the Premises or any other aspect of the Retail Component. The depiction of other tenants in the Retail Component on the site plan does not constitute a representation, warranty or covenant of any kind whatsoever by Landlord and should not be relied upon by Tenant.

SCHEDULE "C"

CONSTRUCTION OF THE PREMISES
LANDLORD'S WORK AND TENANT'S WORK

ARTICLE I
LANDLORD'S ACKNOWLEDGMENTS

1.01 Design Criteria - Landlord acknowledges that the tenant will be free to design the Premises to the same look, feel and standards of their other operating like stores. Landlord will provide to the Tenant a manual detailing the procedures, rules, and regulations (the "**Manual**") relating to the construction of rentable premises in the Retail Component and Tenant agrees to comply with and to cause its contractors and sub-contractors to comply with the Manual in addition to the other requirements set out in this Schedule.

1.02 Access - Landlord will be entitled access to the Premises at all times during the Fixturing Period as long as it is in compliance with the rules and regulations regarding construction safety, and have checked in with the Tenant's constructor foreman. Both parties agree to be in compliance with all Applicable Laws, including without limitation, municipal noise by-laws.

1.03 Architect's Opinion - The opinion in writing of the Architect is binding on both Landlord and Tenant respecting all matters of dispute regarding Landlord's Work and Tenant's Work, including the state of completion and whether or not work is completed in a good and workmanlike manner and in accordance with the Manual and this Schedule.

1.04 Liens - Tenant shall pay before delinquency all costs for work done in the Premises which could result in any lien or encumbrance on Landlord or Tenant's interest in the Retail Component or any part thereof, shall keep the title to the Land, the Retail Component and Development free and clear of any lien or encumbrance and shall indemnify and hold harmless Landlord from and against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien or otherwise, arising from the supply of material, services or labour for such work or otherwise. Tenant shall immediately notify Landlord of any such lien or encumbrance of which it has or reasonably should have knowledge, and shall cause the same to be removed or vacated within five (10) days, failing which Landlord may take such action as Landlord deems necessary to remove or vacate the same, and Tenant shall pay to Landlord on demand the entire cost thereof, together with interest, legal fees and expenses from the date such cost was paid by Landlord, plus interest at the Stipulated Rate, calculated daily and compounded monthly, will be immediately due and payable by Tenant to Landlord on demand as Additional Rent, of such cost. Tenant shall not mortgage, charge, grant a security interest in or otherwise encumber any leasehold improvements.

1.05 Applicable Laws - In this Schedule "Applicable Laws" means all laws, regulations, by-laws, codes, directives and recommendations of any governmental or quasi-governmental authority in respect of the matter in question. All Tenant's Work is to be performed in accordance with Applicable Laws.

ARTICLE II
LANDLORD'S WORK

2.01 Tenant acknowledges and agrees that it is accepting possession of the Premises and Common Retail Facilities in an "as is" condition and that Landlord is not obligated to perform any work other than that contained herein**.**

2.02 Landlord agrees to provide to the Premises prior to Tenant taking possession of the Premises, the following Landlord's Work only:

(a) DRAWINGS, PERMITS & BASE BUILDING SERVICES – Landlord to provide drawings to the tenant in .dwg format with full permission to use same for the purposes of design and planning of the store. Landlord to secure permits necessary for Landlord scope of work related to the Premises. Tenant is responsible for all drawings and permits related to the Tenant scope of work.

2.02.1 The following work shall be performed by Landlord: Premises and surrounding common area shall be free of Hazardous Condition at the time of delivery of the Premises to Tenant (and any Hazardous Substances discovered by the Tenant in the course of performing work shall be removed or remediated by the Landlord as soon as reasonably possible). Landlord shall provide a street entrance which is to be finished, décor only, by Tenant. Exhibit detailing the street entrance to be provided for Tenant's final approval. Landlord to provide mature landscaping and high-quality hardscape and pavement outside of Premises.

2.02.2 Landlord shall be solely responsible for any necessary upgrades to ensure that the utilities in the respective capacities set out Sections 2.02.3 and 2.02.4.

2.02.3 Landlord shall be solely responsible for any necessary upgrades to ensure that the utilities in the respective capacities set out in section 3.01 below, are available to the Tenant, it being understood that the work of physically bringing such utilities to the Premises shall be performed by the Landlord as part of Landlord's Work.

2.02.4 Landlord shall be liable for the cost of all development, sewer, water, electrical, gas and other utility and meter/sub-meter hook-up, tie-in, connection or similar fees and costs assessed, excluding only deposits to commence service. All utilities shall be available for Tenant's use 24 hours per day, 7 days per week (subject to Unavoidable Delay).

ARTICLE III
BASE BUILDING WORK AT LANDLORD'S COST

3.01 The Landlord's Work to be performed by Landlord shall consist solely of the work for the Premises described in this Article III and solely at Landlord's cost.

3.02 EXISTING FACILITIES – Landlord is responsible for the preparation of the Premises. Landlord shall remove and/or relocate all utilities, pipes, conduits, shafts, columns, stairs, elevators, escalators and other facilities or structures, and any other easements or rights of way ("utility facilities") located within or abutting the Premises, underground or below the floor, within walls and/or above ceilings of the Premises, if Tenant determines such utility facilities materially interfere with or increase the cost of construction of Tenant's Work.

3.03 BUILDING SHELL - Landlord shall provide storefronts and facade elements as generally depicted on current renderings, including all structural work, metal studs, exterior gypsum, and insulation as required for Tenant's storefront.

(a) WALLS - Demising walls (excluding storefront) to be dry walled or unit masonry, fire sealed full height and paint ready to underside of deck and meet the minimum requirements for fire separation per the Ontario Building Code.

(b) CEILING – Tenant acknowledges that the Premises have many slab-to-slab height variations, [

(c) SERVICE DOOR - Service door for access to loading dock in the location shown on Landlord's plans.

(d) ACCESS DOOR - Access door to retail parking and driveway in a location as shown on Tenant's plans.

(e) FLOOR - Minimum 4" concrete slab, leveled to within 3/8" grade variance with a 10'-0" straight edge, capable of carrying a live load of not less than 100 pounds per square foot where not on grade (certified by Landlord's Engineer).

~~(f) ROOF - Existing, in good condition;~~ Intentionally Deleted

(g) PLUMBING - Landlord to bring to the premises a 2.5" domestic water connection, at minimum 60 P.S.I., Landlord to provide a 6" sanitary drain line below slab and capable of servicing Tenant's grease interceptor also to be located below or in slab.

(h) ELECTRICAL - One (1) main electrical service at 600 Amp, 600 volt, 3 phase, 4 wire, delivered to the Premises' electrical room and terminated in a fused disconnect in a location to be determined on the Tenant's plans.

(i) HEATING, VENTILATION & AIR CONDITIONING - Landlord will provide Tenant with an HVAC system capable of delivering 1 ton of cooling for every 300 sq. ft. of GLA.

(j) SPRINKLER MAIN - Sprinkler main designed in accordance with latest NFPA standards with capacity of one (1) head per one hundred (100) square feet of GLA of the Premises with upright heads for Tenant modifications at their expense in order to provide final sprinkler distribution for the Premises, Landlord to permit connection to Development fire alarm system and provide junction box with conduit stubbed to Premises for Tenant's use (exact system to be discussed).

(k) FIRE STANDPIPE - Fire hose cabinets throughout for full coverage per code based on open CRU

layouts. Tenant confirms its acceptance “As is, Where is”

(l) TELEPHONE - Two (2) 1-1/2” empty conduits with pull strings for telephone and data service to the Tenant’s designated point within the Premises, complete with pull strings.

(m) EXHAUSTS and MAKE UP AIR - Landlord to provide to the Tenant’s lease line as follows:

- NFPA 96 rated exhaust duct, fan and Ecology system if required capable of handling 8500 cfm.
- Dishwashing Exhaust duct and fan rated at 1,000 cfm.
- Restroom Exhaust duct and fan rated at 1500cfm.
- Makeup Air Unit and duct rated at 10,000cfm.

(n) NATURAL GAS - 3,000,000 BTU of low pressure natural gas at 7” water column gas line from meter to demising wall of Premises.

(o) GREASE INTERCEPTOR - Tenant to install an on-slab (surface mount) or below slab grease interceptor installed in a mutually approved location, of a size and capacity required by local code and permitting authorities.

(p) METERS – As part of Base Building Work performed by Landlord, Landlord to install all meters (or where necessary sub-meters) for utilities provided by Landlord such that Tenant’s usage is separately monitored from any other tenant or space.

(q) VERTICAL TRANSPORTATION – Landlord to supply and install the vertical transportation from Premises to street entrance areas, as shown on Landlord’s plans. Landlord shall maintain such vertical transportation thereafter as part of the Common Area.

(r) ACCESS TO RETAIL PARKING – Landlord to supply and install direct access with pressurized vestibule from the Premises to the interior retail parking area of the Project as shown on Tenant’s plans.

(s) FIRE ALARM –Fire alarm system as required by Applicable Laws, to satisfy a shell condition only.

(t) EGRESS – The Landlord will provide exit corridors, if necessary, to meet Applicable Laws. The Tenant may have to extend or modify the Landlord provided exit corridor to suit their internal store layout at Tenant’s expense.

ARTICLE IV
TENANT’S WORK

4.01 Tenant shall provide and carry out, in accordance with the provisions of this Lease, including without limitation, Landlord’s Manual and this Schedule, at its expense, the Tenant’s Work required to render the Premises complete and suitable to open for business by no later than Commencement Date including, but not limited to the work set out in this Article IV.

Tenant acknowledges and agrees that (i) it is accepting possession of the Premises in an "as is" condition subject to performance of the Landlord’s Work (Article III) (ii) no changes are to be made to the restaurant signage, fixturing, lay-out, utilities and services without obtaining the prior written approval of Landlord and all Applicable Laws, (iii) Landlord has no responsibility or liability for making any renovation, alterations or improvements in or to the Premises (iv) all further renovations, alterations or improvements in or to the Premises are the sole responsibility of Tenant and shall be undertaken and completed at Tenant's expense and strictly in accordance with the provisions of this Schedule and the Lease. Tenant further acknowledges and agrees that in carrying out any Tenant's Work under this Schedule, it will not use or allow to be used, any Hazardous Substances in the construction or fixturing of the Premises, including but not limited to materials containing asbestos or any equipment containing PCB's.

4.02 Storefront, Sign and Flooring

(a) Tenant's storefront and signage shall be furnished and installed by Tenant after review and approval from the Landlord.

(b) Tenant agrees to install new interior décor to the façade of Premises II along the “breezeway corridor” from Yonge Street to the TTC entrance within the Retail Component to be approved by Landlord for the Premises

(c) Tenant's fixturing layout must provide access to mechanical clean outs as shown on the Outline Drawings, if required.

4.03 Electrical

(a) Electrical service is to be provided by Landlord per Article III. Tenant is responsible for required

upgrades, transformers, splitters, all branch wiring, electrical outlets, lighting fixtures including lamps (it being acknowledged that exposed fluorescent light tubes must not be used in ceiling light fixtures in sales areas or display windows), time clocks, exit signs, emergency lighting, night lights, appliances, smoke detectors (which Landlord may require to be wired to the alarm system of the Development), fused disconnect switches, transformer, lighting and receptacle panels, and other equipment as required by Tenant for its use. Tenant shall make all necessary arrangements with and pay all fees to the Electrical Safety Authority ("**ESA**") and local utility for the provision and connection order of service.

(b) Tenant shall provide full recessed flush mounted type service access panels (24" x 24" minimum) in the retail ceiling space of the Premises to all electrical junction boxes, if required.

(c) Tenant will at its own expense provide all emergency exit lighting required within the Premises.

(d) All drawings for the electrical work shall be carried out by a professional electrical engineer registered in the Province in which the work is performed. The professional engineer shall also provide a letter of compliance at the end of the Tenant's interior construction.

4.04 Heating, Ventilating and Air-Conditioning

Tenant to provide a complete heating, ventilating and cooling distribution system in and for the Premises based on Tenant's design governing the sizing of Tenant's equipment as provided and installed as part of Base Building Work by Landlord. Tenant shall be responsible for all costs incurred in making changes to the system installed by Landlord due to any special design conditions within the Premises or to meet criteria requirements. The design should be based on local environmental conditions and shall not exceed the stipulations of latest edition of ASHRAE Standard 55, 62 and 90.1 and any Applicable Laws.

The design should be based on local environmental conditions and the following:

(a) all new or modified HVAC systems and equipment are to meet the performance criteria as set out in current ASHRAE standards;

(b) during unoccupied periods in the heating season, the temperature may be reduced to 17º Celsius for energy conservation purposes;

(c) supply air shall be uniformly distributed throughout the occupied zone to maintain required temperature and ventilation; and

4.05 Equipment used for the Design Criteria and performance of Tenant's Work shall include, without limitation:

The system shall include:

(a) Fan coil or heat pump unit, duct distribution system with volume dampers, diffusers, grilles, registers and ceiling fire stop dampers if required by Applicable Laws;

(b) Tenant shall provide flush mounted type service access panels (24" x 24" minimum) in the ceiling space of the Premises, if the ceiling system does not have other means of access, for maintenance of mechanical equipment;

(c) Tenant shall provide any necessary exhaust grilles and exhaust ductwork and make vent connections to base building provisions.

Fire alarm and smoke detector system as required by Applicable Laws:

(a) Tenant shall provide sealed engineered drawings for the modifications to the Landlord's fire alarm system;

(b) All modifications required to the fire alarm system with respect to the Premises only shall be carried out by Landlord's approved contractor at the Tenant's expense; and

(c) Tenant shall have the ability to turn off public address or music systems in the event of a fire alarm if required by the Landlord or any Applicable Laws.

Ventilation:

(a) Tenant to connect to Landlord supplied sanitary exhaust system.

(b) Objectionable odours originating in the Premises shall be exhausted in such a manner so as to prevent their release into the interior common areas and Facilities, other rentable premises, or short-circuiting it into any fresh air intakes;

(c) Thermal insulation for all piping carrying hot water, chilled water, domestic cold water and surface drains from fan-coil units. Insulation shall be minimum three quarters inch (¾") thick and shall incorporate vapour barrier for all piping, except hot water piping; and

(d) If Tenant wishes to use ceiling space as a return air plenum such use shall comply with the requirements of Applicable Laws.

4.06 Tenant's Ceiling

The ceiling in the Premises shall be open ceiling unless the Tenant's design contemplates drywall, plaster or other approved materials in the ceiling space. No combustible materials may be used in the ceiling space. If Tenant's design does not contemplate open ceiling, Tenant shall install flush mount type (24"x 24" minimum) appropriately sized access panels as required, at its own expense, for inspection and maintenance of all Tenant and Landlord equipment. Failure to install the proper access panels will require Landlord to install them at Tenant's expense. Exposed mechanical and electrical distribution is permitted.

4.07 Communication, Telephone/Alarms

Tenant will make direct arrangements with the cable and telephone company for installation of telephone services and cable services, as the case may be, at its expense, from the point of entry in the base building to and within the Premises. Any intercom, burglar alarm and antenna, including conduit, wiring and monitoring for all of the same will be provided by Tenant, at its expense.

Interior Finishes

(a) All interior finishes and installations including show windows and enclosures, floor coverings, partitions, wall finishes, suspended ceiling assemblies and finishes, and trade fixtures shall be of new and high quality materials provided by Tenant, at its own expense.

(b) Any extra fire-rating or wall construction required by Tenant's occupancy shall be at Tenant's expense.

4.08 Sprinkler Distribution and Fire Protection

(a) Alterations and/or additions to the standard sprinkler distribution system to meet Tenant's needs and requirements must be designed by a professional mechanical engineer registered in the Province in which the work is to be performed and approved by Landlord. Sprinkler distribution and heads hydraulically designed shall be installed within the Premises as required, so as to maintain overall fire-rating of the Development in accordance with Applicable Laws, requirements of the Landlord, and the insurers of the Development. Sprinkler and related work to be done by the Landlord's base building approved sprinkler contractor at Tenant's expense.

(b) Tenant will, at its expense, provide any fire-fighting equipment needed within the Premises, if such is required by law or recommended by fire department officials, Landlord's insurance company or by any Applicable Laws.

(c) The sprinkler system must be hydrostatically tested in accordance with National Fire Protection Association Standard No. 13 (latest edition) and witnessed by Landlord's representative. The general contractor is to supply written confirmation of the installation and test. Any extra fire-rating or wall construction required by Tenant's occupancy shall be at Tenant's expense.

4.09 Plumbing, Exhaust, Ventilation and Gas

(a) Tenant will provide and install all internal plumbing and accessories, except for whatever is provided by Landlord per Article III, a domestic hot water tank and heater as required. Tenant shall provide all plumbing within the Premises, including, water closets, wash basins, washroom finishings, hot water storage tank, floor drains and heaters.

(b) Tenant to provide adequate heat tracing for any new piping exposed to freezing conditions.

(c) Where a hot water storage tank and heater is installed, a relief valve discharge must be installed extended to an approved sanitary line.

(d) Tenant shall inform Landlord of plumbing, exhaust, ventilation and gas requirements if capacity is different than what is provided by the Landlord as part of Article III. Tenant shall pay for any additional costs incurred by Landlord in providing such additional capacity.

(e) Any plumbing work and electrical tracing required outside the Premises must be performed by Tenant, at Tenant's expense.

4.10 Foodservice Facilities

In addition to the provisions set out in Sections 3.01 to 3.10 of this Schedule, the following provisions shall be applicable to rentable premises which are foodservice facilities.

(a) Tenant shall provide all additional plumbing and drainage systems, including washrooms, staff

change rooms, kitchen facilities, grease interceptors, hot water heaters and any other related requirements, all in accordance with Applicable Laws and Landlord requirements.

(b) Tenant shall provide and install a kitchen exhaust hood complete with balancing dampers including NFPA 96 rated fire suppression per city code, grease fire extinguishing equipment as per Applicable Laws. System shall be installed in such a manner that the exhaust system will not run without the make-up air system also operating. The hood suppression system must be connected as a fire alarm zone to the main panel, including, at Landlord's option, the connection of approved extinguishing system to the main fire alarm panel, at Tenant's expense.

(c) Tenant shall provide the necessary exhaust, grilles, ductwork and shafts to meet Applicable Laws within the Premises to connect to the Landlord provided washroom exhaust. Tenant shall provide the necessary condensate hood and ductwork to connect to the Landlord provided dishwasher exhaust.

(d) Tenant shall provide and install grease recovery system within the Premises complete with flow control device in the inlet to capture unwanted solids and recover fats, oil and grease before it enters the Landlord drainage system.

(e) Tenant will connect to the Landlord provided and installed, ecologizer exhaust system in full compliance with NFPA 96 at Tenant’s expense.

(f) Domestic cold water might require thermal expansion tanks, mixing valves and back flow preventer as per Applicable Laws.

(g) Tenant shall conform to all Applicable Laws with regards to life safety, building, structural, plumbing, HVAC, mechanical and electrical installations.

4.11 Acknowledgement

(a) Any damage to the Premises or other rentable premises or the Building caused during the performance of Tenant's Work by Tenant, its contractors, sub-contractors, trades or material suppliers shall be repaired immediately by Tenant, or, at Landlord's option, by Landlord at the expense of Tenant, and Tenant shall pay to Landlord upon demand as Additional Rent an administration fee of fifteen percent (15%) of the cost of the work and materials and professional fees. Landlord’s option shall also apply to remedy deficiencies in repairs made by Tenant.

4.12 Special Conditions

(a) Specific and unique construction conditions may occur on certain rentable premises, such as, but not limited to, fire-rated mechanical enclosures, fire-rated base building structure and base building services, raised storefront bulkheads, demising cap changes and upgrades. It is recommended that Tenant and its designer visit the site to inspect and dimension all site conditions, prior to commencement of design work to determine pertinent localized conditions and co-ordinate with Landlord how any such conditions will be dealt with or treated.

(b) Premises utilizing sound systems such as stereos, radios, televisions, loud speakers, phonograph or other audio-visual or mechanical devises shall have all demising walls insulated to the underside of the roof deck or slab, in order to obtain a minimum sound transmission class of STC-41. This suppression requirement shall apply to the noise level emanating through the storefront and evident immediately within the Common Retail Facilities. Sound speakers for the individual store stereo system shall not be located within ten feet (10'-0”) behind the lease line.

(c) All work shall be carried out by Tenant's general contractor at Tenant's expense, and to the satisfaction of Landlord.

(d) The repair of sprayed fireproofing, if any, will be by Landlord’s approved contractor at Tenant's expense.

(e) If Tenant handles perishable items it will upgrade existing refuse area as required by city code and provide a refrigerated area or system for refuse storage satisfactory to and approved by Landlord.

(f) Any requirement under this Article IV for Tenant to provide equipment, carry out work or complete improvements also requires Tenant to remove any existing corresponding equipment and improvements, unless Landlord directs otherwise.

4.13 Tenant's Plans, Specifications and Schedule

(a) The design of the Premises shall be carried out by a qualified professional designer and engineers. Tenant's plans and specifications shall be prepared with strict adherence to this Schedule and the Design Criteria. Tenant agrees to provide to Landlord in the time frame stated in Section 4.01, a digital file in Adobe Acrobat (PDF) format sent via email and two (2) bond prints of each set of plans as set out below, on a uniform size of 24" x 36" sheets with specifications and such other information and details as may be necessary for the complete identification and approval of all work to be carried out by Tenant. Drawings must be completed with an OAA or BCIN stamp/seal.

(b) Landlord shall not be responsible for errors or omissions due to conflict between site conditions and the Design Criteria.

(c) Such plans shall include:

- Floor Plan and Interior Finish Schedule;
- Interior Wall Elevations;
- Storefront Plan, Elevation, Sections and Details;
- Details and Sections;
- Reflected Ceiling Plan;
- Signage Details and Shop Drawings;
- Plumbing;
- Sprinklers;
- Heating, Ventilating and Air-Conditioning Systems, including Heat Gain Calculations, Heat Loss Calculations and Total C.F.M.;
- Electrical Requirements, including Connected Loads and single line diagrams;
- Finish Sample Board;
- Coloured Rendering of Storefront;
- Details of any special features or installations of any special facilities or installations forming part of Tenant's Work or which affect Landlord's facilities;
- Professional engineers Stamp, registered in the Province in which the work is to be performed in; and
- List and details of work requested by Tenant to be done by Landlord.

ARTICLE V
SCHEDULE FOR TENANT'S WORK

5.01 Tenant's Plans

Within **one hundred twenty (120)** days after Tenant receives the Manual and existing Tenant drawings for the Premises, Tenant will provide to Landlord the plans, renderings, specifications and other information as detailed in 4.13(c).

5.02 Commencement of Tenant's Work

When the Fixturing Period has started and Tenant has satisfied Landlord's requirements in accordance with Section 7.01 below, Tenant will proceed immediately to complete Tenant's Work.

ARTICLE VI
HOARDING

6.01 Landlord will install and remove storefront hoarding suitable for the Development, which shall include doors, frame and hardware. Tenant must supply and install 3-M vinyl film wall to wall hoarding graphics for the duration of the Fixturing Period, in conjunction with the installation of the Hoarding. Tenants are encouraged to submit, unique, dramatic and professional alternate hoarding graphics for review and written approval by the Landlord prior to installation. General contractors and/or designer’s company signage is not permitted.

If the Tenant fails to install the hoarding graphics within five (5) days of hoarding installation, the Landlord will install a generic graphic at Tenant’s expense.

Five (5) business days’ notice is required before hoarding is to be removed.

Barriers for exterior construction work must comply with city codes in collaborations with Landlord requirements.

ARTICLE VII
LANDLORD'S REQUIREMENTS FOR TENANT'S WORK

7.01 Requirements Prior to Commencement of Tenant's Work

Prior to entering any portion of the Retail Component, the Development or the Premises to perform Tenant’s Work, Tenant shall complete each of the following obligations to Landlord’s satisfaction.

(a) Obtain Landlord’s written approval of Tenant’s Plans.

(b) Ensure that all work on or in respect of the Premises is to be performed by competent and skilled workers; all contractors shall be subject to the prior approval of Landlord, not to be unreasonably withheld.

(c) Provide evidence satisfactory to Landlord that Tenant has obtained, at its expense, all necessary consents, permits and licenses from all relevant governmental and regulatory authorities. If Tenant fails to obtain any such consent, permit or license, Landlord may, but shall not be obligated to, obtain same on behalf of Tenant, and all costs or expenses incurred by Landlord shall be payable by

Tenant as Additional Rent forthwith on demand.

(d) Provide evidence satisfactory to Landlord of its schedule for the completion of Tenant's Work.

(e) Ensure that a comprehensive and rigorous health and safety program to protect workers in the Premises is implemented to ensure that no accidents or injuries occur in connection with the performance of any Tenant's Work, and Tenant shall indemnify Landlord in respect of all claims, infractions, prosecutions, alleged infractions, losses, costs and expenses and any fines or proceedings relating to fines or other offences or contraventions under all occupational health and safety and any similar legislation that might be brought, or imposed against or suffered by Landlord or any of its officers, directors and employees in connection with the performance of any Tenant's Work. Without limiting the foregoing obligations in this subsection, Tenant shall do at least the following:

(i) Ensure that all obligations imposed by statute, law or regulation on "constructors" or other persons completing or coordinating any Tenant's Work are diligently and properly completed;
(ii) Cooperate with Landlord in having any Tenant's Work designated as a separate project so that Landlord does not incur any obligations as a constructor or obligations similar to those of a constructor at law or by regulation imposed in connection with the performance of any Tenant's Work;
(iii) Comply with all directions that Landlord may give to Tenant in connection with the performance of any Tenant's Work having regard to construction health and safety requirements; and
(iv) Provide to Landlord whatever rights of access, inspection, and whatever information, documents and other matters Landlord requires in order to ensure that the Tenant's obligations under this subsection are complied with.

(f) Landlord's Approval of Tenant's Drawings and Specifications - Landlord will notify Tenant either of its approval or of its disapproval of Tenant's plans, drawings and specifications and may indicate any specific changes required by it. Tenant will then promptly prepare and submit to Landlord, within twenty (20) business days following notice of the disapproval, complete drawings and specifications amended as required by Landlord. If Tenant fails to submit complete drawings and specifications within the times stated in this Schedule Landlord may, by notice in writing, terminate the Lease, without legal proceedings and without prejudice to any of Landlord's other rights and remedies and all amounts paid by Tenant to Landlord will be forfeited on the termination.

(g) Tenant's Insurance - Before entering on the Premises for any purpose, Tenant will provide Landlord with a certificate of insurance on a form acceptable to Landlord, duly executed by Tenant's insurers, evidencing that the insurance required to be placed by Tenant pursuant to the Lease is in full force and effect.

(h) Tenant's Contractors - Tenant will employ a general contractor who is to be approved by the Landlord acting reasonably, to be responsible for all construction within the Premises, including the contracting and co-ordination of all trades. All work on or in respect of the Premises will be performed by competent local workers who are compatible with others employed by Landlord and its contractors so that work stoppages are avoided.

(i) Workers' Compensation Clearances - Tenant will provide to Landlord prior to commencing any work in respect of the Premises, a current clearance certificate issued pursuant to the workers' compensation act of the Province in which the contractor and every sub-contractor that Tenant proposes to employ or to permit to do work in respect of the Premises and Tenant will not permit any contractor or sub-contractor to do work in respect of the Premises except for those for which such clearance certificate has been provided.

(j) Tenant's Permits - Tenant will provide evidence satisfactory to Landlord prior to commencing any work in respect of the Premises that Tenant has obtained at its expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction and will post permits when required by law. Should Tenant fail to obtain any required consent, permit, license, inspection or certificate, Landlord may, but will not be obligated to, obtain it on behalf of Tenant at Tenant's expense.

(k) Garbage Removal - Tenant and/or its general contractor shall arrange for and pay for all costs related to the removal from the Development of all excess materials, trash and cartons caused by the renovation and initial stocking of the Premises. Where local authorities require the separation of different garbage materials, Tenant shall dispose of them as directed by the authorities. Should Tenant fail to comply with this requirement Landlord, at its option, may proceed to have the garbage removed, and Tenant will pay to Landlord, on demand, the cost of removal together with an administration fee of fifteen percent (15%) of such costs.

(l) Tenant's General Contractor to contact the Landlord to obtain the pre-construction package for submission prior to scheduling pre-construction meeting prior to commencement of Tenant's Work.

7.02 Requirements for Performance of Tenant's Work

In the performance of Tenant's Work, Tenant will:

(a) After satisfying all the requirements of Section 6.01 of this Schedule, but not before, proceed to complete Tenant's Work in a good and skilled manner using new materials, the whole to Landlord's satisfaction and in conformity with the Manual and Tenant's Plans as approved by Landlord. Mediocre or inferior materials or work will be replaced by Tenant, at its expense, by materials or work of first-class quality, to Landlord's satisfaction.

(b) Retain one (1) set of Tenant's Plans with Landlord's approval endorsed on them at all times on the Premises during the period when Tenant's Work is being performed.

(c) Indemnify Landlord against any loss, costs or expenses arising from labour disruptions attributable to workers employed by Tenant, its contractors, or sub-contractors, or to their activities.

7.03 Fire Proofing Standards

Where Tenant’s occupancy requires fire rated construction standards, Tenant must satisfy the applicable governing laws, by-laws, codes and regulations. Damage to the existing fireproofing of the base building will be repaired by Tenant or Tenant’s contractor before finishing of the Premises.

7.04 Security

Security of the Premises after Tenant takes possession is the responsibility of Tenant who will take all necessary steps to secure the Premises. Landlord will have no liability for any loss or damage, including theft of building materials, equipment or supplies, or of Tenant’s fixtures, inventory or personal property.

7.05 Requirements after Performance of Tenant's Work

Tenant will, upon completion of Tenant's Work and when requested by Landlord:

(a) Provide Landlord with a statutory declaration (the "**Declaration**"):

(i) Stating that Tenant's Work has been performed in accordance with all of the provisions of the Manual and this Schedule and that all deficiencies, (if any), which Landlord has brought to Tenant's attention have been corrected;
(ii) Stating that there are no construction, builders, mechanics, Worker's Compensation or other liens or encumbrances affecting the Premises, the Retail Component, or the Development in respect to work, services or materials relating to Tenant's Work; and that all accounts for work, services and materials have been paid in full with respect to all of Tenant's Work; and
(iii) Confirming the date on which the last such work was performed or materials provided.

(b) Provide to Landlord an itemized list showing the cost actually expended by Tenant for completion of Tenant's Work.

(c) Provide to Landlord a clearance certificate issued under the Worker's Compensation Act of the Province in which each contractor and sub-contractor listed on the Declaration operates.

(d) Obtain and provide to Landlord a copy of every occupancy license and other permit which may be required by Applicable Laws.

(e) Provide to Landlord a certificate of substantial completion (or its equivalent) in the form prescribed by the Province, in respect of each contract entered into by or on behalf of Tenant in connection with Tenant's Work.

(f) One (1) set of drawings documenting "as built" conditions and representing existing conditions.

(g) A certificate from the designer and mechanical and electrical engineers, certifying that Tenant's Work has been carried out in accordance with the plans and specifications approved by Landlord and its representatives and clearance of the building permit by the Building Inspector having jurisdiction; if Tenant does not provide such certification and clearance to Landlord within fifteen (15) business days of completion of such installations, Landlord shall be entitled, at Tenant's expense, to engage its own experts for the purpose of verifying whether such work has been performed in accordance with the approved plans and specifications and insure the building permit has been cleared; and Landlord shall be entitled to take whatever remedial measures may be required to make such work comply with the approved plans and specifications and all charges and costs incurred by Landlord in carrying out such work, plus a supervision charge of fifteen percent (15%), shall be payable by Tenant as Additional Rent forthwith on demand.

7.06 Prior to Opening for Business

Tenant is required to satisfy Landlord that all work has been completed in accordance with the approved plans and specifications. Tenant must also receive Landlord's written approval prior to opening. Failure to complete work properly will disqualify Tenant from opening.

7.07 Tenant to Advise Landlord of Opening Date

Tenant is to advise Landlord of the opening date a minimum of three (3) business days prior to the actual opening of the Premises.

SCHEDULE "C-1"

CHECK METER INSTALLATION

1. INSTALLATION OF CHECK METER – At any time following the Possession Date, Landlord may at its entire discretion, require Tenant to install a check meter for the Premises, which shall be acceptable to Landlord and the installation of which is to be at Tenant's entire cost and expense. Tenant hereby agrees that it will conform itself to any such request of Landlord in accordance with the following:

1.1 Tenant's cost of installing the check meter shall include, without limitation, the costs of all preparatory plans and specifications, labour, materials, permits, licenses and any other costs directly or indirectly related thereto;

1.2 within 15 days of Landlord's request, Tenant shall submit for Landlord's approval the plans and specifications prepared by an engineer or other qualified professional showing in detail all information Landlord requires concerning the installation and location of the check meter in the Premises and the date of installation; and

1.3 if the installation of the check meter is not completed within 30 days of Landlord's approval, or if Tenant fails to provide the plans and other information required by Section 1.2 above, Landlord shall have the right, without prejudice to its other rights under this Lease, to install the check meter at Tenant's cost plus an administration fee of 15%. These amounts are payable by Tenant as Additional Rent.

2. PAYMENT OF THE CHECK METERED UTILITY CHARGE FOR THE FIRST 12-MONTH PERIOD

2.1 During the first 12 month period after the check meter is installed, Tenant shall pay a utility charge on the provisional monthly estimate calculated on the basis of: (i) Tenant's consumption of Utilities as determined by periodic check meter readings conducted solidarily by representatives of Landlord and Tenant, and (ii) the applicable utility rate charged to Landlord by the supplier ("Applicable Rate") for the relevant period.

2.2 Subject to Landlord's right to conduct additional check meter readings, a minimum of three check meter readings shall be conducted during the first 12 months as follows:

2.2.1 30 days after installation of the check meter;

2.2.2 five months after the reading to be taken under Section 2.2.1; and

2.2.3 six months after the reading to be taken under Section 2.2.1.

2.3 Landlord will furnish its estimates of utility charges to Tenant prior to the commencement of the period for which it is intended to apply or as soon as practical thereafter. Thereafter, the last previous existing estimate shall apply until replaced by another. The first estimate will be based upon the 30 day check meter reading and the Applicable Rate then in force and subsequent estimates will be based upon subsequent check meter readings and Applicable Rate(s).

2.4 Within a reasonable delay after each check meter reading (except the first), Landlord will furnish Tenant with a statement showing the actual amount to be paid for the Utilities consumed during the period to which the estimate applies. If the total of Tenant's provisional payments with respect to such amount is less than the actual amount payable, the difference will become due and exigible with the next instalment of Minimum Rent. If Tenant's provisional payments exceed the actual amounts payable, Landlord will credit such amount without interest against other sums due or to become due under the Lease.

3. PAYMENT OF CHECK METERED CHARGE FOR THE REMAINDER OF THE TERM

3.1 After the first 12 month period following the installation of the check meter, Tenant shall pay a utility charge on the basis of provisional monthly estimates taking into account Tenant's average monthly utility consumption during the immediately preceding 12 month period and the Applicable Rate(s) in force at each relevant time.

3.2 Notwithstanding Section 3.1 above, Landlord may at any time conduct periodic check meter readings for the purpose of monitoring the consumption and verifying the accuracy of the estimated utility charge.

3.3 If such a periodic check meter reading (when applied to the Applicable Rate) indicates that Tenant is underpaying provisionally, then Tenant shall pay any deficiency with the next instalment of Minimum Rent following Landlord's invoice and Landlord may increase the estimated utility charge accordingly.

3.4 Subject to Landlord's rights under Sections 3.2 and 3.3 above, the utility charge shall be adjusted annually in the same manner stipulated in Section 2.4 above which will apply *mutatis mutandis*.

4. RETROACTIVE ADJUSTMENTS

4.1 Notwithstanding anything contained in this Lease to the contrary, Landlord may, at its discretion, revise the unmetered charge which has become payable pursuant to Section 8.1 of the Lease prior to the installation of the check meter, retroactively to the Commencement Date, based upon the results of the check meter readings during the first 12 month period following the date of the check meter installation and any other information Landlord or its engineers consider reliable.

4.2 If Tenant has underpaid or overpaid for any utility based upon Landlord's revised calculations, the difference will be payable or credited without interest, as the case may be, with the next instalment of Minimum Rent to become due following Landlord's invoice.

SCHEDULE "D"

OPERATING COSTS

1. "**Common Retail Facilities Operating Costs**" means the total amounts incurred, paid or payable whether by Landlord or by others on behalf of Landlord for the maintenance, operation, repair, replacement, management and administration of the Retail Component, including the Common Retail Facilities. Landlord retains the right, acting on a reasonable and equitable basis, to gross up certain Operating Costs which vary with actual occupancy, such as by way of example, garbage removal, to more accurately reflect the costs (and Tenant's Proportionate Share thereof) which would be incurred were the Retail Component **one hundred (100%) percent** occupied.

2. Common Retail Facilities Operating Costs include, without limitation and without duplication, the aggregate of:

2.1 the total cost of placing, maintaining and keeping in force all insurance for the Retail Component as well as Landlord's operations therein;

2.2 general maintenance and operation including cleaning, snow removal, garbage and waste collection and disposal, the costs of security and supervision, parking lot striping and landscaping, repair, maintenance and operation of the HVAC System, and the cost of all Utilities consumed in the operation of the Retail Component;

2.3 the wages and salaries of on-site management, administration and other personnel **including,** without limitation, the salary and benefits of the dockmaster employed to oversee all of the loading docks for the Development, and/or an equitable allocation of wages and salaries of off-site personnel where they are employed to perform services for the Retail Component together with other properties including benefits, travel and other expenses related thereto, and any associated costs thereof;

2.4 management fees paid to any Management Company;

2.5 the cost of the purchase and rental of any equipment and signs, and the cost of supplies, used by Landlord in the maintenance and operation of the Retail Component;

2.6 audit fees and the cost of accounting services and expenses incurred in the preparation of the certificates referred to in this Lease and related financial statements;

2.7 the cost of conducting any environmental audit or other testing on or in any part of the Retail Component and all costs and expenses incurred by Landlord in removing any Hazardous Substance from any part of the Retail Component;

2.8 all costs, charges and other expenses incurred by Landlord in maintaining, operating, replacing, servicing and repairing the Retail Component including the Common Retail Facilities and the systems, facilities, equipment, pylon and other sign(s) serving the Retail Component;

2.9 depreciation or amortization of: (a) the costs and expenses, including the cost of initial supply and installation and the repair and replacement of all equipment, meters and other fixtures, equipment and facilities, including sprinkler and irrigation systems, serving or comprising the Retail Component which by their nature, require periodic or substantial repair or replacement, unless, pursuant to Section 2.8 above, they are charged fully in the Lease Year in which they are incurred, in accordance with accounting principles used generally by landlords in the shopping centre industry in Canada ("Accounting Principles"), and (b) the costs of improvements, repairs and replacements properly charged to capital account, amortized over their useful life, as determined by Landlord in accordance with Accounting Principles;

2.10 interest calculated at two percentage points above the Prime Rate charged during such Lease Year upon the undepreciated or unamortized portion of the original cost of all fixtures, equipment and facilities referred to in Section 2.9 above;

2.11 business taxes, all Capital Taxes as defined in Section 4 below as they relate to or are allocated by Landlord to the Retail Component, and business transfer and other taxes and similar charges allocated by Landlord to the Common Retail Facilities;

2.12 a rental charge for any mechanical, electrical, meter, garbage, utility, storage, janitorial or other service rooms or corridors in the Retail Component based upon the average rental on a per square footage basis paid in the Retail Component by ground floor tenants occupying less than 2,500 square feet of GLA; and

2.13 a fee for the administration and management of the Retail Component in an amount comparable to that which would be charged by landlords for shopping centres of similar size, type and location in the area in which the Retail Component is located. This fee is in addition to and is not a duplication of the expenses, salaries, benefits and fees referred to in Sections 2.3 and 2.4 above, At the date of this Lease, current administration/management fee is 4% of Tenant’s Minimum Rent.

From the total of the above costs, there is deducted or excluded, as the case may be:

2.14 all net recoveries received by Landlord from tenants as a result of any act, omission, default or negligence of such tenants or by reason of a breach by such tenants of provisions in their respective leases (other than recoveries from such tenants under clauses in their respective leases requiring their contribution to Operating Costs);

2.15 net proceeds received by Landlord from insurance policies taken out by Landlord to the extent that the proceeds relate to Operating Costs; and,

2.16 contributions to Operating Costs received by Landlord from tenants whose premises are excluded in calculating the GLA of the Retail Component.

3. "**Shared Facilities Costs**": means the costs and expenses incurred by Landlord in connection with insuring, repairing, replacing, maintaining, operating, administering and managing the Shared Facilities including, without limitation, all costs and expenses incurred under the Shared Facilities Agreement, the Condominium Documents, and any operating agreements or other agreements entered into for the Development.

4. Capital Tax is an imputed amount presently or hereafter imposed from time to time upon Landlord and payable by Landlord (or by any entity acting on behalf of Landlord) and which is levied or assessed against Landlord on account of its ownership of or capital employed in the Retail Component. Where Landlord is not a corporation, Capital Tax will be calculated on the basis that Landlord is a corporate entity. Capital Tax will be imputed as if the amount of such tax were that amount due if the Retail Component were the only real property of Landlord and Capital Tax includes the amount of any capital or place of business tax or other tax or assessment levied by the provincial government, federal government or other applicable taxing authority against Landlord whether or not known as Capital Tax, large corporations tax or by any other name.

SCHEDULE "D-1"

HEATING, VENTILATING AND AIR-CONDITIONING

1. **THE HVAC SYSTEM** – The heating, ventilating and air-conditioning system (the "HVAC System") of the Retail Component is composed of all heating, ventilating and air-conditioning equipment and facilities provided or operated and maintained by Landlord, and includes from time to time and without limitation: the buildings or areas which house any common heating, ventilating or air-conditioning facilities, and all of the equipment, improvements, installations and utilities therein; any rooftop or window heating, ventilating or air-conditioning units installed or maintained by Landlord; the fuel and power facilities of the systems; any distribution, piping, air handling units, and common fan coil and ventilation units which form part of the system; any monitoring, energy-saving, and control systems, including the thermostat in each of the individual stores supplied by the HVAC System and those ventilation systems which serve more than one tenant; but specifically excludes: (i) any individual, self-contained heating, ventilating and air-conditioning system in any department store or other tenant premises which have such tenant-installed and maintained systems; (ii) the distribution system within each tenant's premises, installed by or for each tenant; and (iii) tenant-maintained ventilation ducts, make-up air facilities, and/or booster units which are installed by or for individual tenants, or a group of tenants, to satisfy requirements which are in excess of the standard maximum sensible cooling load established by Landlord, or which result from the production of air which is not suitable for recirculation.

2. **THE BASIC HVAC CHARGE** – Tenant agrees to pay in each Lease Year of the Term, for the installation and any necessary replacements of the components of the HVAC System serving the Common Retail Facilities (whether directly, or by appropriation), a basic charge (the "Basic HVAC Charge") in the amount stipulated in Section 1.21 of the Basic Provisions of this Lease per annum per square foot of the GLA of the Premises. The Basic HVAC Charge shall be paid, as Additional Rent, in equal monthly instalments in advance on the first day of each month together with, but not as part of Minimum Rent. Landlord shall have the right to increase the Basic HVAC Charge in any Lease Year, and for every Lease Year it chooses to do so, in proportion to increases in the CPI, using as a base CPI, the CPI for the month of January prior to the Commencement Date.

3. **HVAC OPERATING COSTS** – In each Lease Year, the total costs of operating, maintaining and repairing the HVAC System (the "HVAC Operating Costs"), shall be allocated to the Common Retail Facilities, based where appropriate on the advice of an Expert. The HVAC Operating Costs shall include, without limitation: costs for labour including fringe benefits, power, fuel, domestic water, chemicals, lubricants, filters, and outside maintenance contracts, if any, and a fee of 15% of the total of such HVAC Operating Costs for Landlord's overhead. In the event that any repair costs are not charged in full in the Lease Year in which same is performed or purchased, there shall be charged in each Lease Year depreciation or amortization on any such depreciated or amortized costs (together with a fee of 15% of such depreciation or amortization) and interest (calculated at two percent above the Prime Rate charged during such Lease Year) on the undepreciated or unamortized portion outstanding from time to time. The HVAC Operating Costs which are allocated to the Common Retail Facilities shall be included in the Operating Costs detailed in Schedule "D" of this Lease.

4. **LANDLORD'S EXPERT** – The calculation made by an Expert shall in all instances be final and binding upon the parties hereto.

SCHEDULE "E"

SPECIAL PROVISIONS

1. INDUCEMENT TO LEASE

1.1 Landlord will pay to Tenant a sum equal to Two Hundred Dollars ($200.00) per square foot of the GLA of the Premises, plus HST (the "Inducement") to be used by Tenant for the construction and installation of the leasehold improvements in the Premises.. So long as the Required Conditions have been met and continue to be met at all times, the Inducement shall be payable to Tenant as follows:

1.2 25% of the Inducement shall be paid to Tenant upon commencement of the Fixturing Period;

1.3 25% on the 60th day after the commencement of the Fixturing Period;

1.4 25% on the 120th day after the commencement of the Fixturing Period;

1.5 15% on the 150th day after the commencement of the Fixturing Period; and,

1.6 the balance within sixty (60) days from the last to occur of:

1.6.1 execution of the Lease by both Landlord and Tenant;

1.6.2 execution of the indemnity agreement by both Landlord and Indemnifier;

1.6.3 execution of the documentation to effect automatic debiting as set out in Section 5.7 of this Lease;

1.6.4 commencement of the Term;

1.6.5 the opening by Tenant of its business in the whole of the Premises fully stocked and staffed;

1.6.6 compliance by Tenant with its obligations under the Lease governing the construction and completion of Tenant's Work;

1.6.7 Tenant having provided Landlord with a statutory declaration from a senior officer of Tenant:

1.6.7.1 stating that Tenant's Work has been performed in accordance with all of the provisions of the Lease and that all deficiencies (if any) which Landlord has brought to Tenant's attention have been corrected;

1.6.7.2 stating that all Tenant's Work has been carried out and performed in accordance with all applicable laws, by-laws, rules, regulations and orders of any lawful authority;

1.6.7.3 stating that there are no construction, builders', mechanics', workers', Workers' Compensation or other liens and encumbrances affecting the Premises, the Retail Component or the Development with respect to work, services or materials relating to Tenant's Work and that all accounts for work, services and materials have been paid in full with respect to all of Tenant's Work;

1.6.7.4 listing each contractor and sub-contractor who did work or provided services or supplied materials in connection with Tenant's Work; and

1.6.7.5 confirming the date upon which the last such work was performed, services were provided and materials were supplied;

1.6.8 Tenant having provided copies of paid invoices itemizing improvements equal to or exceeding the Inducement; and

1.6.9 Tenant having provided Landlord with a written request or invoice for the amount of the Inducement. This request or invoice must also contain Tenant's legal name, HST registration number and date of issue.

1.7 Payment of the Inducement is subject to confirmation that all invoices have been paid and there are no construction liens, Workers' Compensation or other liens and is subject to compliance by all parties with the construction lien or other relevant legislation in force in the Province and subject to any holdbacks specified under such legislation.

1.8 Tenant agrees that failure by Tenant to complete construction of the Premises in accordance with the terms of the Lease, including this Section 1 and Schedule "C", will constitute an Event of Default and Landlord shall be entitled to exercise all of its rights and remedies provided for in the Lease and at law.

1.9 Landlord may deduct from the Inducement any arrears of Rent. If Tenant becomes bankrupt or insolvent or the Lease is terminated prior to the expiration of the Term for a default by Tenant, such portion of the Inducement as shall remain unamortized (assuming a straight-line rate of amortization to zero over the balance of the initial Term from the date of payment of the Inducement), as of the day before the date of such bankruptcy, insolvency or termination, shall be deemed to be outstanding and immediately payable by Tenant as Additional Rent.

2. OPTIONS TO EXTEND

2.1 So long as the Required Conditions have been met and continue to be met at all times, Tenant shall have the option to extend the Term of the Lease for two further periods of five years each, provided that written notice is given to Landlord at least 12 months, but not more than 18 months, prior to the expiry of the initial Term or the then expiring extension term, whichever is applicable. Each extension term shall be upon the same terms and conditions as contained in this Lease, except that:

2.1.1 any rent free periods, rental concessions, inducements, allowances and other similar items applicable during any prior term will not apply during any extension term;

2.1.2 Tenant will, at Landlord's option, enter into and sign Landlord's then current standard form of net lease for the Retail Component or a lease extension agreement to give effect to the extension term;

2.1.3 Tenant will accept the Premises on an "as is" basis at the commencement of each extension term;

2.1.4 Tenant agrees that it shall refurbish the Premises at its own cost in accordance with Landlord's then current design criteria;

2.1.5 there shall be no further right of extension beyond the second extension term;

2.1.6 the annual Minimum Rent for any extension term shall be based upon the then current fair market rental for similar premises in similar vicinities at the commencement of the extension term in question and shall be agreed upon between the parties by no later than 6 months prior to the expiry of the initial Term or the then expiring extension term, as the case may be, and failing agreement by that date then the annual Minimum Rent for the first year of the extension term in question will be determined by a single arbitrator in accordance with the *Arbitration Act* for the Province. The cost of the arbitration shall be borne equally by the parties; and

2.1.7 in no event, however, shall the annual Minimum Rent payable during each year of the extension term in question be less than the annual Minimum Rent payable during the last year of the initial Term or the last year of the immediately preceding extension term, as the case may be.

2.2 If the Minimum Rent payable during the extension term has not been determined prior to the commencement of such extension term, then until such determination has been made, Tenant shall pay Minimum Rent at a rate equal to 125% of the Minimum Rent payable during the immediately preceding 12 month period. Upon determination of the Minimum Rent for the extension term, any increase in Minimum Rent shall be payable retroactive to the beginning of the extension term in question, together with interest thereon at the Stipulated Rate from the first day of such extension term to the date paid, and either Landlord shall pay to Tenant any excess or Tenant shall pay to Landlord any deficiency in the payments of Minimum Rent previously made by Tenant.

3. RESTRICTIVE COVENANT

3.1 So long as the Required Conditions have been met and continue to be met at all times, Landlord will at no time during the Term of the Lease, lease space in the Retail Component as the same is constituted as of the date of this Lease to another tenant whose principal business is operation of a food supermarket or a food caterer. This restrictive covenant does not apply to: (i) any existing tenants, their successors, assigns or replacement tenants; (ii) any tenant in excess of Twenty Thousand (20,000) square feet; or (iii) any restaurants. Notwithstanding the generality of the foregoing, Landlord shall be entitled to lease space in the Retail Component for the operation of one (1) coffee shop, notwithstanding that a coffee shop may already be operated within any of the premises referred to in subparagraphs (i), (ii) and (iii) above.

3.2 Tenant acknowledges that Landlord is not obliged to enforce the aforementioned covenant against any Person if by doing so it shall be in breach of any laws, rules, regulations or enactments from time to time, and this covenant is not intended to apply or to be enforceable to the extent that it would give rise to any offence under the *Competition Act* (Canada), or any statute that may be substituted therefore or may be enacted with similar intent, from time to time. As this covenant has been granted solely at the request of Tenant, Tenant shall indemnify and hold harmless Landlord from any loss, injury, liability or damage whatsoever suffered by Landlord in connection with any such breach or offence as aforesaid including,

without limitation, all expenses incurred in connection with any claims, actions or proceedings brought by, on behalf of, or against Landlord as a result of such breach or offence.

3.3 Tenant further acknowledges that Landlord shall not be liable to Tenant for any damages Tenant may suffer as a result of another tenant of Landlord using its premises for any one of the restrictive uses (specified in Section 3.1 above) in violation of such tenant's lease.

SCHEDULE "F"

RULES AND REGULATIONS

1. Tenant will:

1.1 keep the inside and outside of all glass in the doors and windows of the Premises clean;

1.2 keep all exterior storefront surfaces of the Premises clean;

1.3 replace promptly, at its expense, any cracked or broken window glass of the Premises;

1.4 maintain the Premises at its expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;

1.5 keep any garbage, trash, rubbish or refuse in ratproof containers within the interior of the Premises until removed;

1.6 remove garbage, trash, rubbish and refuse at its expense on a regular basis as prescribed by Landlord and if Tenant uses perishable articles or generates wet garbage, Tenant shall provide refrigerated storage facilities suitable to Landlord;

1.7 keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; and

1.8 co-operate with Landlord and comply with any directive, policy or request of any governmental or quasi-governmental authority or entity, or any other request of Landlord, in respect of any energy conservation, waste management, safety, security or other matter relating to the operation of the Retail Component and/or the reduction of the Retail Component's impact on the environment.

2. Tenant will not:

2.1 commit or permit waste upon or damage to the Premises or any nuisance or other act that disturbs the quiet enjoyment of other tenants or occupants of the Retail Component or of the Development;

2.2 do anything that may damage the Retail Component or the Development or permit odours, vapours, steam, water, vibrations, noises or other undesirable effects to come from the Premises;

2.3 place or maintain any merchandise or other articles in any vestibule or entry of the Premises, on the adjacent sidewalks or elsewhere on the exterior of the Premises, the Common Retail Facilities or the Development;

2.4 permit accumulations of garbage, trash, rubbish or other refuse within or outside the Premises;

2.5 distribute handbills or other advertising matter to Persons in the Development other than in the Premises;

2.6 permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking facilities, mall or other area of the Retail Component or of the Development;

2.7 permit any motor vehicle to be driven on any part of the Common Retail Facilities or the Development other than on a driveway;

2.8 receive, ship, load or unload articles of any kind including merchandise supplies, materials, debris, garbage, trash, refuse and other movables except through service access facilities designated from time to time by Landlord;

2.9 use the plumbing facilities for any other purposes than those for which they are constructed;

2.10 use any part of the Premises for lodging, sleeping or any illegal purposes;

2.11 cause or permit any cash dispensing machines, machines selling merchandise, rendering services or providing, however operated, entertainment to be present on the Premises unless consented to in advance in writing by Landlord;

2.12 solicit business and display merchandise except in the Premises, nor do or permit anything to be done in or on the Common Retail Facilities, the Retail Component or the Development that hinders or interrupts the flow of traffic to, in and from the Retail Component or the Development or obstructs the free movement of Persons in, to or from the Retail Component or the Development;

2.13 permit on the Premises any transmitting device (other than standard credit/debit machines) or erect an aerial on any exterior walls of the Premises or any of the Common Retails Facilities or the Shared Facilities, or use travelling or flashing lights, signs or television or other audio visual or mechanical devices that can be seen outside of the Premises, or loudspeakers, television, phonographs, radios or other audio

visual or mechanical devices that can be heard outside of the Premises.

SCHEDULE "G"

EXISTING EXCLUSIVE AND RESTRICTIVE COVENANT

NONE

SCHEDULE "H"

CONSENT AND ACKNOWLEDGEMENT AGREEMENT

TO: _____ (the "Bank")

The undersigned ("Landlord") is advised that (a) the Bank has provided certain financing to _____ ("Tenant") which has leased certain premises (the "Premises") identified as Unit #___ situated in the Retail Component known as "_____" from Landlord under a lease dated the __ day of _____, 20__, as the same may be amended, superseded or replaced from time to time (the "Lease"), and (b) Tenant has given, or intends to give to the Bank, a Personal Property Security Interest (the "Bank's Security") in certain tangible assets situated, or to be situated, on the Premises.

In consideration of the Bank's acknowledgement set out in Part B, below; and the sum of One Dollar ($1.00) Landlord, agrees as follows:

Part A

1. Landlord consents to the Bank's Security.

2. Landlord acknowledges that the Lease is a valid and subsisting lease in full force and effect and in good standing.

3. If any default occurs under the Lease, in respect of which Landlord intends to exercise a right to terminate or resiliate the Lease, Landlord will give the Bank at the address set out below, notice in writing of the default but it will have no liability to the Bank, nor will its rights referred to below, in this agreement be prejudiced, should it fail to do so.

The Bank's address for notice is:

_____

_____

_____

4. So long as the Lease remains in full force and effect, if there is a default by Tenant under its financing with the Bank, Landlord agrees, upon receiving written notice from the Bank, to permit the Bank to enter onto the Premises to remove the inventory, equipment, movables and trade fixtures (the "Removable Property") of Tenant that are subject to the Bank's Security. However, this does not imply a waiver on the part of Landlord of any of its rights under the Lease or at law.

Part B

1. The Bank acknowledges that the Bank's Security does not apply to the Lease or to Tenant's interest in the Lease or to the leasehold improvements that are not Removable Property and confirms that the Bank's Security does not affect tangible property situated on the Premises except the Removable Property.

2. Landlord, the Bank, and Tenant agree that all Removable Property will be considered as movables for the purposes of the Lease and this agreement.

3. The Bank confirms that Tenant is not in default under any material obligation of Tenant for which the Bank holds the Bank's Security.

4. The Bank will follow all reasonable directions of the manager of the Retail Component to minimize disruption and to maximize safety in effecting removal of the Removable Property from the Premises; will restore promptly all damage caused in connection with the removal; will indemnify Landlord against all claims arising in connection with the Bank's removal of the Removable Property and releases Landlord and any manager of the Retail Component (as well as their respective officers, directors, employees, agents and contractors) from all claims for damage or loss to the Removable Property regardless of how the damage or loss occurs.

5. The Bank will not register any notice of the Bank's Security on the title to the Retail Component.

6. Landlord's consent is conditional upon the Bank signing the enclosed copy of this agreement to confirm its acknowledgement and agreement concerning what is set out above.

Part C

Tenant has executed this Agreement to confirm what is stated above and to confirm that Landlord does not, in signing this Agreement, waive, release, amend, or derogate from its rights under the Lease as between Landlord and Tenant.

Part D

The party, if any, that signs this agreement below as the "Indemnifier" confirms that the obligations of Indemnifier under any Indemnity entered into by it in respect of the Lease remain in full force and will not be reduced or derogated from by virtue of any provision of this Agreement or any action or failure to act on the part of Landlord as contemplated by this Agreement.

THE PARTIES HAVE SIGNED BELOW, to confirm the terms of this Agreement.

TENANT HAS EXECUTED THIS AGREEMENT THE _____ DAY OF _____, ***.

****
(Tenant)

By: FORM ONLY – DO NOT SIGN
Name:
Title:

By: FORM ONLY – DO NOT SIGN
Name:
Title:

I/We have authority to bind the Corporation.

_____ FORM ONLY – DO NOT SIGN
Witness ******* (Tenant)

_____
Name

_____
Address

INDEMNIFIER HAS EXECUTED THIS AGREEMENT THE _____ DAY OF _____, ***.

****
(Indemnifier)

By: FORM ONLY – DO NOT SIGN
Name:
Title:

By: FORM ONLY – DO NOT SIGN
Name:
Title:

I/We have authority to bind the Corporation.

_____ FORM ONLY – DO NOT SIGN
Witness ******* (Indemnifier)

_____
Name

_____
Address

THE BANK HAS EXECUTED THIS AGREEMENT THE _____ DAY OF _____, ***.

****
(Bank)

By: FORM ONLY – DO NOT SIGN
Name:
Title:

By: FORM ONLY – DO NOT SIGN
Name:
Title:

I/We have authority to bind the Bank.

LANDLORD HAS EXECUTED THIS AGREEMENT THE _____ DAY OF _____, ***.

****

(Landlord)

By: FORM ONLY – DO NOT SIGN
Name:
Title:

By: FORM ONLY – DO NOT SIGN
Name:
Title:

We have authority to bind the Corporation.

SCHEDULE "I"

DEFINITIONS

The following defined terms have the following meanings:

"**Act**": means the Condominium Act, 1998, S.O. 1998 c.19, as may be amended from time to time.

"**Additional Rent**": means all amounts payable by Tenant to Landlord or any other Person pursuant to this Lease other than Minimum Rent and Percentage Rent, if any, and includes, without limitation, all Charges.

"**Applicable Laws**": means all federal, provincial, municipal and local laws, statutes, ordinances, by-laws and regulations and all orders, directives, decisions, policies, guidelines and similar guidance of, any ministry, department or administrative or regulatory agency having jurisdiction (the "Authorities") over any matter from time to time.

"Architect": means the professional accredited architect selected by the Landlord.

"**Auditor**": means an independent chartered accountant of recognized professional standing.

"**Authoritiy"** or **"Authorities**": has the meaning set out in the definition of Applicable Laws.

"**Basic HVAC Charge**": means the charge payable pursuant to Schedule "D-1".

"**Business Day**": means any day of the week other than a Saturday, Sunday or statutory holiday effective under Applicable Laws in the Province.

"**Business Taxes**": means, (i) the taxes, rates, duties, levies, assessments and other charges that are imposed against or in respect of the improvements, equipment and facilities of Tenant on or in the Premises or the Retail Component or any part of either of them or Landlord on account of its ownership of or interest in either of them; and (ii) every tax and license fee that is imposed against or in respect of the business carried on in the Premises or in respect of the use or occupancy of the Premises or any part of the Retail Component by Tenant or its subtenants or licensees, or against Landlord on account of its or their ownership of the Premises or the Retail Component or any part of it, whether or not in existence as of the date of this Lease and whether of the foregoing character or not. Business Taxes do not include Taxes.

"**Change of Control**" means, in the case of any corporation or partnership, the transfer or issue by sale, assignment, subscription, transmission on death, mortgage, charge, security interest, operation of law or otherwise, of any shares, voting rights or interest which would result in any change in the effective control of such corporation or partnership, unless such change occurs as a result of trading in the shares of a public corporation listed on a recognized stock exchange in Canada or the United States.

"**Charges**": means all items set out in Section 1.21.

"**Commencement Date**": means the date stipulated in Section 1.13.

"**Commercial Parking Garage**": means the underground commercial parking garage located on levels P1 and P2 of the Development and including all of the lands, structures, improvements and installations, including, but not limited to the lobby, elevator and entrance area, constructed upon a portion of the Retail Component.

"**Common Residential Facilities**": means those portions of the Residential Component not part of the premises dedicated for residential purposes, but includes, without limitation, entrances to and exits from the Residential Component, stairwells, corridors, electrical rooms, mechanical rooms, fire exits, public seating and public washrooms in the Residential Component if any, and all other common areas now or hereafter developed in and exclusively serving the Residential Component.

"**Common Retail Facilities**": means those portions of the Retail Component not part of the premises set aside by Landlord for leasing to tenants of the Retail Component including, without limitation, entrances to and exits from the Retail Component, public seating and public washrooms in the Retail Component if any, service areas, corridors, elevators, escalators, fire exits, electrical rooms, garbage rooms, mechanical rooms, and all other common areas now or hereafter developed in and exclusively serving the Retail Component.

"**Common Retail Facilities Operating Costs**": means the costs set forth in paragraphs (a) and (b) of Schedule "D".

"**Condominium**": means any condominium in the Development created pursuant to the Act at any time before or during the Term, of which the Residential Component forms the whole or a part.

"**Condominium Documents**": means all documents contemplated under the Act with respect to the formation, governance, management and regulation of the Condominium including, without limitation, the declaration, by-laws and rules (as defined in the Act), and the Shared Facilities Agreement, as all or any of them may be modified from time to time.

"**Controls**": means all books and records which are required to satisfy the requirements, if any, of the income and sales tax Authorities and any additional material which would normally be examined by an Auditor pursuant to accepted auditing standards in performing a detailed audit of Tenant's sales.

"**CPI**": means the applicable of the following:

(i) for all matters other than the calculation of the HVAC Operating Costs (as defined in Schedule "D-1" attached hereto), the Consumer Price Index (All Items for Regional Cities); and

(ii) for the purpose of calculating the HVAC Operating Costs (as defined in Schedule "D-1" attached hereto), the Consumer Price Index for Energy for Regional Cities;

in either case as published by Statistics Canada or by a successor or other governmental agency, for the geographical area closest to the Retail Component, or any replacement index reasonably designated by Landlord if any such indices are no longer published.

"**Damage**": means any damage to property, death or injury to any Person or any other loss whatsoever arising from or out of any occurrence in or relating to the Retail Component.

"Development": means the mixed-use development located on the south-east corner of Bloor Street East and Yonge Street, in the City of Toronto, the municipal address is set out in Section 1.4.

"**Discharge**": means any Hazardous Substance spilled, leaked, discharged or otherwise released at, on, over, under, to or from the Premises or the Retail Component.

"**Event of Default**": has the meaning set out in Section 17.1.

"**Expert**": means the independent architect, architectural technician, engineer, land surveyor or other professional consultant Landlord names from time to time. The decision of the Expert will be final and binding.

"**Expiry Date**": means the date stipulated in Section 1.14.

"**Fixturing Period**": means the period specified in Section 1.11.

"**GLA**": means all floor areas measured in accordance with ANSI/BOMA Z65.5-2010 Retail Buildings – Standard Methods of Measurement and, for greater certainty, comprises the total enclosed floor area of Rentable Premises, generally measured from the centreline of partitions that separate Rentable Premises from adjacent Rentable Premises, from the measure line on the exterior surface of exterior enclosures, from the lease line of Common Retail Facilities, and includes the full thickness of all other enclosing walls, all as certified by the Expert. GLA includes interior space even if it is occupied by projections, structures or columns, structural or non-structural, and if a store front is recessed from the lease line the area of the recess is included within the GLA of the Rentable Premises. The dimensions of Rentable Premises that are a kiosk will be determined by Landlord.

"**GLA of the Retail Component**": the total of the GLA of all Rentable Premises excluding, where applicable, any one or more of the following categories of space: (i) kiosks; (ii) basement and storage areas except if leased or designated by Landlord as leaseable to a tenant; (iii) free standing buildings or structures; (iv) the area occupied by Major Tenants; (v) theatres or cinemas; (vi) space used by governmental, quasi-governmental or public offices, agencies or services or charitable organizations; (vii) mezzanine areas inside Rentable Premises, (viii) the area demised pursuant to any land leases; and (ix) the area occupied by other tenants or other occupants whose contributions to Operating Costs or Taxes are reduced, limited or non-existent. However, the area of the Premises and the area of other Rentable Premises that are of the same category of space as the Premises shall be included in the GLA of all Rentable Premises.

"**Gross Negligence**": means conduct which is a very marked departure from the standard of conduct expected of a landlord or those for whom it is in law responsible and which goes beyond mere ordinary neglect.

"**Gross Revenue**": means the total of the selling or rental prices of goods sold or leased and services performed in or from the Premises, whether the sales or rentals are made or services performed on the Premises or elsewhere.

Gross Revenue includes but is not limited to:

(a) orders taken or received electronically or on-line for the Premises
(b) orders fulfilled at or delivered from the Premises, whether the sales or rentals are made or services performed at the Premises or elsewhere;
(c) if the McEwan upscale food supermarket business is operated with a commissary, all orders fulfilled or delivered within the radius stipulated in Section 1.9;

(d) sales and rentals of goods and services via an internet website operated by the Tenant or an Affiliate of the Tenant where the sales and rentals are generated via a terminal or console located within the Premises;
(e) deposits not refunded to purchasers; and
(f) all other receipts and receivables (including interest, instalment and finance charges) from business conducted in or from the Premises,

whether the sales, rentals or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales or rentals are made by means of mechanical or other vending devices in the Premises. Each charge, sale or rental made on instalment or credit will be treated as a sale or rental for the full selling or rental price in the month for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

Gross Revenue does not include, or there will be deducted from Gross Revenue:

(i) sales or rentals of merchandise for which cash has been refunded or credit made to a charge card account, but only to the extent of the refund or credit, and in the case of sales made through catalogues or the internet, only to the extent that such refund or credit relates to a prior inclusion of the same transaction in Gross Revenue;

(ii) the selling or rental price of merchandise returned by customers for exchange, but the selling or rental price of merchandise delivered to the customer in exchange will be included in Gross Revenue;

(iii) retail tax imposed by federal, provincial, municipal or any other governmental authorities directly on sales and rentals and collected from customers at the point of sale or rental by the Tenant acting as agent for the authority, but only if the amount is added separately to the selling or rental price and does not form part of the quoted price for the article or the service and is actually paid by the Tenant to the authority; and

(iv) transfers of merchandise between the Tenant's stores and merchandise returned to the Tenant's suppliers, but only if the transfers or returns are for convenience or other valid business reasons and not for reducing Gross Revenue.

“Hazardous Condition": means individually or collectively the creation of a hazardous, dangerous or harmful situation, condition or substance, including related to mould, asbestos or asbestos-containing material.

"**Hazardous Substance**": means any substance or thing or mixture of them, including any breakdown product or constituent element (individually or collectively, a "Substance"), any of which alone or in combination with others may be hazardous, harmful, detrimental or dangerous to Persons, other living things, property or the environment (including indoor space) (individually or collectively hereinafter referred to as the "Environment"), including without limiting the generality of the foregoing, any Substance that could cause an adverse effect to or impairment of the Environment or which is, or may be deemed or designated by Applicable Laws to be, dangerous or detrimental to living things or to the Environment, and includes, but is not limited to, any pollutant, contaminant, dangerous good, deleterious substance, toxic or hazardous chemical, waste that is hazardous, toxic, dangerous, or deemed to be subject waste or a similarly designated waste under Applicable Laws ("Hazardous Waste"), dangerous, noxious or toxic Substance, flammable, explosive or radioactive Substance, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyl, pesticides, mould, or any other Substance, the presence, release, leaking, spilling, discharging, processing, removal, recycling, manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, transportation, handling or ownership of which is subject to or regulated under Applicable Laws.

"**HVAC System**": has the meaning set out in Schedule “D-1”.

"**Indemnifier**": means the Person, if any, who has executed, or agreed to execute, an indemnity agreement with Landlord.

"**Landlord**": means the party of the First Part and Persons for whom Landlord is responsible in law. In sections that contain a release or other exculpatory provision or indemnity in favour of Landlord, "Landlord" includes the Released Persons.

"**Landlord's Work**": means the work, if any, Landlord has agreed to perform pursuant to Schedule "C".

"**Lease**": means this agreement and all attached schedules.

"**Lease Year**": means, in the case of the first Lease Year, a period commencing on the Commencement Date and ending on the last day of the following December. Each Lease Year thereafter shall consist of consecutive periods of 12 calendar months save for the last Lease Year which shall terminate upon the Expiry Date (or the last day of a renewal or extension term, if applicable). Landlord may, in its sole and unfettered discretion, change the Lease Year from time to time.

"**Major Tenant**": means a tenant occupying at least 10,000 square feet of GLA in the Retail Component.

"**Management Company**": means FCR Management Services LP and/or any other company or other entity, if any, appointed by Landlord from time to time to operate or manage the Retail Component.

"**Minimum Rent**": means the annual rent payable pursuant to Section 6.1.

"**Mortgagee**": means any mortgagee, chargee or other encumbrancer (including any trustee for bondholders) from time to time, of the Retail Component or any part of it, or Landlord's interest in it. The security documents held by Mortgagees and any ground or underlying leases affecting the Retail Component, as renewed, extended or replaced are referred to as "Encumbrances".

"**Operating Costs**": means, collectively, the Common Retail Facilities Operating Costs and the Shared Facilities Costs, all as more particularly set forth in Schedule "D".

"**Ordinary Municipal Waste**": means solid waste that is not and does not contain Hazardous Waste.

"**Percentage Rent**": means the rent payable pursuant to Section 6.3.

"**Person**": if the context allows, includes any individual person, firm, partnership or corporation, trust, trustee, or any group or combination of them.

"**Possession Date**": means the date stipulated in Section 1.10.

"**Premises**": means the Rentable Premises described in Section 1.5.

"**Prepaid Rent**": means the amount stipulated in Section 1.18 and applied in accordance with Section 6.2.

"**Prime Rate**": means the rate of interest per annum publicly quoted from time to time by a Canadian chartered bank chosen by Landlord as the referenced rate of interest (commonly known as its "prime rate") used by it to determine rates of interest chargeable in Canada on Canadian dollar demand loans to its commercial customers.

"**Project Manager**": means Landlord's designated project manager for the Retail Component.

"**Promotion Charge"**: means an annual amount charged by Landlord for promotion of the Retail Component.

"Promotion Fund": means a promotion fund established by Landlord to receive amounts to defray cost to Landlord of fulfilling its obligations under Section 11.2.

"**Proportionate Share**": means: **(i) with respect to Common Retail Facilities Operating Costs,** a fraction which has as its numerator the GLA of the Premises, and as its denominator the GLA of the Retail Component, or such portion of the GLA of the Retail Component to which Landlord, acting reasonably, but in its sole discretion, may allocate such cost items of which Tenant is required to pay its Proportionate Share**; and (ii) with respect to the Shared Facilities Costs, in accordance with allocation terms in the Shared Facilities Agreement**. **In both instances,** Landlord may recalculate or adjust the denominator of the Proportionate Share fraction from time to time due to changes, additions or improvements to the Retail Component **and/or the Shared Facilities, as the case may be**.

"**Province**": means the province in which the Retail Component is located.

"**Released Persons**": means collectively and individually Landlord, the Management Company, First Capital Realty Inc., and each corporation, partnership and trust controlled by it, and the Mortgagee. In any Section of this Lease which contains a release or other exculpatory provision, or an indemnity in favour of any or all of the Released Persons, such Released Persons shall include the officers, directors, employees and agents of each such Released Person, and Landlord acts as agent for, or as trustee for, the benefit of such Released Person so that each such release, indemnity and/or other exculpatory provision is fully enforceable by the Released Persons and Tenant and Indemnifier, as the case may be, undertakes having knowledge of the Released Person to accept this irrevocable stipulation for another.

"**Rent**": means Minimum Rent, Percentage Rent, if any, and Additional Rent, but excluding Sales Taxes.

"**Rentable Premises**": means those premises (including the Premises), in or on the Retail Component that are, or are intended from time to time to be, occupied by businesses that sell or lease goods or services to the public.

"**Required Conditions**": means:

(i) an Event of Default has not occurred; and

(ii) no Transfer (other than Transfers permitted under Article 12) has occurred; and

(iii) Tenant named on page 1 of this Lease, or a Transferee permitted under Article 12, is in physical occupation of and conducting business in the whole of the Premises for the purpose stipulated in Section 1.7.

“**Residential Component**”: shall mean the residential units or suites in the tower constructed or to be constructed as part of the Development, together with any ancillary service areas and facilities and common elements for the use of the residents of such residential units or suites, and includes, without limitation, all parking areas within the Development other than the Commercial Parking Garage, as the same may exist from time to time, and which, for clarification, excludes the Retail Component.

“**Retail Component**”: shall mean the parts of the Development situated or to be situated at below-grade, grade and concourse levels and that are intended to be, or which are developed, occupied and operated for, retail, commercial and/or service uses and includes, without limitation, the Common Retail Facilities serving them or located on or in them from time to time and any other portion of the Development which may be designated from time to time by Landlord in its sole and unfettered discretion for the use of the Retail Component, all as may be altered, expanded, reduced or reconstructed from time to time by Landlord.

"**Rules and Regulations**": means the rules and regulations set out in Schedule "F", as may be amended by Landlord from time to time.

"**Sales Taxes**" means any tax or duty imposed upon either Landlord or Tenant which is measured by or based in whole or in part directly upon the Rent payable under this Lease or in respect of the rental or rental value of premises under this Lease whether existing at the date of this Lease or hereafter imposed by any governmental authority, including, without limitation, goods and services tax, harmonized sales tax, value added tax, business transfer tax, sales tax, federal sales tax, excise taxes or duties or any tax similar to the foregoing.

"**Secured Claim**": means a construction lien, or legal hypothec, charge, mortgage, security interest, floating charge, debenture, or other encumbrance.

"**Security Deposit**": means the amount stipulated in Section 1.19, if any, and applied in accordance with Section 17.12.

“**Shared Facilities**”: means the systems, facilities and services in the Development that are shared between the Retail Component and the Residential Component and include, by way of example only, the following: (a) loading bays and facilities including doors and dock levellers; **(b) garbage rooms and compactors;** (c) all parking ramps, parking stalls and drive aisles forming part of the Commercial Parking Garage; (d) all elevators serving the Commercial Parking Garage; (e) common exterior elements surrounding the Development, if any; (f) heating and cooling equipment and towers and all related equipment located on the roof of, or elsewhere in, the Development (unless they serve only the Retail Component, in which case they would form part of the Common Retail Facilities); and (g) any reciprocal right or other similar agreement between the Development or any part thereof and any neighbouring property or development. For greater certainty, the Shared Facilities shall exclude the Common Retail Facilities and Common Residential Facilities.

“**Shared Facilities Agreement**”: means collectively: (a) the agreement or agreements that is or are from time to time contemplated to be entered into in respect of the Retail Component with the Residential Component with respect to the sharing of: (i) the use of the Shared Facilities; and (ii) the cost and responsibilities (and the provision for easements required to facilitate the performance of those responsibilities) of providing and maintaining services and equipment, and of operating, repairing, maintaining and replacing the Shared Facilities; and (b) any agreement of a similar nature affecting the Retail Component, as such agreements may be amended from time to time.

“**Shared Facilities Costs**”: means the costs referred to in subparagraph 3 of Schedule “D”.

"**Shared HVAC System**": means the heating, ventilating and air-conditioning equipment, facilities and system shared among Rentable Premises in the Retail Component.

"**Statement**": has the meaning set out in Section 7.4.3.

"**Stipulated Rate**": means an amount per annum equal to the aggregate of the Prime Rate in force when an amount becomes due as adjusted from time to time to reflect variations in the Prime Rate, plus five percent.

"**Taxes**": means, (i) all immoveable real property taxes (including the tax or surtax on non-residential immoveables), rates, duties and assessments that are levied, rated, charged or assessed from time to time by any taxing authority in respect of the Retail Component or any part of it from time to time (including, but not limited to, the Common Retail Facilities and the Shared Facilities) or upon Landlord on account of its interest therein; and (ii) all legal, appraisal, consultation and other costs, fees and expenses incurred by Landlord in calculating Taxes, in contesting any Taxes, or in negotiating with taxing Authorities regarding Taxes, and/or in doing any examinations, studies or research to determine the feasibility of either contesting any Taxes or negotiating with taxing Authorities with respect to Taxes. If the system of real estate taxation is altered or varied from that in force on the Commencement Date and any new tax shall be levied or imposed on all or part of the Retail Component and/or the revenues therefrom and/or Landlord in substitution for or in addition to previously existing Taxes by any taxing authority, whether or not the taxing authority has previously charged any Taxes, then any such new tax shall be included in Taxes. Taxes shall also include all immovable property taxes, rates, duties and assessments imposed upon any lands adjoining

or proximate to the Retail Component to the extent that those lands benefit the Retail Component. Taxes shall in every instance be calculated on the basis of the Retail Component being fully assessed and taxed at prevailing commercial shopping centre rates for occupied space for the period for which Taxes are being calculated.

"**Tax Year**": means each 12 month period occurring in whole or in part during the Term which Landlord adopts from time to time to calculate Taxes.

"**Tenant**": means the party of the Second Part and Persons for whom Tenant is in law responsible. Where the context permits, Tenant will also include the officers, directors, employees, agents, mandataries and contractors of Tenant.

"**Tenant Security**": means any bond, debenture, pledge, commercial pledge, warehouse receipt, conditional sales contract, priority, hypothec, charge or any other form of encumbrance granted by or agreed to by Tenant or any other Person (other than Landlord) with respect to its rights in this Lease, the Premises, or any property, whether moveable or immovable, located in or forming part of the Premises, to secure in whole or in part any loan, indebtedness, authorized credit or other obligation.

"**Tenant's Work**": means any work, renovation, repair, alteration, replacement, decoration or improvement conducted by or on behalf of Tenant to the Premises in accordance with this Lease, including, without limitation, the work specified under Schedule "C".

"**Term**": means the period specified in Section 1.12 and includes all renewals or extensions thereof.

"**Transfer**": means any assignment, transfer or disposition of this Lease in whole or in part (other than as Tenant Security), any sublease of all or any part of the Premises, the sharing, license or transfer of any right of use or permitting the occupancy of all or any part of the Premises, any granting of a franchise or concession with respect to all or any part of the Premises, any Change of Control, and includes any transaction or occurrence whatsoever (including, but not limited to, death of Tenant, expropriation, receivership proceedings, seizure by legal process and transfer by operation of law), which has changed or might change the identity of the Person having use or occupancy of any part of the Premises. "Transferor" and "Transferee" have corresponding meanings.

“**TTC**”: has the meaning set out in Section 19.21.

“**TTC Agreements**”: has the meaning set out in Section 19.21.

"**Unavoidable Delay**": means any delay occasioned by cas fortuit, force majeure, strikes, lockouts, labour troubles, inability to procure materials or services, power failure, restrictive governmental rules, regulations or orders, bankruptcy of contractors, the failure of any existing tenant or occupant to vacate the Premises, riots, insurrection, sabotage, rebellion, war, acts of terrorism, or any other condition whether of the foregoing nature or not (other than the financial condition of either party) which is beyond the reasonable control of Landlord or Tenant, as the case may be.

"**Utilities**": means water, fuel, power, telephone and any other utilities.

TAB B

Attached is Exhibit “B”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

CONSENT AND LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the **21st** day of **December, 2018**

BETWEEN:

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

MCEWAN ENTERPRISES INC.
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated April 27, 2018 (the "**Lease**"), and made between the Landlord and the Tenant, the Landlord leased to the Tenant for and during a term of approximately fifteen (15) years (the "**Term**") commencing on the Commencement Date and expiring on the Expiry Date certain premises (the "**Premises**") comprising: (i) certain premises located on the lower level of the retail portion of the development known municipally as 1 Bloor Street East, in the City of Toronto, Ontario (the "**Retail Component**") and comprising a GLA of approximately Seventeen Thousand Eight Hundred and Thirty (17,830) square feet, and in the approximate location shown hatched on the plan attached to the Lease as Schedule "B-1" thereto; and (ii) certain premises located on the ground floor of the Retail Component and comprising a GLA of approximately of One Thousand One Hundred and Sixty-One (1,161) square feet as shown coloured yellow on the plan attached to the Lease as Schedule "B" thereto.

B. At the date of execution of the Lease, a portion of the corporate shares of the Tenant that constitutes voting control were beneficially owned and controlled by Northbridge Personal Insurance Company ("**Northbridge**").

C. Fairfax (Barbados) International Corp. ("**Fairfax**") holds certain options available to it to acquire voting control of the Tenant currently held by Northbridge.

D. The Tenant has notified the Landlord that Fairfax has exercised its options, and intends to acquire voting control of the Tenant (the "**Transfer**") by way of a transfer of the corporate shares of the Tenant currently held by Northridge to Fairfax, as of **December 31, 2018** (the "**Effective Date**") (the "Effective Date").

E. The Transfer is a permitted transfer, as per Section 12.1.4(d) of the Lease, for which Landlord's consent shall not be required, but is otherwise subject to the applicable provisions of the Lease including, without limitation, the obligation of the Tenant to enter into this Agreement

F. The Landlord and the Tenant hereby agree to: (i) enter into this Agreement to give effect to the foregoing; and (ii) amend the Lease, all upon the terms and conditions more particularly set forth herein.

1. The consideration for this Agreement is the mutual covenants and agreements between the Parties to this Agreement and the sum of TWO DOLLARS ($2.00) that has been paid by each of the Parties to the other, the receipt and sufficiency of which is acknowledged by all Parties.

2. The Parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.

3. The Landlord hereby acknowledges the Transfer, upon the terms and conditions contained in this Agreement.

4. This consent does not constitute a waiver of the necessity for notification of any further change in the control of the Tenant existing as at the Effective Date, which must be effected in accordance with the terms of the Lease.

5. Simultaneously with the execution and delivery of this Agreement by the Tenant to the Landlord, the Tenant shall deliver to the Landlord a certified cheque or bank draft, made payable to First Capital Asset Management ULC, in the amount of One Thousand Five Hundred Dollars ($1,500.00), plus HST, which sum represents the amount which the Landlord is prepared to accept in satisfaction of the Landlord's Transfer processing fee referred to in Section 12.2 of the Lease.

6. The parties hereto further acknowledge and agree that, as and from the date of this Agreement, the Lease is hereby deemed amended as follows:

(a) The Landlord's address for notice set forth in Section 1.1 of the Lease is hereby deleted and replaced with: "85 Hanna Avenue, Suite 400, Toronto, Ontario, M6K 3S3, Attention: Senior Vice-President, Leasing, with a copy to: Senior Director, Legal Affairs, at the same address."

(b) Section 1.11 of the Lease is hereby deleted and replaced with the following:

"1.11. FIXTURING PERIOD	Commencing on the Possession Date and expiring on the date which is the earlier of: (i) **Three Hundred and Forty-Four (344)** days after the Fixturing Period began; and (ii) the day immediately preceding the date Tenant begins carrying on business in any part of the Premises."

7. The parties hereto further acknowledge and agree that, as and from the date of the Lease, Section 1 of Schedule "E" to the Lease is hereby amended by deleting the words "GLA of the Premises" from the first paragraph thereof and replacing them with the words "GLA of Premises I".

8. The parties hereto further acknowledge and agree that when the GLA of the Premises has been certified by an Expert, as contemplated by the provisions of Section 4.3 of the Lease: (i) the Landlord shall provide the Tenant with a copy of the area certificate provided to the Landlord by the Expert; (ii) the Rent shall be adjusted, retroactive to the Commencement Date, to reflect the certified GLA of the Premises; and (iii) in respect of Premises I only, the amount of any Inducement paid by the Landlord to the Tenant in accordance with the provisions of Section 1 of Schedule "E" to the Lease, as amended by Section 7 of this Agreement, shall also be adjusted, as between the Landlord and the Tenant, to reflect the certified GLA of Premises I.

9. The parties hereto confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

10. This Agreement shall enure to the benefit of and be binding upon the Parties hereto the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument and delivery of same may occur via the exchange of PDF copies by electronic transmission. The several counterparts and electronic transmissions when combined shall constitute a firm and binding agreement between the parties. The parties undertake to subsequently ensure that original copies of this Agreement are executed by all parties and delivered forthwith thereafter.

12. This Agreement may be executed by the Landlord or the Tenant by electronic signature, and such electronic signature shall constitute an original signature made on behalf of such party(ies).

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

Per: _____
Name: JORDAN ROBINS
Title: VICE-PRESIDENT

Per: _____
Name:
Title: **David Holmes**
A.S.O.

I/We have the authority to bind the Corporation.

MCEWAN ENTERPRISES INC.
(Tenant)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

MCEWAN ENTERPRISES INC.
(Tenant)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

TAB C

Attached is Exhibit “C”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 22nd day of **April, 2019**

BETWEEN:

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

MCEWAN ENTERPRISES INC.
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated April 27, 2018 (the "**Original Lease**"), and made between the Landlord and the Tenant, the Landlord leased to the Tenant for and during a term of approximately fifteen (15) years (the "**Term**") commencing on the Commencement Date and expiring on the Expiry Date certain premises (the "**Premises**") comprising: (i) certain premises located on the lower level of the retail portion of the development known municipally as 1 Bloor Street East, in the City of Toronto, Ontario (the "**Retail Component**") and comprising a GLA of approximately Seventeen Thousand Eight Hundred and Thirty (17,830) square feet and in the approximate location shown hatched on the plan attached to the Lease as Schedule "B-1" thereto; and (ii) certain premises located on the ground floor of the Retail Component and comprising a GLA of approximately of One Thousand One Hundred and Sixty-One (1,161) square feet as shown coloured yellow on the plan attached to the Lease as Schedule "B" thereto.

B. The Premises were subsequently certified to be an aggregate certified GLA of Eighteen Thousand, Two Hundred and Ninety-Three (18,293) square feet, consisting of: (i) certified GLA of Seventeen Thousand, One Hundred and Sixteen (17,116) square feet for the premises shown hatched on Schedule "B-1" of the Lease (being Premises I); and (ii) a certified GLA of One Thousand, One Hundred and Seventy-Seven (1,177) square feet as shown coloured yellow on Schedule "B" of the Lease (being Premises II).

C. By a Consent and Lease Amending Agreement dated the 21st day of December, 2018 (the "**First Amending Agreement**") the Landlord and Tenant acknowledged the change in control of the Tenant and amended the Original Lease on the terms and conditions more particularly set out therein.

D. The Original Lease, as amended by the First Amending Agreement is hereinafter referred to as the "**Lease**".

E. The Landlord and Tenant have agreed to further amend the Lease on the terms set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of Two Dollars ($2.00) now paid by each of the parties to the other (the receipt and sufficiency of which are hereby acknowledged by each of them):

1. The Parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.

2. The Landlord and Tenant covenant and agree that the Term of the Lease commenced on January 14, 2019 (the "**Commencement Date**") and the term expires on January 31, 2034.

3. **RENT**

Provided the Tenant pays its' outstanding arrears of Five Hundred Ninety-two Thousand, Five Hundred and Eighteen Dollars and Fifty-four Cents ($592,518.54) concurrently with execution of this Agreement, Landlord and Tenant agree, effective as of May 1, 2019 to delete Section 1.15 of the Lease and replace it with the following:

Minimum Rent

Starting on the Commencement Date until April 30, 2019, for the first year of the initial Term, an amount equal to One Million Ninety-Seven Thousand One Hundred

and Thirty-Six Dollars and Sixty Cents ($1,097,136.60) per annum, payable in equal monthly instalments of Ninety One Thousand Four Hundred and Twenty Seven Dollars and Ninety-Seven cents ($91,427.97), and based on a rate of Sixty-Four Dollars and Ten Cents ($64.10) per square foot of the GLA of Premises I.

For the period commencing on May 1, 2019 and ending on December 31, 2019, Tenant shall pay Minimum Rent equal to Seven Hundred and Thirty-One Thousand, Three Hundred and Sixty-Six Dollars and Sixty-Eight Cents ($731,366.68) per annum, payable in monthly amounts of Sixty Thousand, Nine Hundred and Forty-Seven Dollars and Twenty-Two Cents ($60,947.22) and based on the rate of Forty-Two Dollars and Seventy-Three Cents ($42.73) per square foot of the GLA of Premises I.

For the period commencing on January 1, 2020 and ending on December 31, 2020, Tenant shall pay Minimum Rent equal to One Million, One Hundred and Thirty-Nine Thousand, Seven Hundred and Fifty-four Dollars and Forty-Four Cents ($1,139,754.44) per annum, payable in monthly amounts of Ninety-Four Thousand, Nine Hundred and Seventy-Nine Dollars and Fifty-four Cents ($94,979.54) and based on the rate of Sixty-Six Dollars and Fifty-Nine Cents ($66.59) per square foot of the GLA of Premises I.

For the period commencing on January 1, 2021 and ending on December 31, 2021, Tenant shall pay Minimum Rent equal to One Million, One Hundred and Fifty-Nine Thousand, Seven Hundred and Thirty-four Dollars and Ninety-Six Cents ($1,159,734.96) per annum, payable in monthly amounts of Ninety-Six Thousand, Six Hundred and Forty-Four Dollars and Fifty-Eight Cents ($96,644.58) and based on the rate of Sixty-Seven Dollars and Fifty-Six Cents ($67.56) per square foot of the GLA of Premises I.

For the period commencing on January 1, 2022 and ending on January 13, 2023, Tenant shall pay Minimum Rent equal to One Million, One Hundred and Seventy-Six Thousand, Seven Hundred and Twenty-Nine Dollars and Thirty Cents ($1,176,729.30) per annum, payable in monthly amounts of Ninety-Eight Thousand, and Sixty Dollars and Seventy-Seven Cents ($98,060.77) and based on the rate of Sixty-Eight Dollars and Fifty-Five Cents ($68.55) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2023 and ending on January 13, 2024, Tenant shall pay Minimum Rent equal to One Million, One Hundred and Ninety Thousand, Five Hundred and Eighty-Eight Dollars and Ninety-Six Cents ($1,190,588.96) per annum, payable in monthly amounts of Ninety-Nine Thousand, Two Hundred and Fifteen Dollars and Seventy-Five Cents ($99,215.75) and based on the rate of Sixty-Nine Dollars and Fifty-Six Cents ($69.56) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2024 and ending on January 13, 2025, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Eight Thousand, and Forty-Seven Dollars and Twenty-Eight Cents ($1,208,047.28) per annum, payable in monthly amounts of One Hundred Thousand, Six Hundred and Seventy Dollars and Sixty-One Cents ($100,670.61) and based on the rate of Seventy Dollars and Fifty-Eight Cents ($70.58) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2025 and ending on January 13, 2026, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Twenty-Five Thousand, Eight Hundred and Forty-Seven Dollars and Ninety-Two Cents ($1,225,847.92) per annum, payable in monthly amounts of One Hundred and Two Thousand, One Hundred and Fifty-Three Dollars and Ninety-Nine Cents ($102,153.99) and based on the rate of Seventy-One Dollars and Sixty-Two Cents ($71.62) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2026 and ending on January 13, 2027, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Forty-Three Thousand, Eight Hundred and Nineteen Dollars and Seventy-Two Cents ($1,243,819.72) per annum, payable in monthly amounts of One Hundred and Three Thousand, Six Hundred and Fifty-One Dollars and Sixty-Four Cents ($103,651.64) and based on the rate of Seventy-Two Dollars and Sixty-Seven Cents ($72.67) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2027 and ending on January 13, 2028, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Sixty-One Thousand, Nine Hundred and Sixty-Two Dollars and Sixty-Eight Cents ($1,261,962.68) per annum, payable in monthly amounts of One Hundred and Five Thousand, One Hundred and Sixty-Three Dollars and Fifty-Six Cents ($105,163.56) and based on the rate of Seventy-Three Dollars and Seventy-Three Cents ($73.73) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2028 and ending on January 13, 2029, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Eighty Thousand, Six Hundred and Nineteen Dollars and Twelve Cents ($1,280,619.12) per annum, payable in monthly amounts of One Hundred and Six Thousand, Seven Hundred and Eighteen Dollars and Twenty-Six Cents ($106,718.26) and based on the rate of Seventy-Four Dollars and Eighty-Two Cents ($74.82) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2029 and ending on January 13, 2030, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Ninety-Nine Thousand, Four Hundred and Forty-Six Dollars and Seventy-Two Cents ($1,299,446.72) per annum, payable in monthly amounts of One Hundred and Eight Thousand, Two Hundred and Eighty-Seven Dollars and Twenty-Three Cents ($108,287.23) and based on the rate of Seventy-Five Dollars and Ninety-Two Cents ($75.92) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2030 and ending on January 13, 2031, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Eighteen Thousand, Four Hundred and Forty-Five Dollars and Forty-Eight Cents ($1,318,445.48) per annum, payable in monthly amounts of One Hundred and Nine Thousand, Eight Hundred and Seventy Dollars and Forty-Six Cents ($109,870.46) and based on the rate of Seventy-Seven Dollars and Three Cents ($77.03) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2031 and ending on January 13, 2032, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Thirty-Seven Thousand, Nine Hundred and Fifty-Seven Dollars and Seventy-Two Cents ($1,337,957.72) per annum, payable in monthly amounts of One Hundred and Eleven Thousand, Four Hundred and Ninety-Six Dollars and Forty-Eight Cents ($111,496.48) and based on the rate of Seventy-Eight Dollars and Seventeen Cents ($78.17) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2032 and ending on January 13, 2033, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Fifty-Seven Thousand, Four Hundred and Sixty-Nine Dollars and Ninety-Six Cents ($1,357,469.96) per annum, payable in monthly amounts of One Hundred and Thirteen Thousand, One Hundred and Twenty-Two Dollars and Fifty Cents ($113,122.50) and based on the rate of Seventy-Nine Dollars and Thirty-One Cents ($79.31) per square foot of the GLA of Premises I.

For the period commencing on January 14, 2033 and ending on January 31, 2034, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Seventy-Seven Thousand, Four Hundred and Ninety-Five Dollars and Sixty-Eight Cents ($1,377,495.68) per annum, payable in monthly amounts of One Hundred and Fourteen Thousand, Seven Hundred and Ninety-One Dollars and Thirty-One Cents ($114,791.31) and based on the rate of Eighty Dollars and Forty-Eight Cents ($80.48) per square foot of the GLA of Premises I.

Tenant shall not be obliged to pay Minimum Rent on Premises II for so long as Premises II are used solely as an entry area. Minimum Rent shall be payable on all of Premises II if Premises II is used for one or more the purposes set forth in Section 1.7 of this Lease. (Section 6.1)

4. Landlord and Tenant covenant and agree that during the period from May 1, 2019 to December 31, 2019, in the event the Tenant fails to pay the Minimum Rent and Additional Rent or applicable taxes at the times required or if the Tenant defaults in the performance of any of its other obligations under this Agreement or the Lease, the Landlord shall have the option, in its sole discretion, to give the Tenant written notice that this Agreement is deemed null and void, and the Minimum Rent rates originally payable under the Lease shall be reinstated. Tenant's obligation to pay Minimum Rent rates as originally set out in the Lease shall be effective on the first of the month following the written notice from the Landlord

5. Landlord and Tenant further covenant and agree that during the period from May 1, 2019 to December 31, 2019, in the event:

(i) The Tenant becomes bankrupt or insolvent; or
(ii) The Lease is terminated or otherwise cancelled; or
(iii) There is a Transfer of the Lease,

Then this Agreement will be deemed to be null and void effective one (1) day prior to the occurrence of one of the above and the Minimum Rent shall be payable as set out originally in the Lease.

6. Simultaneously with the execution and delivery of this Agreement Tenant agrees to deliver to Landlord a certified cheque in the amount of Five Hundred Ninety-two Thousand, Five Hundred and Eighteen Dollars and Fifty-four Cents ($592,518.54) to clear its arrears of Rent from January 14, 2019 to April 30, 2019. In addition, Landlord shall concurrently deliver to Tenant a cheque in the amount of Three Hundred and Eighty-Nine Thousand, Three Hundred and Fifty-Two Dollars and Eighty Cents ($389,352.80) being the final installment of the Tenant Inducement as set out in Section 1 of Schedule "E".

7. The parties hereto further acknowledge and agree that, as and from the date of this Agreement, the Lease is hereby deemed amended as follows:

(a) The Landlord's address for notice set forth in Section 1.1 of the Lease is hereby deleted and replaced with: "85 Hanna Avenue, Suite 400, Toronto, Ontario, M6K 3S3, Attention: Senior Vice-President, Leasing, with a copy to: Director, Legal Affairs, at the same address."

8. The parties hereto confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

9. This Agreement shall enure to the benefit of and be binding upon the Parties hereto the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

10. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument and delivery of same may occur via the exchange of PDF copies by electronic transmission. The several counterparts and electronic transmissions when combined shall constitute a firm and binding agreement between the parties. The parties undertake to subsequently ensure that original copies of this Agreement are executed by all parties and delivered forthwith thereafter.

11. This Agreement may be executed by the Landlord or the Tenant by electronic signature, and such electronic signature shall constitute an original signature made on behalf of such party(ies).

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

Per: _____
Name:
Title:

Per _____
Name:
Title:

Alison Hamick
Vice President

I/We have the authority to bind the Corporation

MCEWAN ENTERPRISES INC.
(Tenant)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

TAB D

Attached is Exhibit “D”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 7th day of **June, 2019**

BETWEEN:

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

MCEWAN ENTERPRISES INC.
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated April 27, 2018 (the "**Original Lease**"), and made between the Landlord and the Tenant, the Landlord leased to the Tenant for and during a term of approximately fifteen (15) years (the "**Term**") commencing on the Commencement Date and expiring on the Expiry Date certain premises (the "**Premises**") comprising: (i) certain premises located on the lower level of the retail portion of the development known municipally as 1 Bloor Street East, in the City of Toronto, Ontario (the "**Retail Component**") and comprising a GLA of approximately Seventeen Thousand Eight Hundred and Thirty (17,830) square feet, and in the approximate location shown hatched on the plan attached to the Lease as Schedule "B-1" thereto; and (ii) certain premises located on the ground floor of the Retail Component and comprising a GLA of approximately of One Thousand One Hundred and Sixty-One (1,161) square feet as shown coloured yellow on the plan attached to the Lease as Schedule "B" thereto.

B. The Premises were subsequently certified to be an aggregate certified GLA of Eighteen Thousand, Two Hundred and Ninety-Three (18,293) square feet, consisting of: (i) certified GLA of Seventeen Thousand, One Hundred and Sixteen (17,116) square feet for the premises shown hatched on Schedule "B-1" of the Lease (being Premises I); and (ii) a certified GLA of One Thousand, One Hundred and Seventy-Seven (1,177) square feet as shown coloured yellow on Schedule "B" of the Lease (being Premises II).

C. By a Consent and Lease Amending Agreement dated the 21st day of December, 2018 (the "**First Amending Agreement**") the Landlord and Tenant acknowledged the change in control of the Tenant and amended the Original Lease on the terms and conditions more particularly set out therein.

D By a Lease Amending Agreement dated the 22nd day of April, 2019 (the "**Second Amending Agreement**") the Landlord and Tenant amended the terms of the Original Lease as more particularly set out therein.

E. The Original Lease, as amended by the First Amending Agreement and Second Amending Agreement is hereinafter referred to as the "**Lease**".

F. The Landlord and Tenant have agreed to further amend the Lease on the terms set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of Two Dollars ($2.00) now paid by each of the parties to the other (the receipt and sufficiency of which are hereby acknowledged by each of them):

1. The Parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.

2. **RENT**

The second paragraph of Section 3 of the Second Amending Agreement is hereby deleted and replaced with the following:

> **"For the period commencing on May 1, 2019 and ending on December 31, 2019, Tenant shall pay Minimum Rent equal to Three Hundred and Sixty-Five Thousand Seven Hundred and Eleven Dollars and Eighty-Seven Cents ($365,711.87), payable in monthly amounts of Forty Five Thousand, Seven Hundred and Thirteen Dollars**

and Eighty-One Cents ($45,713.98) and based on the rate of Thirty-Two Dollars and Five Cents ($32.05) per square foot of the GLA of Premises I."

3. The parties hereto confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

4. This Agreement shall enure to the benefit of and be binding upon the Parties hereto the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument and delivery of same may occur via the exchange of PDF copies by electronic transmission. The several counterparts and electronic transmissions when combined shall constitute a firm and binding agreement between the parties. The parties undertake to subsequently ensure that original copies of this Agreement are executed by all parties and delivered forthwith thereafter.

6. This Agreement may be executed by the Landlord or the Tenant by electronic signature, and such electronic signature shall constitute an original signature made on behalf of such party(ies).

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

Per: _____
Name:
Title:

Per: _____
Name: Leigh Balgopal
Title: A.S.C.

I/We have the authority to bind the Corporation.

MCEWAN ENTERPRISES INC.
(Tenant)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

TAB E

Attached is Exhibit “E”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 3rd day of **April, 2020**

BETWEEN:

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

MCEWAN ENTERPRISES INC.
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated April 27, 2018 (the "**Original Lease**"), and made between the Landlord and the Tenant, the Landlord leased to the Tenant for and during a term of approximately fifteen (15) years (the "**Term**") commencing on the Commencement Date and expiring on the Expiry Date certain premises (the "**Premises**") comprising: (i) certain premises located on the lower level of the retail portion of the development known municipally as 1 Bloor Street East, in the City of Toronto, Ontario (the "**Retail Component**") and comprising a GLA of approximately Seventeen Thousand Eight Hundred and Thirty (17,830) square feet, and in the approximate location shown hatched on the plan attached to the Lease as Schedule "B-1" thereto; and (ii) certain premises located on the ground floor of the Retail Component and comprising a GLA of approximately of One Thousand One Hundred and Sixty-One (1,161) square feet as shown coloured yellow on the plan attached to the Lease as Schedule "B" thereto.

B. The Premises were subsequently certified to be an aggregate certified GLA of Eighteen Thousand, Two Hundred and Ninety-Three (18,293) square feet, consisting of: (i) certified GLA of Seventeen Thousand, One Hundred and Sixteen (17,116) square feet for the premises shown hatched on Schedule "B-1" of the Lease (being Premises I); and (ii) a certified GLA of One Thousand, One Hundred and Seventy-Seven (1,177) square feet as shown coloured yellow on Schedule "B" of the Lease (being Premises II).

C. By a Consent and Lease Amending Agreement dated the 21st day of December, 2018 (the "**First Amending Agreement**") the Landlord and Tenant acknowledged the change in control of the Tenant and amended the Original Lease on the terms and conditions more particularly set out therein.

D. By a Lease Amending Agreement dated the 22nd day of April, 2019 (the "**Second Amending Agreement**"), the Landlord and Tenant amended the terms of the Original Lease as more particularly set out therein.

E. By a Lease Amending Agreement dated the 7th day of June, 2019 (the "**Third Amending Agreement**"), the Landlord and Tenant amended the terms of the Original Lease as more particularly set out therein.

F. The Original Lease, as amended by the First Amending Agreement, the Second Amending Agreement and the Third Amending Agreement is hereinafter collectively referred to as the "**Lease**".

G. The Landlord and Tenant have agreed to further amend the Lease on the terms set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of Two Dollars ($2.00) now paid by each of the parties to the other (the receipt and sufficiency of which are hereby acknowledged by each of them):

1. The Parties hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and in fact.

2. **RENT**

Effective as of the date of this Agreement (the "Effective Date") the third paragraph of Section 3 of the Second Amending Agreement is hereby deleted and replaced with the following:

"For the period commencing on January 1, 2020 and ending on June 30, 2020, Tenant shall pay Minimum Rent equal to Two Hundred and Eighty-four Thousand, Nine Hundred and Twenty-nine Dollars ($284,929.00), payable in monthly amounts of Forty-Seven Thousand, Four Hundred and Eighty-eight Dollars and Seventeen Cents ($47,488.17) for Premises I.

For the period commencing on July 1, 2020 and ending on December 31, 2020, Tenant shall pay Minimum Rent equal to Five Hundred and Eighty Thousand, Four Hundred and Ten Dollars ($580,410.00), payable in monthly amounts of Ninety-Six Thousand, Seven Hundred and Thirty-five Dollars ($96,735.00) for Premises I.

For the period commencing on January 1, 2021 and ending on December 31, 2021, Tenant shall pay Minimum Rent equal to One Million, One Hundred and Seventy-seven Thousand, Five Hundred and Twenty-five Dollars ($1,177,525.00) per annum, payable in monthly amounts of Ninety-eight Thousand, One Hundred and Twenty-seven Dollars and Eight Cents ($98,127.08) for Premises I.

For the period commencing on January 1, 2022 and ending on December 31, 2022, Tenant shall pay Minimum Rent equal to One Million, One Hundred and Ninety-four Thousand, Four Hundred and Seventy-Nine Dollars ($1,194,479.00) per annum, payable in monthly amounts of Ninety-Nine Thousand, Five Hundred and Thirty-nine Dollars and Ninety-two Cents ($99,539.92) for Premises I.

For the period commencing on January 1, 2023 and ending on December 31, 2023, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Eleven Thousand, Six Hundred and Eighty-Eight Dollars ($1,211,688.00) per annum, payable in monthly amounts of One Hundred Thousand, Nine Hundred and Seventy- Four Dollars ($100,974.00) for Premises I.

For the period commencing on January 1, 2024 and ending on December 31, 2024, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Twenty-nine Thousand, and One Hundred and Fifty-five Dollars ($1,229,155.00) per annum, payable in monthly amounts of One Hundred and Two Thousand, Four Hundred and Twenty-nine Dollars and Fifty-Eight Cents ($102,429.58) for Premises I.

For the period commencing on January 1, 2025 and ending on December 31, 2025, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Forty-six Thousand, Eight Hundred and Eighty-four Dollars ($1,246,884.00) per annum, payable in monthly amounts of One Hundred and Three Thousand, Nine Hundred and Seven Dollars ($103,907.00) for Premises I.

For the period commencing on January 1, 2026 and ending on December 31, 2026, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Sixty-four Thousand, Eight Hundred and Seventy-eight Dollars ($1,264,878.00) per annum, payable in monthly amounts of One Hundred and Five Thousand, Four Hundred and Six Dollars and Fifty Cents ($105,406.50) for Premises I.

For the period commencing on January 1, 2027 and ending on December 31, 2027, Tenant shall pay Minimum Rent equal to One Million, Two Hundred and Eighty-three Thousand, One Hundred and Forty-three Dollars ($1,283,143.00) per annum, payable in monthly amounts of One Hundred and Six Thousand, Nine Hundred and Twenty-eight Dollars and Fifty-Eight Cents ($106,928.58) for Premises I.

For the period commencing on January 1, 2028 and ending on December 31, 2028, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and One Thousand, Six Hundred and Eighty-two Dollars ($1,301,682.00) per annum, payable in monthly amounts of One Hundred and Eight Thousand, Four Hundred and Seventy-three Dollars and Fifty Cents ($108,473.50) for Premises I.

For the period commencing on January 1, 2029 and ending on December 31, 2029, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Twenty Thousand, Four Hundred and Ninety-nine Dollars ($1,320,499.00) per annum, payable in monthly amounts of One Hundred and Ten Thousand, Forty-One Dollars and Fifty-eight Cents ($110,041.58) for Premises I.

For the period commencing on January 1, 2030 and ending on December 31, 2030, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Thirty-nine Thousand, Five Hundred and Ninety-eight Dollars ($1,339,598.00) per annum,

payable in monthly amounts of One Hundred and Eleven Thousand, Six Hundred and Thirty-three Dollars and Seventeen Cents ($111,633.17) for Premises I.

For the period commencing on January 1, 2031 and ending on December 31, 2031, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Fifty-eight Thousand, Nine Hundred and Eighty-three Dollars ($1,337,957.72) per annum, payable in monthly amounts of One Hundred and Eleven Thousand, Four Hundred and Ninety-Eight Dollars and Fifty-Eight Cents ($111.498.58) for Premises I.

For the period commencing on January 1, 2032 and ending on December 31, 2032, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Seventy-eight Thousand, Six Hundred and Sixty Dollars ($1,378,660.00) per annum, payable in monthly amounts of One Hundred and Fourteen Thousand, Eight Hundred and Eighty-eight Dollars and Thirty-three Cents ($114,888.33) for Premises I.

For the period commencing on January 1, 2033 and ending on January 31, 2033, Tenant shall pay Minimum Rent equal to One Million, Three Hundred and Ninety-eight Thousand, Six Hundred and Thirty-one Dollars ($1,398,631.00) per annum, payable in monthly amounts of One Hundred and Sixteen Thousand, Five Hundred and Fifty-two Dollars and Fifty-eight Cents ($116,552.58) for Premises I.

Tenant shall not be obliged to pay Minimum Rent on Premises II for so long as Premises II are used solely as an entry area. Minimum Rent shall be payable on all of Premises II if Premises II is used for one or more the purposes set forth in Section 1.7 of this Lease. (Section 6.1)"

3. As of the Effective Date, Section 1.16 of the Lease is deleted and replaced with the following:

"**Percentage Rent Rate:** **Eight and one half percent (8.5%)** (Section 6.3)"

4. As of the Effective Date, Section 3.1 of Schedule "E" (Restrictive Covenant) is deleted and replaced with the following:

"3.1 So long as the Required Conditions have been met and continue to be met at all times, Landlord will at no time during the Term of the Lease, lease space in the Shopping Centre as the same is constituted as of the date of this Lease to another tenant whose principal business is operation of a food supermarket or a food caterer. This restrictive covenant does not apply to: (i) any existing tenants, their successors, assigns or replacement tenants; (ii) any tenant in excess of Twenty Thousand (20,000) square feet; or (iii) any restaurants. Notwithstanding the generality of the foregoing, Landlord shall be entitled to lease space in the Shopping Centre for the operation of one (1) or more coffee shops or cafes, notwithstanding that a coffee shop or cafe may already be operated within any of the premises referred to in subparagraphs (i), (ii) and (iii) above, and the Landlord shall be entitled to lease space in the Shopping Centre for the operation of a store selling cannabis, cannabis related products and/or paraphernalia, which sells, without limitation, cannabis infused edibles and drinks."

5. Tenant covenants and agrees that during the period from January 1, 2020 to June 30, 2020, the Tenant shall invest at least **Two Hundred and Eighty-five Thousand Dollars ($285,00.00)** in marketing for the Tenant's business in the Premises and shall provide Landlord with paid invoices evidencing same. Tenant further covenants and agrees to animate the first floor of the Premises, in a manner agreed upon by the Landlord in advance. In the event the Tenant fails to do the foregoing, or if the Tenant defaults in the performance of any of its other obligations under this Agreement or the Lease, the Landlord shall have the option, in its sole discretion, to give the Tenant written notice that this Agreement is deemed null and void, and the Minimum Rent rates originally payable under the Lease shall be reinstated. Tenant's obligation to pay Minimum Rent rates as originally set out in the Lease shall be effective on the first of the month following the written notice from the Landlord.

6. Landlord and Tenant further covenant and agree that during the period from January 1, 2020 to December 31, 2020, in the event:

(i) The Tenant becomes bankrupt or insolvent; or
(ii) The Lease is terminated or otherwise cancelled; or
(iii) There is a Transfer of the Lease,

Then this Agreement will be deemed to be null and void effective one (1) day prior to the occurrence of one of the above and the Minimum Rent shall be payable as set out originally in the Lease.

7. The parties hereto confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

8. This Agreement shall enure to the benefit of and be binding upon the Parties hereto the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

9. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument and delivery of same may occur via the exchange of PDF copies by electronic transmission. The several counterparts and electronic transmissions when combined shall constitute a firm and binding agreement between the parties. The parties undertake to subsequently ensure that original copies of this Agreement are executed by all parties and delivered forthwith thereafter.

10. This Agreement may be executed by the Landlord or the Tenant by electronic signature, and such electronic signature shall constitute an original signature made on behalf of such party(ies).

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

Per: _____
Name: Leigh Balgopal
Title: A.S.O.

Per: _____
Name: Jordan Rubins
Title: A.S.O.

I/We have the authority to bind the Corporation.

MCEWAN ENTERPRISES INC.
(Tenant)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

TAB F

Attached is Exhibit “F”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

LEASE AMENDING AGREEMENT

THIS AGREEMENT is dated the 6th day of **April, 2021**

BETWEEN:

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

MCEWAN ENTERPRISES INC.
(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS:

A. By a lease dated April 27, 2018 (the "**Original Lease**"), and made between the Landlord and the Tenant, the Landlord leased to the Tenant for and during a term of approximately fifteen (15) years (the "**Term**") commencing on the Commencement Date and expiring on the Expiry Date certain premises (the "**Premises**") comprising: (i) certain premises located on the lower level of the retail portion of the development known municipally as 1 Bloor Street East, in the City of Toronto, Ontario (the "**Retail Component**") and comprising a GLA of approximately Seventeen Thousand Eight Hundred and Thirty (17,830) square feet, and in the approximate location shown hatched on the plan attached to the Lease as Schedule "B-1" thereto; and (ii) certain premises located on the ground floor of the Retail Component and comprising a GLA of approximately of One Thousand One Hundred and Sixty-One (1,161) square feet as shown coloured yellow on the plan attached to the Lease as Schedule "B" thereto.

B. The Premises were subsequently certified to be an aggregate certified GLA of Eighteen Thousand, Two Hundred and Ninety-Three (18,293) square feet, consisting of: (i) certified GLA of Seventeen Thousand, One Hundred and Sixteen (17,116) square feet for the premises shown hatched on Schedule "B-1" of the Lease (being Premises I); and (ii) a certified GLA of One Thousand, One Hundred and Seventy-Seven (1,177) square feet as shown coloured yellow on Schedule "B" of the Lease (being Premises II).

C. By a Consent and Lease Amending Agreement dated the 21st day of December, 2018 (the "**First Amending Agreement**") the Landlord and Tenant acknowledged the change in control of the Tenant and amended the Original Lease on the terms and conditions more particularly set out therein.

D. By a Lease Amending Agreement dated the 22nd day of April, 2019 (the "**Second Amending Agreement**"), the Landlord and Tenant amended the terms of the Original Lease as more particularly set out therein.

E. By a Lease Amending Agreement dated the 7th day of June, 2019 (the "**Third Amending Agreement**"), the Landlord and Tenant amended the terms of the Original Lease as more particularly set out therein.

F. By a Lease Amending Agreement dated the 3rd day of April; 2020 (the "**Fourth Amending Agreement**"), the Landlord and Tenant amended the terms of the Original Lease as more particularly set out therein.

G. The Original Lease, as amended by the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement and the Fourth Amending Agreement is hereinafter collectively referred to as the "**Lease**".

Apr. 30

Nov 2020

2. **RENT**

Effective as of the date of this Agreement (the "**Effective Date**") the Landlord and Tenant agree that, notwithstanding anything in the Lease to the contrary, for the period from December 1, 2020 to and including March 31, 2021, (the "**Gross Rent Period**") the Tenant shall pay, as Gross Rent, the amount which is 11.5% of Gross Revenue during the Gross Rent Period. Such amount shall be calculated by Tenant and paid to Landlord within fifteen (15) days of the end of the Gross Rent Period. In addition, during the Gross Rent Period, the Tenant shall not be required to pay Minimum Rent, Percentage Rent, Charges and Additional Rent as defined in with the Lease. From and after April 1, 2021, Tenant shall resume payment of all Minimum Rent, Percentage Rent and Charges and Additional Rent in accordance with the Lease.

3. The parties hereto confirm that in all other respects, the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. It is understood and agreed that all terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

4. This Agreement shall enure to the benefit of and be binding upon the Parties hereto the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument and delivery of same may occur via the exchange of PDF copies by electronic transmission. The several counterparts and electronic transmissions when combined shall constitute a firm and binding agreement between the parties. The parties undertake to subsequently ensure that original copies of this Agreement are executed by all parties and delivered forthwith thereafter.

6. This Agreement may be executed by the Landlord or the Tenant by electronic signature, and such electronic signature shall constitute an original signature made on behalf of such party(ies).

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement under the hands of their officers duly authorized in that behalf as of the day and year first above written.

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION
(Landlord)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

MCEWAN ENTERPRISES INC.
(Tenant)

Per: _____
Name:
Title:

Per: _____
Name:

TAB G

Attached is Exhibit “G”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

Commissioner for taking Affidavits, etc

CITATION: McEwan Enterprises Inc., 2021 ONSC 6878
COURT FILE NO.: CV-21-00669445-00CL
DATE: 2021-11-01

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Robert J. Chadwick, Caroline Descours, Trish Barrett and Peter Ruby,* for the Applicant

Sean Zweig and Joshua Foster, for the Monitor

Virginie Gauthier, for The Cadillac Fairview Corporation Limited

Catherine Francis and Kenneth L. Kallish, Counsel for Royal Bank of Canada

Steven L. Graff and Jeremy Nemers, for First Capital Holdings (Ontario) Corporation

David Ward, for Sayan Navaratnam

HEARD: October 15, 2021

RELEASED: November 1, 2021

ENDORSEMENT

INTRODUCTION

[1] McEwan Enterprises Inc. ("MEI") brings this motion for an order (the "Approval and Vesting Order"), pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"), among other things:

(a) approving the purchase agreement dated September 27, 2021 (the "Purchase Agreement") between MEI and 2864785 Ontario Corp. (the "Purchaser"), a newly formed company owned by Mark McEwan and Fairfax Financial Holdings Limited ("Fairfax"), and the sale and transfer of substantially all of the assets and liabilities of the McEwan Group, with the Exception of the excluded locations (as defined below), to the Purchaser (the "Transaction");

(b) approving the transaction deposit under the Purchase Agreement (the "Transaction Deposit") up to the maximum amount of $2.25 million, and authorizing MEI to obtain the Transaction Deposit from the Purchaser in order to finance MEI's working capital requirements, other general corporate purposes and capital expenditures, and the costs of these CCAA proceedings, in accordance with the terms of the Purchase Agreement;

(c) ancillary relief required to complete the Purchase Agreement; and

(d) extending the stay proceedings granted pursuant to the Initial Order (the "Stay of Proceedings") to December 17, 2021.

[2] MEI commenced these proceedings on September 28, 2021.

[3] From the standpoint of MEI, the principal objectives of these CCAA proceedings are to ensure the ongoing operations of MEI for the benefit of its stakeholders and to effectuate a restructuring of MEI and its full-service restaurant, catering, gourmet grocery and events company (the "Business") in order to provide for a right-sized, sustainable business going forward. As part of its restructuring efforts, MEI indicated at the outset of the proceedings that it intends to seek to complete the sale and transfer of the business pursuant to the proposed Transaction.

[4] Section 36 of the CCAA imposes certain restrictions on disposition of business assets. It provides that a debtor company may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by court order.

ISSUES

[5] The issues for consideration on this motion are whether the court should:

(a) approve the Transaction;

(b) grant certain related relief pursuant to the proposed Approval and Vesting Order; and

(c) approve the Transaction Deposit and grant the Transaction Deposit Charge.

[6] Sections 36(3) and (4) read as follows:

s. 36 (3)

Factors to be considered. – In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

s. 36 (4)

Additional Factors – Related Persons - If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

FACTS

[7] In determining whether to approve the Transaction, it is necessary to review the facts in detail.

[8] MEI is a private company incorporated under the laws of Ontario and is headquartered in Toronto. MEI is owned by Fairfax, through one of its subsidiaries, which holds a 55% equity interest in MEI, and by Mr. McEwan, through McEwan Holdings Co. Inc., which owns a 45% equity interest in MEI.

[9] Commencing in the summer of 2021, MEI engaged legal counsel to assist it in reviewing and assessing its various potential options and alternatives, in light of financial difficulties facing MEI.

[10] MEI contends that it made extensive efforts to seek consensual arrangements with its landlords in respect of its leases, to improve lease terms and reduce those lease obligations that are unsustainable and/or to exit certain locations, but is been unable to achieve a comprehensive out-of-court resolution that would result in the long-term viability of MEI in its Business.

[11] MEI then determined that the best available alternative that could be implemented that would preserve the value of the Business for the benefit of MEI's many stakeholders, would be a sale of substantially all the assets of the Business to MEI's current shareholders pursuant to the proposed Transaction, and the continuation of the Business with a reduced number of MEI locations to result in a rightsizing of the Business on a sustainable basis going forward.

[12] On September 27, 2021, the applicant entered into the Purchase Agreement, pursuant to which, subject to court approval, the parties would complete the Transaction.

[13] The proposed Transaction contemplates the transfer of substantially all of the assets and the assumption of substantially all of the liabilities of MEI, with the exception of locations not being assumed by the purchaser as part of the Transaction (the "Excluded Locations"), and an offer of employment to all of MEI's current employees (including those employees at the Excluded Locations).

[14] MEI believes that there would be a significant benefit to its stakeholders from the completion of the proposed Transaction as, without the support of Mr. McEwan, there is a significant risk that many parties could be negatively impacted both on a financial and overall business basis.

[15] MEI points out that the implementation of the Transaction will result in a sustainable business going forward for the benefit of MEI's many stakeholders, including its 268 employees whose jobs will be preserved, its secured creditors whose obligations will be unaffected and assumed by the Purchaser, and its many suppliers and service providers whose contracts and obligations will also all be assumed.

[16] As part of MEI's process to address its financial challenges, MEI stated that it reviewed in detail potential options and alternatives, duly considered a potential third-party sales process and determined that the Transaction is the best result for all parties. MEI believes that a third-party sales process poses potential risks to the business, and what ultimately not provide a better result that would benefit MEI's stakeholders. At the same time, the proposed Transaction leaves unaffected all claims against MEI and otherwise provides for the highest potential recovery in respect of the landlord preferred claim (as defined below).

[17] The relief requested by MEI is opposed by First Capital Holdings (Ontario) Corporation (the "Y & B Landlord"). The Y & B Landlord objects to the proposed Transaction on the basis that it does not comply with the provisions of s. 36(4) of the CCAA.

[18] MEI takes the position that it has been unable to achieve a consensual arrangement with the Y & B Landlord. With no consensual arrangement, and no possibility of the CCAA plan of arrangement (as the sole opposing creditor would have a veto), MEI contends there are only three ways to complete a going concern value maximizing transaction in the circumstances.

[19] The three alternatives are set out at paragraph 9 of the MEI Factum.

	Options	Implications
1.	Completion of the proposed Transaction in a CCAA proceeding.	• All creditor claims (except the Landlord Preferred Claim) are assumed in full at 100% of the amounts owed to such creditors. • Landlord Preferred Claims receive a cash payment in the maximum amount of such claim as calculated under the *Bankruptcy and Insolvency Act* (the "BIA") and is paid in full at 100% of such claim. • The proposed Transaction is superior in all respects including certainty and cost to compete, timing, continued operation of most locations, continued employment for all employees, continuation of experienced management and leadership with the Business, stability and continuation of long-standing stakeholder relationships, and strong shareholder support with financial ability to fund the Business going forward through the continued COVID-19 related challenges.
2.	A receivership and a current or subsequent no asset or bankruptcy process to complete the proposed Transaction.	• Same treatment as above for all creditors. • Bankruptcy proceeding statutorily limits an affected Landlord's claim to a preferred landlord claim pursuant to the BIA. Such landlord can recover no further amounts beyond its BIA preferred landlord claim. • Potential increased risk to the Business given additional time to complete, more costs for additional process, and potential impact on the stability of the Business and stakeholders support in the interim. • Same treatment for all parties and same result achievable as pursuant to #1 above, with no additional benefit to any stakeholders.
3.	A sale to a third party (by the Company or by a Receiver).	• Higher costs to complete and may result in discounted proceeds. • Risk that creditors do not receive payment in full, and creates a pool of unsecured claims (in respect of any excluded/non-assumed employee claims, trade obligations, additional lease claims, and outstanding debt obligations) to share in any

		remaining proceeds following payment of secured claims in priority. • All secured claims, interim financing to fund the Business until closing and professional fees incurred as part of the proceedings and transaction would be satisfied in priority to any unsecured pool. • Once assets are sold (or before), there would be a bankruptcy proceeding as unsecured creditors or the Company would not allow landlord claims to dilute the recovery to unsecured creditors where in a bankruptcy proceeding claims are limited to a preferred landlord claim. • Best possible result for an affected landlord is receiving the maximum amount of its BIA preferred landlord claim. • Many additional risks and uncertainty, including additional time and cost to complete, additional priority funding of operations, potential job losses, closure of additional stores, loss of founder as part of the go-forward business, and potentially less support of management, employees, landlords and trade creditors. • No third party can successfully acquire the Business without the termination of certain leases and amendments to other leases.

[20] MEI contends that under all circumstances, the maximum recovery in respect of an affected Landlord's claim is the maximum amount of a preferred landlord claim calculated under *Bankruptcy and Insolvency Act* ("BIA"), and the proposed Transaction guarantees the payment of such maximum claim amount to the Y & B Landlord.

[21] MEI also points out that the existing ownership group is willing to support the future funding requirements of the restructured company. Further, the Transaction is not subject to any financing due diligence conditions, has the support of the Cadillac Fairview Entities and Royal Bank of Canada, and can be completed efficiently to protect the Business for the benefit of MEI's stakeholders.

[22] Mr. McEwan swore affidavits in these proceedings on September 27, 2001 (the "First McEwan Affidavit") and October 1, 2021 (the "Second McEwan Affidavit").

[23] Of note in the First McEwan Affidavit are the following paragraphs:

> [5] The continuation of the McEwan Group under the ownership of its current shareholders is a critical aspect of any proposed restructuring. My continued involvement as chef and operator of the McEwan Locations (as defined below), which I believe to be fundamental to the value and success of the Busines going forward, is premised on a continuation of my partnership with Fairfax as co-owners of the McEwan Group.
>
> …
>
> [107] The aggregate consideration for the Purchased Assets to the Transaction is: (a) the assumption of the Assumed Obligations (as defined in the Purchase Agreement) by the Purchaser and/or, as applicable, one or more designees of the Purchaser, which as at the date hereof are estimated to be approximately $11 million (calculated based on amounts outstanding as at August 31, 2021, and taking into account additional amounts expected to be incurred and additional funding requirements anticipated until the closing of the Transaction, based on a closing date of October 3, 2021), and (b) a cash payment in an amount equal to the sum of (i) $520,000 (the "Base Purchase Price"), and (ii) an amount equal to the Cure Costs (as defined in the Purchase Agreement).
>
> [108] I am advised by counsel to the Company that the Base Purchase Price was calculated based on an amount equal to the damages in respect of the lease resulting to the McEwan Yonge & Bloor Location as determined pursuant to the formula set forth in section 136(1)(f) of the *Bankruptcy and Insolvency Act* (the "BIA"). As discussed above, the Company and the Cadillac Fairview Entities are continuing their ongoing discussions to reach mutually satisfactory arrangements in respect of the Cadillac Fairview Leases, and thus there is no claim amount included in respect of Fabbrica Don Mills Excluded Location as part of the purchase price under the proposed Transaction.
>
> …
>
> [111] The Company did not complete a third-party sale process to canvass potential interest from third parties in respect of acquiring the Company or the Business, and believes there is no prejudice to stakeholders from not having completed a third-party sale process based on all of the current circumstances. As discussed above, the Purchaser is acquiring and assuming substantially all of the assets and liabilities of the Company, with the exception of the Excluded Locations, and the Base Purchase Price provides for a cash amount in respect of the non-terminated Excluded Location based on the formula provided under the BIA.
>
> [113] As noted above, my continued involvement as chef and operator of the Business, which I believe to be fundamental to the success of the Business going forward, is premised on a continuation of my partnership with Fairfax as co-owners

> of the McEwan Group. I do not anticipate that I would remain with the Business if it were to be sold to a third party purchaser. The Company and its shareholders do not believe that a third party purchaser would be in a position to acquire the assets of the Business, without my continued involvement in the Business, for a similar or higher price.

[24] Of note in the Second McEwan Affidavit are the following paragraphs:

> [26] The Company did not complete a third-party sale process to canvass potential interest from third parties in respect of acquiring the Company or the Business, and believes there is no prejudice to stakeholders from not having completed a third-party sale process based on all of the current circumstances, including the following factors discussed below.
>
> [27] I believe that my continued involvement in the Business is fundamental to the value and success of the Business going forward. I founded the McEwan Group many years ago, and my name, my personal involvement in the Business and my creations as part of the McEwan Restaurants and catering busines are key aspects of the Business. In addition, my personal brand and television projects have become inextricably linked with the brand of the Business.
>
> [28] Accordingly, the Company and its shareholders do not believe that a third-party purchaser would be in a position to acquire the assets of the Business, without my continued involvement in the Business, for a similar or higher price.
>
> …
>
> [36] As a result, the Company determined, in consultation with its counsel, that a third-party sales process was not necessary in the circumstances and could have a negative effect on the ongoing Business of the Company.
>
> [Emphasis Added]

[25] The Monitor has filed a Prefiling Report, a First and a Second Report.

[26] The First Report references the proposed Transaction but does not articulate the Monitor's views on the merits of the proposed Transaction.

[27] The Second Report of the Monitor, filed the day before this hearing, comments on the proposed Transaction.

[28] The Monitor notes that in June 2021, MEI engaged legal counsel to assist it in reviewing and assessing its various strategic alternatives including exploring whether consensual arrangements with its landlords could be reached to improve lease terms, reduce lease obligations and/or exit certain unprofitable locations. The Monitor states that with respect to discussions and negotiations with landlords, that its comments are based on its understanding of the situation.

[29] The Monitor further comments, that after extensive review and consideration of its circumstances and available alternative, MEI ultimately determined to pursue the proposed Transaction. MEI and the Purchaser entered into the Purchase Agreement on September 27, 2021 and MEI commenced the CCAA proceedings on September 28, 2021.

[30] Although the Monitor is now familiar with the terms of the proposed Transaction, there is no indication that the Monitor was involved in any type of analysis at the time that the proposed Transaction was entered into.

[31] At paragraph 3.8 of the Second Report, the Monitor notes that subsequent to the comeback hearing held on October 7, 2021, the Monitor had separate discussions with counsel to MEI, and with the financial advisor and counsel to the Y & B Landlord. The Monitor relates that these conversations did not result in a resolution of the issues between the parties.

[32] At paragraph 3.9 of the Second Report, the Monitor references that the Y & B Landlord through its counsel, provided the Monitor with an email on the evening of October 11, 2021 which gave details as to a Purchase Agreement executed by the Yonge & Bloor Landlord (the "Y & B Landlord's Purchase Agreement") in substantially the same form as the proposed Purchase Agreement, subject to certain revisions.

[33] In paragraph 3.11, the Monitor outlines key differences between the Purchase Agreement and the Y & B Landlord's Purchase Agreement. These key differences are as follows:

(i) the addition of the Yonge and Bloor lease as a go forward operating location would appear to make the Yonge and Bloor Landlord's Purchase Agreement, on its face, financially superior;

(ii) the potential for employee severance and termination claims to arise as a result of Mr. McEwan's potentially other employees not accepting new employment offers from the Yonge and Bloor Landlord, which may be material; and

(iii) the inclusion of a due diligence period.

[34] At paragraph 3.12, the Monitor provides its views that the due diligence requirement introduces a higher level of execution risk and, given the complexities of MEI's business, could very well require more than 14 days to complete. These uncertainties include the prospect the Y & B Landlord would not be able to reach satisfactory arrangements in respect of the Cadillac Fairview leases, or that such arrangement could require significant time to settle. In addition, the Monitor notes that Mr. McEwan and possibly other key personnel are not prepared to accept new employment offers from the Y & B Landlord, and that the resulting disruption to the Business either prevents the Y & B Landlord from waiving the due diligence condition precedent, or requires extended time to allow the Y & B Landlord to identify and hire replacement personnel. Further, if Mr. McEwan and/or other key personnel choose not to accept new employment offers from the Y & B Landlord, that could create material employment related unsecured claims against MEI. The Monitor also notes that with respect to the Cadillac Fairview Entities, if the proposed Transaction

is not approved, third parties considering this opportunity should not expect to receive the same terms that have been agreed to with MEI.

[35] The Monitor also commented on the affected landlord claim. The Monitor notes that the applicant is close to finalizing its arrangements with the Cadillac Fairview Entities, including a settlement and termination payment in connection with Fabbrica at Don Mills (an Excluded Location). Accordingly, the only outstanding obligations to be excluded from the proposed Transaction are the obligations owing and potential claims in respect of the Yonge and Bloor Location [the "Affected Landlord Claim"].

[36] The Monitor includes an illustrative bankruptcy liquidation analysis and a comparison with the proposed Transaction and concludes that the proposed Transaction would provide a favourable outcome. The Monitor's comments with respect to the analysis are set out at paragraph 3.19 and 3.20 as follows.

Illustrative Bankruptcy Liquidation Analysis

3.19 Having regard to claims that could arise in a bankruptcy liquidation, such as secured and unsecured creditor claims, employee termination and severance claims, lease termination/disclaimer claims and other damages claims for non-performance, the Monitor's Illustrative Liquidation and Valuation Range Analysis projects that in a bankruptcy liquidation scenario, creditor recoveries are estimated to be (all figures approximate):

(i) full payment (100% recovery) in respect of RBC's secured claim of $2.2 million;

(ii) full payment (100% recovery) in respect of the Cadillac Fairview Entities' secured claim, including: (a) a fixtures loan of $198,000; and (b) amounts totalling $1.1 million in respect of the Cadillac Fairview Leases (calculated pursuant to subsection 136(1)(f) of the BIA);

(iii) <u>full payment (100% recovery) in respect of the remaining two lease claims totalling $540,000 (calculated pursuant to subsection 136(1)(f) of the BIA); and</u>

(iv) <u>a recovery to remaining creditors in the range of approximately 1.8% to 26%</u> in respect of unsecured claims estimated to be $11 million in aggregate.

3.20 In comparison to the above bankruptcy liquidation analysis, the Monitor is of the view that the Proposed Transaction would provide a favourable outcome, for the following reasons:

(i) it is beneficial to MEI's secured and unsecured creditors as it provides for either a full settlement or the full assumption of the obligations owing, with the exception of the Affected Landlord Claim, and avoids the unfortunate termination and dislocation of MEI's 268 employees, which may result in unpaid wages and vacation pay as well as severance and termination claims estimated to be in excess of $4 million, termination of the Assumed Contracts, and termination of MEI's existing customer and trade relationships;

(ii) it is beneficial to the landlord group as a whole as it: (a) provides for the continued operation of six of MEI's eight locations;[1] and (b) provides for a cash payment of approximately $520,000 to the Yonge & Bloor Landlord in respect of the Affected Landlord Claim, which is estimated to be the maximum amount that it would otherwise receive in a bankruptcy; and

(iii) the Proposed Transaction is consistent with the rehabilitative intent of the CCAA by preserving the majority of the business to avoid liquidation.

[Emphasis Added]

[37] At s. 3.21 of the Report, the Monitor states that neither MEI nor the Monitor has completed any formal or informal third-party sale process. The Monitor references comments of Mr. McEwan in the Second McEwan Affidavit and specifically that MEI and its shareholders do not believe that a third party purchaser would be in a position to acquire MEI's Business absent Mr. McEwan's continued involvement (which is contingent upon the continuation of his partnership with Fairfax as co-owners of the Business) for a purchase price that is equal or superior to that provided under the proposed Transaction.

[38] The Monitor goes on to note that the Y & B Landlord Purchase Agreement, on its face, would appear to be financially superior to the proposed Transaction given that includes the assumption of an additional location resulting in fewer claims and accordingly, higher available recoveries. These potential benefits, according to the Monitor, are tempered by the additional risk factors set out in its Report.

[39] The Landlord also points out the following in s. 3.24(ii) as follows:

(ii) as there is no prescribed formula for determining a landlord claim in the CCAA, the claims that could be submitted by landlords within CCAA proceedings

[1] There is no lease arrangement or rent charged at the Diwan location, which is a restaurant located within the Aga Khan Museum in Toronto.

> in respect of one or more disclaimed lease may also range, but in most circumstances, it is expected that the submitted claim would be significantly larger than those in a bankruptcy. By applying such a higher claim amount (as compared to a bankruptcy claim) to the higher range of potential recoveries, there could be certain illustrative sale transaction scenarios where the recovery on the Affected Landlord Claim is greater than $520,000. Conversely in the lower range of potential recoveries, even with a higher claim amount, the recovery on the Affected Landlord Claim is less than $520,000. However, as described in the Second McEwan Affidavit, the Monitor understands that the Applicant has considered and is prepared to advance the Proposed Transaction through a concurrent receivership and bankruptcy process, which in the Applicant's view, effectively limits the Yonge & Bloor Landlord's recovery in any scenario to $520,000.
>
> [Emphasis Added]

[40] At s. 3.30 of its Report, the Monitor undertakes a review and assessment of the proposed Transaction and makes specific reference to be considered by the Court in s. 36(3) of the CCAA, specifically,

(i) *36(3)(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances*

(ii) *36(3)(b) whether the monitor approved the process leading to the proposed sale or disposition*

(iii) *36(3)(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy*

(iv) *36(3)(d) the extent to which the creditors were consulted*

(v) *36(3)(e) the effects of the proposed sale or disposition on the creditors and other interested parties*

(vi) *36(3)(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value*

1.2 As described in subsection 36(4) of the CCAA, if a proposed sale or disposition is to a related party, the court may, after considering the factors referred to in subsection 36(3) of the CCAA grant the authorization only if it is satisfied that subsections 36(4)(a) and 36(4)(b) of the CCAA have been satisfied.

1.3 The Monitor regards the provisions within subsection 36(4) of the CCAA, in light of the dispute before the Court between the parties, as a significant threshold issue to the Proposed Transaction's approval. Further, the Monitor views the determination as to whether the circumstances of this case and the Applicant's efforts to ensure that the proposed related

party transaction is in the best interests of MEI's stakeholders satisfy the requirement of subsection 36(4) of the CCAA as a question to be determined by the Court.

[41] At s. 3.32 of its Report, the Monitor outlined certain relevant considerations in respect of subsections 36(4)(a) and 36(4)(b) of the CCAA:

> *36(4)(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company*
>
> (i) no third-party sales process or other market test was conducted in or before these CCAA Proceedings;
>
> (ii) the Monitor understands the Yonge & Bloor Landlord's position to be that the Proposed Transaction cannot be approved absent a third-party sale process;
>
> (iii) the Monitor is aware that Canadian Courts have previously held that subsection 36(4)(a) of the CCAA may be satisfied, in appropriate circumstances, without a formal sale process having been conducted;
>
> (iv) as described in the Second McEwan Affidavit:
>
> (a) prior to entering into the Purchase Agreement the Applicant, in consultation with its legal advisors, considered, among other things, the alternatives available to MEI, the viability and value of MEI's business absent the involvement of Mr. McEwan, Fairfax and MEI's management and the likelihood that an independent third-party purchaser would propose a superior transaction; and
>
> (b) the Applicant has concluded that the Proposed Transaction is in the best interests of MEI and its stakeholders. More to the point, the Applicant has also concluded that the Purchaser is the only party likely to complete a going-concern transaction that would see substantially all of MEI's assets and liabilities acquired and assumed.
>
> *36(4)(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.*
>
> (vi) in the absence of a third-party sale process being conducted, potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict.
>
> (vii) in the circumstances and under the process conducted by the Applicant, the Monitor regards the consideration to be received under the Proposed Transaction as fair and reasonable and offers a significant recovery to nearly all creditors. Moreover, it would appear to be the highest consideration that could be obtained without exposing MEI's busines to greater transaction risk, including the potential risks posed by diligence periods to conduct a sales process, and additional costs in the CCAA Proceedings. As discussed

previously, the Proposed Transaction currently results in substantially all of MEI's creditors being unaffected and the Affected Landlord Claim receiving the amount it would be entitled to if the Yonge & Bloor Lease were to be disclaimed in a bankruptcy; and

(viii) on its face (and if executable) the Yonge & Bloor Landlord's Purchase Agreement is financially superior to the Proposed Transaction. However, the Monitor notes that the Applicant's secured creditors view the Proposed Transaction as providing more certainty and less risk for the go forward business.

ANALYSIS

[42] MEI submits that it is well-established that the court has the jurisdiction to approve the sale of the assets of a debtor company in the CCAA proceeding in the absence of a plan of arrangement where such sale is in the best interests of stakeholders generally and that the sale of a business as a going concern during a CCAA proceeding is consistent with the purposes of the CCAA. (See: *9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 40 – 43, 45 ("Callidus").

[43] The foregoing principle was recently confirmed by the British Columbia Court of Appeal in *Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd.*, 2021 BCCA 31.

[44] I accept this submission.

[45] However, the facts in this case give rise to a number of questions or concerns:

1. The equity interests of MPI will be the same as those of the proposed new entity.

2. Mr. McEwan has stated that he has no interest in being involved in an entity which is a different structure than MEI.

3. The monitor was not involved in the review process that led to the proposed Transaction.

4. The proposed Transaction results in the assumption of significant liabilities of MEI. MEI has reached an accommodation with Cadillac Fairview with respect to its obligations owing under a number of leases. The Y & B Landlord is the only significant party who has not reached a settlement or accommodation with MEI.

5. The Monitor has filed a report which states that the proposed Transaction would be more beneficial to the creditors than a sale or disposition under a bankruptcy. However, the report also sets out that the treatment being provided to the Y & B Landlord is the same as it would receive in a receivership and bankruptcy scenario. The receivership and bankruptcy scenario is referenced in the

> liquidation analysis and in the McEwan Affidavits and is summarized at paragraph 9 of the Factum submitted by MEI.

[46] MEI submits that the proposed Transaction satisfies the factors under sections 36(3) and (4) and is in the best interests of stakeholders.

[47] It is conceded that Mr. McEwan is a related person within the meaning of s. 36(5). Thus s. 36(4) is engaged.

[48] Having considered the factors set out in s. 36(3), it is arguable that the proposed Transaction could be approved.

[49] The Monitor has issued a report which summarizes the impact on creditors. The creditors have been consulted. The effect of the proposed Transaction on creditors suggests that, in the circumstances, the consideration to be received for the assets could be found to be reasonable and fair.

[50] However, I have not been persuaded that factors set out in s. 36(4) have been satisfied.

[51] It is important to note that authorization for the sale can be given **only** if the court finds that the s. 36(4) factors have been satisfied in that:

> (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
>
> (b) the consideration to be received is **superior** to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.
>
> [Emphasis Added]

[52] In this case, MEI determined, prior to the commencement of the CCAA proceeding that there was no point in embarking on a sales process. The Monitor was not part of the decision making that lead to this determination. Although MEI may have valid reasons to support its decision, that is not the requirement set out in s. 36(4)(a). The statute references efforts being made to sell or otherwise dispose of the assets to persons who are not related the Company. In this case, no efforts were made.

[53] Turning now to s. 36(4)(b), the consideration to be received in the proposed Transaction is set out at paragraph 9 of MEI's factum, which is set out at paragraph 19 of these reasons.

[54] The question is whether the consideration is superior to the consideration that would be received under any offer made in accordance with the process leading to the proposed sale.

[55] In this case, two alternatives to the proposed Transaction are referenced.

[56] The first is an alternative proposal put forth by MEI of a receivership and a concurrent or subsequent no asset bankruptcy process to complete the proposed Transaction.

[57] This alternative provides for the same treatment for all creditors in the proposed Transaction. The Y & B Landlord would receive the same consideration in the bankruptcy ($520,000) as it would receive in the proposed Transaction where it receives $520,000 (the Base Purchase Price). No creditor receives superior consideration.

[58] Under the Y and B Landlord's Purchase Agreement, the details are set out in the Second Report of the Monitor at section 3.9. The Monitor's views and concerns are set out at s. 3.12. The consideration to be received by creditors may be superior but, in view of the concerns raised by the Monitor, it is too speculative to be considered in the analysis.

[59] Accordingly, the merits of the proposed Transaction have to be considered in comparison to the alternative of the receivership and concurrent bankruptcy referenced by the Monitor at section 3.24 of its Second Report.

[60] The two alternatives provide for the same treatment for creditors. The result of the foregoing analysis is clear. The consideration referenced in the proposed Transaction is not superior to the receivership/bankruptcy alternative. The s. 36(4) have not been satisfied and the proposed Transaction cannot be approved.

[61] MEI had a choice. MEI could have proposed superior consideration to the Y & B Landlord, but they elected not to do so.

[62] The Monitor raised concerns with respect to the fact that no efforts were made to sell or otherwise dispose of the assets to persons who are not related to MEI. The Monitor also made reference in its Second Report to a proposal put forth by the Y & B Landlord which would result in an alternate structure and would possibly provide a greater return to the creditors of MEI.

[63] MEI responds that it is simply not practical to consider any sale or disposition to a third party as Mr. McEwan is not interested in pursuing or continuing in this type of a business operation. This explanation falls short of establishing that good faith efforts were made to sell or otherwise dispose of assets to persons who are not related to MEI.

[64] More importantly, there is no evidence that has been provided by either MEI or the Monitor that would allow me to arrive at a conclusion that the consideration to be received is superior to the consideration to be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

[65] The cases referenced by MEI are all fact specific and as such, are of no real assistance.

DISPOSITION

[66] The facts of this case are such that the mandatory requirements of s. 36(4) have not been established and the proposed Transaction cannot be approved.

[67] In the event that the alternative transaction proceeds and does not fulfil the expectations of the Y & B Landlord, that is a risk that the Y & B Landlord must assume. It is the sole party that is objecting to the proposed Transaction and if the return that the Y & B Landlord receives is less than the $520,000 promised under the proposed Transaction, it is only just that they suffer the adverse consequences of their actions. The motives of the Y & B Landlord in refusing to accept the proposed Transaction may be questioned, but that is not a question that issues is not before me today.

[68] The motion to approve the proposed Transaction is accordingly dismissed.

[69] Issues with respect to any extension of the Stay Period will be addressed at a hearing scheduled for 3:00 p.m. today.

Chief Justice G.B. Morawetz

Date: November 1, 2021

TAB H

Attached is Exhibit “H”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

November 3, 2021

Greg and Josh,

Please find below a few questions and information requests. We appreciate that certain of this information is not in the public domain and accordingly, we are prepared to sign an appropriate confidentiality agreement, if required. In the meantime, we would appreciate a timely response to those questions that would not be subject to confidentiality restrictions, i.e. questions 1, 4 and 5.

1. Please confirm whether the calculation below of adjusted (actual and projected) cash flow for the period September 25 to November 12, 2021 is correct.

	(C$000s)		
Description	Actual	Projected	Actual and Projected
	Sep 25 – Oct 22	Oct 23 – Nov 12	Total
Negative CCAA cash flow before third party funding	(936)	(1,212)	(2,148)
Addbacks:			
Professional fees	414	317	731
Pre-filing vendor payments	1,400	-	1,400
Subtotal	1,814	317	2,131
Adjusted cash flow	878	(895)	(17)

Based on the excerpt below from your most recent report to Court (the "Report"), we note receipts for the period are well ahead of budget (~28%). Given the nature of MEI's business, we assume that receipts are, essentially, a proxy for sales. The positive variance suggests that the operations of the business have not been adversely affected by MEI's insolvency proceedings.

Cash Flow Results			**CAD$000's**
	Budget	**Actual**	**Variance**
Receipts	**2,654**	**3,405**	**751**

2. Please provide MEI's most recent internally prepared income statement and its year-to-date income statement, together with budget-to-actual variance analyses. We would also appreciate receiving the Company's most recent internally prepared balance sheet.
3. Has MEI prepared a proforma financial projection for the next 13-weeks and for its next fiscal year, either reflecting or not reflecting the performance of the business on a restructured basis? We would appreciate receiving a copy of any analyses prepared by MEI in this regard.
4. Other than pre-filing payments (~$1.4 million) and professional fees (~$731,000), are there any non-normal course expenses included in MEI's actual or projected cash flows included in the Report?

5. There are references in the Report to the Applicant's legal fees not being included in the actual or projected cash flow results. What is the amount of Applicant's unpaid legal fees and how are these to be paid?

Thank you,

Bobby Kofman

Eunice Baltkois

From: Jeremy Nemers
Sent: November 4, 2021 4:04 PM
To: Eunice Baltkois
Subject: FW: MEI

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
E jnemers@airdberlis.com

From: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>
Sent: November 4, 2021 10:03 AM
To: Bobby Kofman <bkofman@ksvadvisory.com>; Karpel, Greg <gkarpel@alvarezandmarsal.com>
Cc: zweigs@bennettjones.com; David Sieradzki <dsieradzki@ksvadvisory.com>; Jeremy Nemers <jnemers@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>
Subject: RE: MEI

Hi Bobby, please see below regarding questions 1 & 4. We will get back to you shortly on the others.

1. Yes, the numbers set out in your table are consistent with what we included in the Supplement. Please note the following:
    - during the period October 23 to November 12 the company is expected to continue making certain Pre-filing vendor payments of approximately $300,000 in aggregate;
    - regarding your add-back for Pre-filing vendor payments to assess "Adjusted cash flow", we note that these Pre-filing vendor payments were paid in accordance with the Initial Order, they relate to normal course payments and have allowed the company to maintain its regular pre-filing trade terms with the vast majority of its vendors. In the absence of making these payments, it is likely that vendors would have required accelerated or COD payment terms which has not been reflected in your "Adjusted cash flow" analysis;

    Regarding your comment on the positive variance in receipts, as set out in Note 1 of the Assumptions, the forecast was prepared taking into consideration recent sales experience and expectations/uncertainty with respect to ongoing social distancing measures, capacity restrictions and other potential COVID-19 related impacts on the business. At this time, the Company has not determined if this positive trend is expected to continue in the near term.

4. We are not aware of any additional non-normal course disbursements. We note that the Monitor is currently holding approximately $260k in trust relating to October and November disputed rent amounts at Yonge & Bloor.

Thank you,
Josh

Josh Nevsky

Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910

From: Bobby Kofman <bkofman@ksvadvisory.com>
Sent: Wednesday, November 03, 2021 7:41 AM
To: Karpel, Greg <gkarpel@alvarezandmarsal.com>; Nevsky, Joshua <jnevsky@alvarezandmarsal.com>
Cc: zweigs@bennettjones.com; David Sieradzki <dsieradzki@ksvadvisory.com>; Jeremy Nemers <jnemers@airdberlis.com>; Steven Graff (sgraff@airdberlis.com) <sgraff@airdberlis.com>
Subject: MEI

[EXTERNAL EMAIL]

Greg and Josh,

Please see the attached information request.

Thanks,

Bobby

KSV

Bobby Kofman
President

T 416.932.6228
M 647.282.6228
E bkofman@ksvadvisory.com

KSV Advisory Inc.
150 King Street West
Suite 2308, Box 42
Toronto, Ontario, M5H 1J9
T 416.932.6262 | F 416.932.6266 | www.ksvadvisory.com

TAB I

Attached is Exhibit "I"

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

Eunice Baltkois

From: Sean Zweig <ZweigS@bennettjones.com>
Sent: October 11, 2021 8:53 PM
To: Steve Graff; Nevsky, Joshua; Joshua Foster; Greg Karpel (gkarpel@alvarezandmarsal.com)
Cc: Jeremy Nemers; Damian Lu; Bobby Kofman (bkofman@ksvadvisory.com); David Sieradzki (dsieradzki@ksvadvisory.com)
Subject: RE: In the Matter of the CCAA Proceedings of McEwan Enterprises.

Thanks Steve. Receipt confirmed. FYI, we've forwarded to Goodmans as well and asked them to forward to the company.

Sean Zweig
Partner,* **Bennett Jones LLP**
***Denotes Professional Corporation**

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 6254 | F. 416 863 1716
E. zweigs@bennettjones.com

From: Steve Graff <sgraff@airdberlis.com>
Sent: Monday, October 11, 2021 7:42 PM
To: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>; Sean Zweig <ZweigS@bennettjones.com>; Joshua Foster <FosterJ@bennettjones.com>; Greg Karpel (gkarpel@alvarezandmarsal.com) <gkarpel@alvarezandmarsal.com>
Cc: Jeremy Nemers <jnemers@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; David Sieradzki (dsieradzki@ksvadvisory.com) <dsieradzki@ksvadvisory.com>
Subject: In the Matter of the CCAA Proceedings of McEwan Enterprises.

Good Evening All. On behalf of First Captial (“FC”), we are providing the attached signed Purchase Agreement to acquire all the assets of McEwan Enterprises and to assume the vast majority of its liabilities. Also attached is a blackline of the Purchase Agreement to the form of Purchase Agreement which was delivered in respect of the proposed McEwan purchase (by 2864785 Ontario Corp). Finally, attached is a proposed form of DIP term sheet which reflects the fact that FCR is prepared to fund McEwan during a short 14 due diligence period. Please choose to use these transactional documents as you feel appropriate in the context of the ongoing CCAA proceedings. We assume we will hear from you in short order concerning advancing the transaction contemplated by the attached.

We assume you will communicate this proposed arrangement to the Company and it’s counsel as you feel appropriate. Thx.

Steven L. Graff
Aird & Berlis LLP
T416.865.7726
M416.894.5090
Esgraff@airdberlis.com

Bennett Jones is committed to the health and well-being of our communities, our clients, and all of our firm members. Promoting high rates of vaccination against COVID-19 remains a top priority. Effective immediately, everyone entering our offices, including firm clients and other guests, will be required to be fully vaccinated. Those who are not fully vaccinated should request to attend meetings via video or audio conferencing platforms.

TAB J

Attached is Exhibit “J”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

INTERIM CREDIT FACILITY TERM SHEET

WHEREAS on September 28, 2021, McEwan Enterprises Inc. (the "**Borrower**") commenced proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA Proceedings**") pursuant to an initial order (as amended and restated, the "**Initial Order**") of the Ontario Superior Court of Justice, Commercial List (the "**Court**");

AND WHEREAS on October <*>, 2021, First Capital Holdings (Ontario) Corporation (the "**DIP Lender**") and the Borrower entered into a purchase agreement (the "**Purchase Agreement**"), pursuant to which, the DIP Lender agreed to provide the Transaction Deposit (as defined in the Purchase Agreement) to the Borrower, subject to the terms and conditions set forth therein, during the Post-Due Diligence Period (as defined in the Purchase Agreement), to be used solely to finance the Borrower's working capital requirements, other general corporate purposes and capital expenditures, and the costs of the CCAA Proceedings;

AND WHEREAS the Borrower requires short-term financing to fund certain cash requirements of the Borrower from the date of this Agreement to the earlier of: (a) the date of the commencement of the Post-Due Diligence Period; or (b) the termination of the Purchase Agreement;

AND WHEREAS the DIP Lender is willing to provide the DIP Loan (as defined herein) herein to the Borrower in accordance with the terms and conditions set out in this term sheet ("**Term Sheet**");

NOW THEREFORE in consideration of the mutual covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Borrower:	McEwan Enterprises Inc.
DIP Lender:	First Capital Holdings (Ontario) Corporation
Type of DIP Loan:	A super-priority, debtor-in-possession interim, non-revolving credit facility up to a maximum amount of $**<*>** (the "**DIP Loan**"), to be made available to the Borrower in the form of: (a) an initial advance (the "**Initial Advance**") in the principal amount of $**<*>** **[NTD: Monitor to advise re cash requirements of debtor during the Due-Diligence Period (as defined in the Purchase Agreement)]**; and (b) the Transaction Deposit of $2,250,000 (together with the Initial Advance, the "**Advances**", and each, an "**Advance**"), subject to and in accordance with the terms herein.
Currency:	Except as otherwise expressly provided herein, all dollar amounts herein are in Canadian Dollars. All payments made hereunder shall be made in the currency in respect of which the obligation requiring such payment arose.
Availability:	Subject to the fulfillment of the applicable conditions precedent to the availability of the applicable Advance set out herein and provided that no Event of Default (as defined herein) has occurred and is then continuing, the DIP Loan shall be advanced by the DIP Lender.

Advances:	Advances under the DIP Loan shall be deposited into the Deposit Account and utilized by the Borrower in accordance with the terms hereof. "**Deposit Account**" means the account(s) maintained by the Borrower to which payments and transfers under this Term Sheet are to be deposited, which are specified in writing by the Borrower to the DIP Lender or such other account or accounts as the Borrower may from time to time designate by written notice to the DIP Lender.
Purpose, Use of Proceeds:	The proceeds of the Initial Advance will be used to fund cash flow requirements of the Borrower from the date of this Agreement to the earlier of: (a) the date of the commencement of the Post-Due Diligence Period; and (b) the termination of the Purchase Agreement. The Transaction Deposit, if any, will be used to fund cash flow requirements of the Borrower from the date of the commencement of the Post-Due Diligence Period until the Termination Date (as defined herein).
Court Officer:	The Court-appointed monitor in the CCAA Proceedings, Alvarez & Marsal Canada Inc. (in such capacity, the "**Monitor**"), shall be authorized to have direct discussions with the DIP Lender, and the DIP Lender shall be entitled to receive information from the Monitor, as may be requested by the DIP Lender from time to time.
Termination Date:	The maturity of the DIP Loan (the "**Termination Date**") shall be the earliest of: (a) the effective date of the transaction contemplated by the Purchase Agreement or any other merger, amalgamation, consolidation, arrangement, reorganization, recapitalization, sale or any other transaction affecting all or a material part of its assets or operations or resulting in the change of ownership or control of the Borrower confirmed by the Court and satisfactory to the DIP Lender (any of the foregoing being a "**Transaction**"); or (b) the date of the acceleration of the DIP Loan and the termination of the commitment with respect to the DIP Loan as a result of an Event of Default hereunder (as defined herein). All outstanding amounts under the DIP Loan, together with all interest accrued in respect thereof and all other amounts owing under this Term Sheet shall be payable in full on the Termination Date.

Interest Rate: All amounts outstanding under the DIP Loan will bear interest at a rate of <*>% *per annum*, on the daily balance outstanding under the DIP Loan.

Interest shall be due and payable on the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.

Repayment: Unless otherwise repaid as contemplated herein, the DIP Loan shall be due, owing, payable and repaid on the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.

Mandatory Prepayments: Unless otherwise consented to by the DIP Lender, the DIP Loan shall be repaid in full on the Termination Date.

Representations and Warranties: The Borrower represents and warrants to the DIP Lender as of the date hereof, and as of the date of each Advance under the DIP Loan that:

(a) the Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power to carry on business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to constitute a material adverse effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification in required; and

(b) the execution, delivery and performance, as applicable, of this Term Sheet has been duly authorized by all actions, if any, required on the part and by the Borrower's directors, and constitutes a legal, valid and binding obligation of the Borrower enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application that limit the enforcement of creditors' rights generally and to general equitable principles.

Covenants: The Borrower covenants and agree that:

(a) the Borrower shall pay all amounts and satisfy all obligations in respect of the DIP Loan;

(b) the Borrower shall not undertake any actions with respect to its assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender,

have a material adverse effect on the Borrower or the Collateral (as defined herein);

(c) the Borrower shall not incur any indebtedness, including the giving of guarantees, other than indebtedness specifically contemplated hereby or permitted in writing by the DIP Lender;

(d) other than in the ordinary course of business, the Borrower shall not incur, create, assume or suffer to exist any lien, charge, security interest or other encumbrance on any Collateral now owned or hereafter acquired other than: (i) those encumbrances existing as at the date of the Initial Order, and (ii) the DIP Lender's Charge (defined below);

(e) the Borrower shall not enter into any new credit facility or loan arrangements that would be secured in priority to or *pari passu* with the DIP Loan;

(f) the Borrower shall not enter into any Transaction without the prior written consent of the DIP Lender should any Advance remains outstanding to the DIP Lender;

(g) without the prior written consent of the DIP Lender, the Borrower shall not: (i) declare or pay any dividends on, or make any other payments or distributions (whether by reduction of capital or otherwise) with respect to any of its respective issued and outstanding share or other equity interests, or (ii) make any loans;

(h) the Borrower shall not sell any of their assets outside of the ordinary course of business without the prior written consent of the DIP Lender should any Advance remains outstanding to the DIP Lender; and

(i) the Borrower shall promptly pay all DIP Expenses (as defined herein), including all legal and advisory fees and expenses, of the DIP Lender as such DIP Expenses are incurred and invoiced to the Borrower.

Security: As continuing security for the prompt payment of all amounts payable by the Borrower to the DIP Lender under this Term Sheet and as continuing security for the due and punctual performance by the Borrower of its existing and future obligations (the "**DIP Obligations**") pursuant to this Term Sheet, the Borrower hereby grants, conveys, assigns, transfers, mortgages and charges as and

by way of a fixed and specific security interest, to and in favour of the DIP Lender all of its property, assets, rights and undertaking, real and personal, moveable or immovable, tangible and intangible, legal or equitable, of whatsoever nature and kind, whatsoever locate, bother present and future, now or hereinafter owned or acquired (collectively, the "**Collateral**"), including, without limitation, all real and immovable property (including leasehold lands) now or hereafter owned or acquired by such Borrower.

The DIP Obligations shall be subject to a fully perfected Court-ordered super-priority charge (the "**DIP Lender's Charge**") over the Collateral, in priority to any security interests, claims, trusts or deemed trusts (statutory or otherwise) without any requirements to effect *Personal Property Security Act* Ontario registrations except any existing security interests in favour of Royal Bank of Canada and The Cadillac Fairview Corporation Limited, as they may be amended.

Events of Default:

An "**Event of Default**" shall include, without limitation, the following:

(a) the Borrower defaults in the payment of any amount due and payable to the DIP Lender (whether of principal, interest or otherwise) pursuant this Term Sheet;

(b) any representations and warranties made by the Borrower in this Term Sheet proves to be incorrect as of the date given;

(c) the Borrower fails or neglects to observe or perform any term, covenant, condition or obligation contained or referred to in this Term Sheet or any other document between the Borrower and the DIP Lender including, without limitation, the Purchase Agreement;

(d) the stay of proceedings provided for by virtue of the CCAA Proceedings expires without being extended, the CCAA Proceedings are dismissed or terminated or the Borrower becomes subject to a proceeding under the BIA or a receivership or similar insolvency proceeding;

(e) the entry of an order staying, amending, reversing, vacating or otherwise modifying, in each case without the prior written consent of the DIP Lender, the DIP Loan, the DIP Order (as defined herein) or any other order granted by the Court in the CCAA Proceedings; or

(f) the Borrower undertakes any actions with respect to its assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, have a material adverse effect on the Borrower or the Collateral.

Upon the occurrence of an Event of Default, and in accordance with the notice terms of the Initial Order, all indebtedness of the Borrower to the DIP Lender shall become immediately due and payable and the DIP Lender may take all steps necessary to enforce its security.

The DIP Lender shall also have the right to exercise all other customary remedies, including, without limitation, the right to enforce and realize on all Collateral.

Conditions Precedent, to Advance of DIP Loan

The conditions precedent for making the Initial Advance available to the Borrower are as follows:

(a) the Purchase Agreement continuing in full force and effect in accordance with the provisions thereof, unless otherwise agreed to by the DIP Lender in its sole discretion;

(b) the representations and warranties made by the Borrower in this Term Sheet being true and correct as of the date given and as of the date of the Initial Advance; and

(c) issuance of an order by the Court (the "**DIP Order**"), satisfactory in form and substance to the DIP Lender in its sole discretion, approving the DIP Loan, granting the DIP Lender's Charge with the priority contemplated herein and authorizing the payment by the Borrower of all of the fees and expenses in respect of the DIP Loan, unless otherwise agreed to by the DIP Lender in its sole discretion.

The conditions precedent for making the Transaction Deposit available to the Borrower are as follows:

(a) the commencement of the Post-Due Diligence Period;

(b) the Purchase Agreement continuing in full force and effect in accordance with the provisions thereof, unless otherwise agreed to by the DIP Lender in its sole discretion;

(c) the representations and warranties made by the Borrower in this Term Sheet being true and correct as of the date

given and as of the date of the commencement of the Post-Due Diligence Period; and

(d) the issuance of the CCAA Approval and Vesting Order (as defined in the Purchase Agreement).

Illegality: In the event that it becomes illegal for the DIP Lender to lend or continue to lend, the DIP Lender will be repaid and/or the DIP Lender's commitment will be cancelled.

Taxation: All payments of principal, interest and fees will be made free and clear of all present and future taxes, levies, duties or other deductions of any nature whatsoever, levied either now or at any future time.

Fees and Expenses: The Borrower shall pay all of the DIP Lender's out-of-pocket expenses (including the fees and expenses of its counsel and advisors), whether or not any of the transactions contemplated hereby are consummated and whether incurred prior to or after the date of the DIP Order, as well as all expenses of the DIP Lender in connection with the ongoing monitoring, interpretation, administration, protection and enforcement of the DIP Loan and continuation of the CCAA Proceedings and the enforcement of any and all of its remedies at law (collectively, the "**DIP Expenses**").

Governing Law, Jurisdiction: Laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario. The Borrower agree to submit to the non-exclusive jurisdiction of the Court.

Amendments, Waivers, Etc.: No amendment or waiver of any provisions of this Term Sheet or consent to any departure by the Borrower from any provision thereof is effective unless it is in writing and signed by the DIP Lender (and in the case of amendments, the Borrower). Such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

Notices: Any notice, request, consent, waiver or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or direct electronic transmission, including email, to such person at its address set out on its signature page hereof. Any such notice shall be deemed to be given and received when received, unless received after 5:00 p.m. Eastern Time or on a day other than a business day, in which case such notice, request, consent, waiver or other communication shall be deemed to be received on the next following business day.

Entire Agreement: This Term Sheet constitutes the entire agreement between the parties hereto pertaining to the matters therein set forth and supersede and replace any prior understandings or arrangements

pertaining to the DIP Loan. There are no warranties, representations or agreements between the parties in connection with such matters except as specifically set forth herein or in this Term Sheet.

Counterparts and Electronic Transmission: This Term Sheet may be executed in any number of counterparts, each of which when taken together shall constitute one and the same instrument. Any counterpart of this Term Sheet can be executed and delivered by any manner of direct electronic transmission including without limitation "pdf email" or "DocuSign", each of which shall be deemed to be an original hereof.

[*Remainder intentioned left blank; Signature page follows*]

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as of the date first written above.

MCEWAN ENTERPRISES INC.

By: _____
Name:
Title:

Address:

McEwan Enterprises Inc.
c/o Goodmans LLP
333 Bay Street
Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert J. Chadwick and Caroline Descours
Email: rchadwick@goodmans.ca /
cdescours@goodmans.ca

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION

By: _____
Name:
Title:

Address:

First Capital Holdings (Ontario) Corporation
c/o Aird & Berlis LLP
181 Bay Street
Suite 1800
Toronto, Ontario M5J 2T9

Attention: Steven L. Graff and Jeremy Nemers
Email: sgraff@airdberlis.com /
jnemers@airdberlis.com

TAB K

Attached is Exhibit “K”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

~~Execuli3n[9]Version~~

PURCHASE AGREEMENT

MCEWAN ENTERPRISES INC.

as the Seller

- a n d -

~~2864785~~ FIRST CAPITAL HOLDINGS (ONTARIO ~~CORP.~~) CORPORATION

as the Buyer

Made as of ~~September 27~~October <*>, 2021

2

TABLE OF CONTENTS

~~142~~

PURCHASE AGREEMENT

THIS AGREEMENT is made as of ~~September 27~~October <*>, 2021

BETWEEN:

MCEWAN ENTERPRISES INC., a corporation organized under the laws of the Province of Ontario (the "Seller")

- and -

~~2864785~~ FIRST CAPITAL HOLDINGS (ONTARIO ~~CORP~~) CORPORATION., a corporation organized under the laws of the Province of Ontario (the "Buyer")

RECITALS:

A. The Seller owns and operates restaurants, catering, gourmet grocery and an events company in Canada.

B. The Seller has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire~~,~~ assume and accept from the Seller, substantially all of Seller's assets used in connection with, and certain liabilities and obligations of, the Business, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and confirmed), the Parties agree as follows:

ARTICLE 1- INTERPRETATION

1.1 Definitions

In this Agreement,

(a) **"2860117"** means 2860117 Ontario Limited, a wholly-owned subsidiary of the Seller;

(b) **"Additional Indemnitees"** means, with respect to any Party, its directors, officers and employees;

(c) **"affiliate"** has the same meaning as **"affiliate"** under National Instrument 45-106 *—Registration and Prospectus Exemptions;*

(d) **"Agreement"** means this purchase agreement and all Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions **"Article", "Section", "Schedule"** and **"Exhibit"** followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;

(e) **"Applicable Law"** means any Canadian statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority, that applies in whole or in part to the Transaction, the Seller, the Buyer or any of the Purchased Assets;

(f) **"Assumed Contracts"** has the meaning given to it in Section 2.1(c);

(g) **"Assumed Liabilities"** means those Assumed Obligations that are amounts owing or accrued by the Seller as at the Closing Date;

~~(a)~~ (h) **"Assumed Obligations"** has the meaning given to it in Section 3.1;

~~(b)~~ (i) **"Assumed Real Property Leases"** has the meaning given to it in Section 2.1(a);

(~~i~~j) **"Authorizations"** means, with respect to any Person, any order, permit, approval, waiver, license or similar authorization of any Governmental Authority having jurisdiction over the Person;

(k) ~~"~~"**Base Purchase Price**~~"~~" has the meaning given to it in Section 2.7(a);

(1) **"Business"** means the Seller's business of owning and operating restaurants, catering, gourmet grocery and an events company in Canada~~.~~;

(m) **"Business Day"** means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;

(n) **"Buyer"** has the meaning given to it in the preamble to this Agreement;

(~~O~~o) **"Buyer Designee"** means one or more affiliates of the Buyer designated by the Buyer to the Seller prior to the Closing;

(p) **"Cash and Cash Equivalents"** means all of the Seller's cash and cash equivalents (including petty cash and cheques received prior to the close of business on the Closing Date), bank balances, monies in possession of banks and other depositories and other similar cash property, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper and government securities and other cash equivalents.

(q) **"Cash Reserve"** means cash in such amount as may be agreed to by the Parties with the consent of the Monitor prior to the Closing Date.

(r) **"CCAA"** means the *Companies' Creditors Arrangement Act* (Canada);

(s) "**CCAA Approval and Vesting Order"** means an order of the CCAA Court, among other things, authorizing and approving this Agreement, the Transaction and granting a court-ordered charge to secure the obligation of the Seller to repay to the Buyer the Transaction Deposit pursuant to the terms hereof in the event the Agreement is terminated in accordance with the terms of this Agreement, in form and substance acceptable to the Parties, acting reasonably;

(t) **"CCAA Assignment Order"** means an order or orders of the CCAA Court pursuant to Section 11.3 and other applicable provisions of the CCAA authorizing and approving the assignment of any Assumed Contract for which a consent, approval or waiver necessary for the assignment of such Assumed Contract has not been obtained, in form and substance acceptable to the Parties, acting reasonably;

(u) **"CCAA Court"** means the Ontario Superior Court of Justice (Commercial List);

(v) **"CCAA Initial Order"** means an order that may be granted or issued by the CCAA Court granting protection to the Seller pursuant to the CCAA;

(w) **"CCAA Proceedings"** means proceedings that may be commenced by the Seller under the CCAA pursuant to the CCAA Initial Order;

(x) **"CF Loan Agreement"** means the loan agreement entered into on August 6, 2008 between C/F Realty Holdings Inc., as lender, and the Seller, as borrower, as amended

~~3~~ pursuant to an amending agreement entered into as of December 15, 2008, as may be further amended, modified, restated, replaced and supplemented from time to time;

(y) **"Closing"** means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 7.1 (including, as applicable, pursuant to the CCAA Proceedings) and of all other transactions contemplated by this Agreement (or, as applicable, the CCAA Proceedings) that are to occur concurrently with the sale and purchase of the Purchased Assets;

(z) **"Closing Date"** means the first Business Day that is at least five (5) Business Days following the first date by which all of the conditions in Section 6.8 have been satisfied or waived, or such other date as may be agreed upon by the Parties hereto;

(aa) **"Commercially Reasonable Efforts"** means the efforts that a reasonably prudent Person who desires to complete the Transaction on commercially reasonable terms would use in similar circumstances without the necessity of, directly or indirectly, assuming or incurring any material obligations or paying or committing to pay any material amounts to an unrelated Person;

(bb) **"Confidential Information"** means information concerning the Seller, its affiliates and/or its and their respective businesses, operations, finances and affairs that is or has been disclosed by the Seller, its affiliates or any of their respective Representatives to the Buyer, its affiliates or any of their respective Representatives in connection with the Transaction, the proposed transactions of the Seller and its affiliates concerning their assets, business, properties and/or operations outside Canada, this Agreement, including the existence of, the terms and conditions of, or the status of the Transaction, any such other proposed transaction, this Agreement, or any other facts pertaining to any of them, any information about identifiable individuals or any other information relating to the Seller, its affiliates and/or its and their respective businesses, operations, finances and affairs, associates, customers, suppliers, partners, investors, employees and consultants, and includes all data, reports, analyses, compilations, forecasts, records and other material (in whatever form maintained) that contain or otherwise reflect any such information, as well as all notes, analyses, compilations, studies, interpretations or other documents prepared by the Buyer, its affiliates or any of their respective Representatives that contain, reflect or are based upon, in whole or in part, any such information. Notwithstanding the foregoing, **"Confidential Information"** does not include information that the Buyer can demonstrate that: (A) is or becomes readily available to the public other than as a result of disclosure by the Buyer, its affiliates or any of their respective Representatives; (B) is received by the Buyer from an independent third party that obtained it lawfully and was under no duty of confidentiality; (C) has been in the possession of the Buyer on a non-confidential basis prior to the disclosure of such information by the Seller or its Representatives; (D) was independently developed by the Buyer without use or reference of any Confidential Information; or (E) is disclosed pursuant to Applicable Laws or a valid and enforceable order of a court or other Governmental Authority having jurisdiction over the Buyer *provided that* (other than in respect of disclosure by the Seller pursuant to applicable securities laws) the Buyer shall, to the extent possible, first promptly notify the Seller in writing of such requirement and fully cooperate with respect to any reasonable steps possible to further protect Confidential Information;

(cc) **"Contract"** means any contract, agreement, lease, sublease, license, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on any Person or any part of its property under Applicable Law;

(dd) **"Court Approvals"** means the issuance of the CCAA Initial Order, the CCAA Approval and Vesting Order and, as applicable, CCAA Assignment Orders by the CCAA Court in respect of one or more Assumed Contracts in the CCAA Proceedings, each such order in form and substance satisfactory to the Buyer and the Seller acting reasonably;

(ee) **"Cure Costs"** means, unless otherwise agreed between the applicable counterparty and the Buyer in respect of any Assumed Contract, all amounts owing as at the Closing Date by the Seller or an affiliate thereof pursuant to such Assumed Contract, and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from the Seller to the Buyer and/or, as applicable, one or more Buyer Designees, and/or to obtain any Third Party Consent and/or, as applicable, pursuant to any CCAA Assignment Order, and any fees required to be paid to obtain such Third Party Consent or CCAA Assignment Order, as agreed upon by the Parties in writing;

(ff) **"Deposit Amount"** has the meaning given to it in Section 2.6(b);

(gg) **"Designation Deadline"** has the meaning given to it in Section 2.4;

(hh) **"Disclosed Personal Information"** has the meaning given to it in Section 10.5(b);

(hh-A) **"Due Diligence Date"** means the date that is fourteen (14) days next following the execution of this Agreement;

(hh-B) "**Due Diligence Period**" means the period of fourteen (14) days following the date of execution of this Agreement;

(ii) **"Employee Plans"** means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by the Seller for the benefit of the current or former directors, officers, employees, contractors, consultants of the Seller in respect of the Business and/or their respective ~~dependants~~dependents or beneficiaries, by which the Seller is bound or with respect to which the Seller participates or has any actual or potential liability, other than statutory benefit plans which the Seller is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;

(jj) **"Encumbrance"** means any and all right, title, interest, priorities, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, assignments, judgments, options, levies, charges, other financial or monetary claims or encumbrances, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, by or of any and all persons or entities of any kind whatsoever;

(kk) **"Environmental Laws"** means all Applicable Laws relating to the protection, preservation and remediation of the environment (including the *Canadian Environmental Protection Act, 1999)* or health and safety;

(~~11~~ll) **"Excluded Assets"** has the meaning given to it in Section 2.2;

(mm) **"Excluded Contracts"** has the meaning given to it in Section 2.2(a);

(nn) **"Excluded Encumbrances"** means the Encumbrances set out on Schedule 1.1(nn);

(oo) **"Excluded Obligations"** has the meaning given to it in Section 3.2;

(pp) **"Governmental Authority"** means: (i) any federal, provincial, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;

(qq) **"HST"** means harmonized sales tax payable under the HST Legislation;

(~~r~~rr) **"HST Legislation"** means the *Excise Tax Act* (Canada) and other Applicable Laws in Canada (or any province thereof) giving rise to the requirement to pay harmonized sales tax;

(ss) **"Improvements"** means all plants, buildings, structures, systems, fixtures, erections and improvements located on, over, under or upon, the Leased Locations;

(tt) **"Indemnified Losses"** means all claims, liabilities, obligations, damages, awards, assessments, settlement amounts, penalties, fines, judgments, losses, costs, charges and expenses, but for greater certainty, excluding in all cases any and all indirect, incidental, consequential, punitive, exemplary and special damages (including, as exclusions, loss of future revenue or income, business interruption, cost of capital or loss of business reputation or opportunity or diminution in value);

(uu) **"Intellectual Property"** means any domestic and foreign (i) registered and unregistered trademarks, trade names, business names, brand names, designs, logos, indicia, distinguishing guises, trade dress, service marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know-how, technology and related goodwill, (ii) issued patents, continuations in part, divisional applications or analogous rights therefor, (iii) telephone and facsimile numbers, domain name registrations, website names, world wide web addresses and social media accounts, (iv) all right, title and benefit to any and all consents, whether express or implied, granted in accordance with or pursuant to *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act,* the *Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (Canada)* (commonly known as **"Canada's Anti-Spam Law"** or **"CASL")**, and (v) any applications or registrations of any of the foregoing, in each case whether registered or not, as well as all other intellectual property rights in the foregoing;

(vv) **"Interim Period"** means the period between the date hereof and the Closing Date;

(ww) **"Inventory and Supplies"** has the meaning given to it in Section 2.1(d);

(xx) **"Leased Locations"** means those premises occupied by the Business that are listed in Schedule 2.1(a) by reference to their respective municipal addresses;

(yy) **"Loan Agreements"** means, collectively, (A) the loan agreement entered into on October 2, 2018 between the Seller, as borrower, and Royal Bank of Canada, as lender, as amended pursuant to an amending agreement entered into as of February 26, 2019, (B) the CF Loan Agreement, (C) the debentures dated October 31, 2018 (as amended), March 18, 2020, August 5, 2020, and March 22, 2021 between the Seller and Northbridge Financial Corporation, (D) the loan received from the Canada Emergency Benefit Account, and (E) the loan agreement entered into on March 30, 2021 between the Seller, as borrower, and Royal Bank of Canada, as lender under the Highly Affected Sectors

13

Credit Availability Program, in each case as amended, modified, restated, replaced and supplemented from time to time;

(zz) **"Material Contracts"** means the Assumed Contracts listed in Schedule 1.1(zz) (as may be amended by the Buyer by adding or deleting any Contract therefrom pursuant to and in accordance with Section 2.4);

(aaa) **"Monitor"** means the monitor appointed pursuant to the CCAA Proceedings;

(bbb) **"Monitor's Certificate"** means the certificate of the Monitor contemplated by the CCAA Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all of the conditions of Closing have been satisfied or waived by the applicable Parties;

(ccc) **"Ordinary Course"** means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the past practices of the Person having regard to the transactions contemplated by this Agreement and, as applicable, the CCAA Proceedings;

(ddd) **"Parties"** means the Seller and the Buyer, and **"Party"** means any of them;

(eee) **"Permitted Encumbrances"** means the following, but, for greater certainty, in each case excluding the Excluded Encumbrances and any and all Encumbrances granted under, pursuant to or in connection with any Excluded Contracts or other Excluded Assets, and also excluding any and all Encumbrances granted in connection with or in respect of, or otherwise securing, any Excluded Obligations:

(i) Encumbrances or privileges reserved to, vested in or in favour of any Person by (a) any Applicable Law or (b) the terms of any Authorization, that affects any lands or premises, to amend or terminate any such Authorization or to require annual or other periodic payments or other requirements as a condition to the continuance or effect thereof;

(ii) Encumbrances for Taxes, assessments or governmental charges and Encumbrances in favour of a Governmental Authority arising by (a) Applicable Law or (b) operation of Applicable Law and which relate to or secure obligations of the Seller;

(iii) covenants, conditions, restrictions, easements and other imperfections or irregularities or similar matters affecting title to the Leased Locations;

(iv) any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind including rights to coal, petroleum and minerals of any kind, including rights to enter, prospect and remove the same, and statutory exceptions, qualifications or limitations to the title;

(v) Encumbrances associated with, and financing statements evidencing, the rights of equipment or other capital lessors under equipment contracts or other capital lease arrangements forming part of the Purchased Assets in and to the equipment or other capital assets which are subject to such Assumed Contracts;

(vi) permits, licenses, zoning, entitlement and other land use regulations, agreements, arrangements, easements, restrictions, reservations, restrictive covenants, conditions, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land of, granted to or reserved by other Persons (including,

15

without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, subdivisions, development, site plan, zoning, rights-of-way, sidewalks, public ways, as well as rights in the nature of easements or servitudes for sewers, drains, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables);

(vii) all matters that are disclosed (whether or not subsequently endorsed over) in any title policies issued in connection with the Leased Locations to the extent such policies have been made available to the Buyer and any plans or surveys to the extent such policies and copies of such surveys and exception documents have been made available to Buyer;

(viii) ~~(i)~~ all matters as would be disclosed on current title reports or surveys and that would not reasonably be expected to have a material adverse effect on a Leased Location;

(ix) ~~(ii)~~ any Encumbrances against the interest of the landlord or sub-landlord at a Leased Location;

(x) ~~(iii)~~ any Encumbrances granted under the Assumed Contracts including any leases or subleases;

(xi) ~~(iv)~~ any Encumbrance to be released on or prior to the Closing;

(xii) ~~(v)~~ any Encumbrance set out in Schedule ~~1. 1~~1.1 (eee); and

~~(ggg)~~

(xiii) ~~(vi)~~ any amendment, supplement, replacement, extension or renewal of any of the foregoing from time to time;

(fff) "Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

mmm

iii)

jjj)

kkk)

(ggg) "Personal Property Leases" means a personal or movable property lease, equipment lease, conditional or instalment sale contract and other similar agreement relating to any Purchased Equipment to which the Seller is a party or under which it has rights to use any Purchased Equipment;

(hhh) "Prepaid Expenses" has the meaning given to it in Section 2.1(k);

(hhh-A) "Post-Due Diligence Period" means the period commencing on delivery by the Buyer of its notice of satisfaction or waiver of the condition in Section 6.6(e) and ending on the Closing Date;

(iii) "Purchased Assets" has the meaning given to it in Section 2.1;

(jjj) "Purchased Equipment" has the meaning given to it in Section ~~2. 1~~2.1 (b);

(kkk) "Representatives" means, in respect of any Party, their respective affiliates, directors, officers, employees, agents and advisors (including financial advisors and legal counsel) of that Party and its affiliates, as well as the directors, officers and employees of any such Party's agents or advisors;

(~~111~~lll) "Seller" has the meaning given to it in the preamble to this Agreement;

(mmm) "Seller's Employees" means the employees of the Seller (full-time or part-time and including those on leave or on disability) and employed for or in the Business on the Closing Date;

(nnn) "Specified Insurance Proceeds" has the meaning given to it in Section 2.1(i);

(~~000~~ooo) "Sunset Date" has the meaning given to it in Section 9. 1 (b);

(ppp) **"Tax"** and **"Taxes"** means all taxes, duties, fees, premiums, assessments, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties and fines in respect thereof~~.~~;

(qqq) **"Tax Act"** means the *Income Tax Act* (Canada), as amended from time to time;

(rrr) **"Third Party Consents"** means the consents, approvals and/or authorizations of the contracting parties to the Transaction or any part thereof, including the assignment, novation or other similar arrangement of the Authorizations, the Personal Property Leases, the Assumed Real Property Leases and the other Assumed Contracts, as may be required by the terms thereof;

(sss) **"Transaction"** means the purchase of assets and assumption of liabilities of the Business by the Buyer contemplated by this Agreement (including pursuant to the CCAA Proceedings, as applicable);

(ttt) **"Transaction Deposit"** has the meaning given to it in Section 2.6(a);

(uuu) **"Transfer Taxes"** means any HST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, documentary, filing, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges; and

(vvv) **"Transferred Employees"** means those Seller's Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 8.1.

1.2 Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(nn)	Excluded Encumbrances
Schedule 1.1(zz)	Material Contracts
Schedule 1.1(eee)	Permitted Encumbrances
Schedule 2.1(a)	Leased Locations / Assumed Real Property Leases
Schedule 2.1(c)	Assumed Contracts
Schedule 2.1(f)	Intellectual Property
Schedule 2.1(l)	Securities
Schedule 2.2(a)	Excluded Contracts
Schedule 4.10	Environmental Matters
Schedule 6.2(a)	Insurance Policies

1.3 Statutes

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

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words **"including"** or **"includes"** in this Agreement is to be construed as meaning **"including, without limitation"** or **"includes, without limitation",** respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.7 Knowledge

Any reference to the **"knowledge"** or awareness of the Seller, will mean the actual knowledge, information and belief of the Seller's senior executive officers, without inquiry, in their respective capacity as senior executive officers of the Seller only and not in their personal capacity or in any other capacity, and without personal liability, as of the date of this Agreement.

1.8 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by each of the Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the Transaction (including for the CCAA Proceedings or any part thereof, and in each case whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and

interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein (including, as applicable, the CCAA), without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the courts of the Province of Ontario (including, as applicable, the CCAA Court) for the resolution of any such disputes arising under this Agreement or any other arrangement between the Parties (including the CCAA Proceedings or any part thereof). Each Party agrees that service of process on such Party as provided in Section 10.11 shall be deemed effective service of process on such Party.

ARTICLE 2— PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as at 12:01 am (EST) on the Closing Date, the Seller agrees to sell, assign, transfer and convey to the Buyer and/or, as applicable, one or more Buyer Designees, and the Buyer agrees to or to cause one or more Buyer Designees to purchase, assume and accept from the Seller, all of the Seller's respective right, title and interest in and to, and the Buyer agrees to assume and perform all of the Seller's obligations in and under, the assets and properties of the Seller used, maintained, owned or operated for, in respect of or in connection with the Business, in each case free and clear of all Encumbrances other than the Permitted Encumbrances, excluding the Excluded Assets (including, for greater certainty, the Excluded Contracts listed on Schedule 2.2(a) hereof) (all of such assets and property hereinafter collectively referred to as the **"Purchased Assets"**), including the following:

(a) **Assumed Real Property Leases.** All of the Seller's respective leasehold interest (subject to the burdens, obligations, restrictions and conditions therein) in the Contracts listed in Schedule 2.1(a), as Schedule 2.1(a) may be amended pursuant to and in accordance with Section 2.4, pursuant to which the Seller uses or occupies the Leased Locations (including all related Contracts such as estoppels, subordination and non-disturbance agreements, guarantees, extensions, renewals and modifications) or rights and any amendments, extensions and restatements thereof, including all Contracts incidental thereto subject to the rights of the applicable landlord or any third party (including rights to ownership or use of such property) under such leases (the **"Assumed Real Property Leases"**);

(b) **Purchased Equipment.** All equipment, machinery, chattels, Improvements, furnishings, computer hardware and peripheral equipment and other tangible personal and movable property (other than Inventory and Supplies) owned by the Seller or the Seller's interests in any such property subject to a personal or movable property lease, equipment lease, conditional or instalment sale contract or other similar agreement to which the Seller is a party or under which the Seller has rights to use any such property(the **"Purchased Equipment"**);

(c) **Contracts.** Without duplication of the Assumed Real Property Leases, the Seller's respective benefit (in each case subject to the burdens, including restrictive covenants, termination rights and other obligations, restrictions and conditions therein) in the Loan Agreements and the other Contracts listed in Schedule 2.1(c), as Schedule 2.1(c) may be amended pursuant to and in accordance with Section 2.4 (including the Assumed Real

Property Leases and the Personal Property Leases for Purchased Equipment, collectively, the **"Assumed Contracts"**);

(d) **Inventory and Supplies.** As at the Closing, all those inventories and supplies (both warehouse and retail) that are held by or on behalf of the Seller for sale, rental, lease or

~~152~~ other distribution for, in or of the Business, whether situated at a Leased Location or at any other location (collectively, the **"Inventory and Supplies");**

(e) **Motor Vehicles.** All motor vehicles owned or leased by Seller;

(f) **Intellectual Property.** The Seller's rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the Business, and including the Intellectual Property listed in Schedule 2.1(f);

(g) **Cash.** All Cash and Cash Equivalents, whether on hand, in transit to the Seller on the Closing Date or in banks or other financial institutions, and all security entitlements, securities accounts, commodity contracts and commodity accounts on hand at Closing;

(h) **Insurance Policies.** To the extent assignable or transferable in accordance with the terms and conditions of the applicable insurance policies, Applicable Law, the CCAA Assignment Order or the CCAA Approval and Vesting Order, (i) all of the Seller's insurance policies and rights and benefits thereunder (including (A) all rights pursuant to and proceeds, condemnation, or expropriation awards or other compensation in respect of loss or damage to any Purchased Asset from such insurance policies, and (B) all claims, demands, proceedings and causes of action asserted by the Seller under such insurance policies relating to any Purchased Asset or Assumed Obligation), and (ii) any letters of credit related thereto;

(i) **Specified Insurance Proceeds.** The net proceeds of any insurance payable or paid in respect of any Purchased Asset, as well as the Seller's rights in and to any such proceeds (the **"Specified Insurance Proceeds"**);

(j) **Receivables.** All accounts receivable of the Seller that are outstanding as at the Closing Date (but excluding amounts owing or receivable in respect of any Excluded Asset), any Tax credit or attribute, HST and other Tax receivables, as well as future Tax receivables and Tax refund entitlements related to periods ending on or before the Closing Date, or in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date, in each case of a Seller or any of its businesses (collectively, the **"Receivables"**);

(k) **Prepaid Expenses and Deposits.** All amounts which are prepaid in respect of or in relation to the Purchased Assets, including all deposits made by the Seller or on account of the Seller for goods and services purchased, ordered or leased by the Seller in respect of the Business as well as all deposits, advances, advance payments, prepayments, deferred charges or rebates in favour of the Seller including (i) security deposits with third-party suppliers, vendors or utility or service providers, ad valorem taxes and lease and rental payments, (ii) rebates, (iii) collateral pledged for workers' compensation and (iv) prepayments, in respect of the Assumed Real Property Leases, the Personal Property Leases for Purchased Equipment and the other Assumed Contracts, the benefit of all of which are transferable to the Buyer in accordance with the terms of this Agreement, all of which are Assumed Contracts being assigned to and assumed by the Buyer and are Assumed Obligations (the **"Prepaid Expenses"**);

(l) **Securities.** All shares, partnership or joint venture interests and any other securities of any Person owned or held by the Seller, as set forth in Schedule 2.1(1);

(m) ~~(m)~~ **Books and Records.** All documents used by the Seller and with respect to which the Seller has possession or a right to possession of, in connection with, or relating to, the Purchased Assets, the Assumed Obligations, or the operations of the Seller's Business, including all files, data, reports, plans, mailing lists, supplier lists, customer lists, price

24

lists, all books of account and other ~~financial~~financial data and information of the Seller or the Business, employee personnel records of Transferred Employees, marketing information and procedures, advertising and promotional materials, equipment records, warranty information, environmental site assessments, building condition reports, surveys, records of operations, standard forms of documents, manuals of operations or business procedures, and other similar procedures (including all discs, tapes, and other media-storage data containing such information);

(n) **Tax Records.** All original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the Seller and/or the Business, *provided that* the Seller shall retain the original copies of any of the records required to be provided to the Buyer hereunder (and provide the Buyer with a copy thereof) to the extent the Seller is expressly required to do so under Applicable Law;

(o) **Employee Plans.** All (i) assets and rights under the Employee Plans other than any Employee Plan that is an employment or similar agreement between a Seller's Employee and the Seller and (ii) human resources and other employee-related files and records relating to the Transferred Employees, except to the extent prohibited by Applicable Law;

(p) ~~(P)~~ **Confidentiality Rights.** All rights of the Seller under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of the Seller or with third parties;

(q) **Other Rights.** All rights, claims, actions, refunds, causes of action, choses in action, suits, proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution, and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities, and other contractual claims (express, implied, or otherwise); and

(r) **Goodwill.** The goodwill of the Business, including the exclusive right of the Buyer to (i) represent itself as carrying on the Business in continuation of and in succession to the Seller, and (ii) use any words indicating that the Business is carried on,

but, for greater certainty, in each case excluding any Excluded Assets.

Notwithstanding anything in this Agreement to the contrary, the Buyer may, in its sole and absolute discretion, at any time on or prior to the Designation Deadline, elect to acquire any additional assets, properties, and rights of the Seller, and any asset so designated by the Buyer shall be a Purchased Asset for all purposes hereunder; *provided, however,* that, with respect to Contracts, such designation shall be made in accordance with Section 2.4.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets will not, and will not be deemed to, include any of the following assets, property, rights, benefits or undertakings of the Seller (collectively, the **"Excluded Assets"):**

(a) all rights and interests in and to the Contracts to which the Seller is a party, other than the Assumed Contracts, as set out in Schedule 2.2(a) (the **"Excluded Contracts"**);

(b) all of the Seller's rights and benefits under this Agreement and the Transaction;

(c) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period, or otherwise in compliance with the terms of this Agreement; and

(d) all director and officer insurance policies and any entitlements and any proceeds paid or payable thereunder to or on behalf of the directors and officers of the Seller.

Notwithstanding anything in this Agreement to the contrary, the Buyer may, in its sole and absolute discretion, at any time on or prior to the Designation Deadline, elect not to acquire any of the assets, properties, and rights of the Seller, and any asset so designated by the Buyer shall be an Excluded Asset for all purposes hereunder; *provided, however,* that, with respect to Contracts, such designation shall be made in accordance with Section 2.4.

2.3 Condition of Conveyance

Without limiting the provisions of this Agreement relating to sale, transfer, assignment, conveyance, or delivery, the Purchased Assets and the Assumed Obligations shall be sold, transferred, assigned, conveyed, and delivered by the Seller to the Buyer and/or, as applicable, one or more Buyer Designees, by appropriate instruments of transfer, bills of sale, endorsements, assignments, and deeds, in recordable form, by way of CCAA Assignment Order, as appropriate, or as otherwise acceptable to the Buyer, and free and clear of any and all Encumbrances of any and every kind, nature, and description, other than Permitted Encumbrances.

2.4 Material Contracts, Assumed Contracts and Assumed Real Property Leases Schedules

Notwithstanding anything in this Agreement to the contrary, the Buyer, in its sole discretion, shall have the right at any time and from time to time up to one (1) day prior to the Closing Date (the **"Designation Deadline"),** upon written notice to the Seller, to (a) amend and update Schedules 1.1(zz), 2.1(a), 2.1(c) and 2.2(a), as applicable, to add (or in the case of Schedule 2.2(a), delete) any one or more of the Contracts to which the Seller is party, to such schedule and upon delivery of each such notice, the Contract so added or deleted shall, for all purposes of this Agreement, be deemed to be a Material Contract, Assumed Real Property Lease and/or Assumed Contract, as the case may be, and liabilities arising at and after the Closing Date under such Contract shall be an Assumed Obligation for all purposes of this Agreement to the extent so provided herein; (b) for any particular Assumed Contract that will be assumed in whole or in part by a Buyer Designee, to identify such Buyer Designee, and (c) amend and update Schedules 1.1(zz), 2.1(a), 2.1(c) and 2.2(a) as applicable, to delete (or in the case of Schedule 2.2(a), add) any one or more Contracts therefrom, and the Contract so deleted or added shall, for all purposes of this Agreement, be deemed to have ceased to be a Material Contract and/or be an Excluded Contract, as the case may be, and in the case of the latter, all liabilities arising at any time therefrom shall be Excluded Obligations for all purposes of this Agreement to the extent so provided herein, *provided, however,* that if the addition of an Excluded Contract results in a material increase in the aggregate amount of Excluded Obligations, such addition of an Excluded Contract shall be subject to the consent of the Monitor. If the Buyer indicates in writing to the Seller after the Closing Date that it wishes to acquire a Contract of the Seller that was not an Assumed Contract on the Closing Date, the Seller will use its Commercially Reasonable Efforts to assign such Contract to the Buyer and/or, as applicable, one or more Buyer Designees; *provided, however,* that nothing herein shall be deemed or construed to obligate the Seller to retain, or refrain from rejecting or terminating, any Contract after the Designation Deadline that

does not constitute an Assumed Contract; *provided, further,* that nothing herein shall be deemed to require the Seller to delay or otherwise alter the completion of the CCAA Proceedings or any winding-up of the Seller or any of its affiliates. Notwithstanding the foregoing or anything else contained

in this Agreement, the Closing shall not be delayed or restricted in any way as a consequence of this Section 2.4.

2.5 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS ARE PURCHASED AND THE ASSUMED OBLIGATIONS ARE ASSUMED BY THE BUYER AND/OR, AS APPLICABLE, ONE OR MORE BUYER DESIGNEES, "AS **IS, WHERE IS"** AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED OBLIGATIONS, AND WITHOUT ANY RECOURSE TO THE SELLER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR KNOWING AND INTENTIONAL FRAUD. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED OBLIGATIONS IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Seller in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded.

2.6 Deposit Amount

(a) During the ~~Interim~~Post-Due Diligence Period, but subject to the CCAA Approval and Vesting Order having been granted by the CCAA Court, the Seller and the Buyer may enter into terms for the payment of a deposit payable in one or more installments up to a total amount of $2,250,000, to be repaid or assumed, as the case may be, in accordance with or as otherwise contemplated by the terms of this Agreement and/or such additional terms as may be entered into between Seller and Buyer, each acting reasonably, at the time of their funding (the **"Transaction Deposit"**). The Transaction Deposit shall be used solely to finance the Seller's working capital requirements, other general corporate purposes and capital expenditures, and the costs of the CCAA Proceedings.

(b) Upon Closing, all interest, income and earnings on the Transaction Deposit (together with the Transaction Deposit, the **"Deposit Amount"**) will constitute an Assumed Obligation of the Buyer pursuant to Section 3.1 of this Agreement.

(c) If this Agreement is terminated for any reason, then the Deposit Amount shall be, and become immediately due and payable in full by Seller to Buyer without any additional notice, demand or other action or otherwise to the Seller or from the Buyer, and the Buyer

shall be deemed to have made a formal demand thereunder, secured as a priority Encumbrance against the Seller pursuant to the CCAA Approval and Vesting Order.

2.7 Purchase Price and Payment

(a) The aggregate consideration for the Purchased Assets is the aggregate sum of (A) $520,000 (the ~~"~~"**Base Purchase Price**~~"~~"), plus (B) an amount equal to Cure Costs, *plus* (C) the assumption of the Assumed Obligations by Buyer or one or more Buyer Designees.

(b) At the Closing, the Buyer shall (A) pay to the Seller the Base Purchase Price by way of wire transfer of immediately available funds to such bank account as is designated by the Seller and advised by the Seller to the Buyer no later than the Closing Date, (B) pay to the Monitor all Cure Costs, if any, as may be directed by the Monitor, and (C) assume the Assumed Obligations. For the avoidance of doubt, the consideration for the purchase by Buyer of the Purchased Assets includes the assumption of the Assumed Obligations by Buyer or one or more Buyer Designees. Notwithstanding the previous sentence, for the purposes of the Tax Act and for computing Transfer Taxes, the consideration for the Purchased Assets shall include only the Assumed Liabilities.

2.8 Purchase Price Allocation

The Buyer and the Seller agree to act in good faith to determine the allocation of the aggregate consideration for the Purchased Assets in accordance with the Tax Act and other Applicable Law. In the event that agreement cannot be reached, the Parties will jointly choose an independent accounting firm, whose decision shall be ~~final~~final. Half of the costs of such firm shall be paid by the Seller and the other half of such costs by the Buyer. The Parties agree to execute and file all Tax returns, declarations, reports, statements and other filings on the basis of such allocation.

2.9 Tax Matters

(a) All amounts payable by the Buyer to the Seller pursuant to this Agreement are exclusive of Transfer Taxes arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets to the Buyer and/or, as applicable, one or more Buyer Designees. The Buyer and/or, as applicable, one or more Buyer Designees, will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use Commercially Reasonable Efforts to assist the Buyer and/or, as applicable, one or more Buyer Designees, in mitigating such taxes. If the Seller is required by any Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer and/or, as applicable, one or more Buyer Designees, the Buyer and/or such Buyer Designees will pay such amounts to the Seller concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and Seller will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.

(b) The Parties will use their Commercially Reasonable Efforts in good faith to minimize (or eliminate) any taxes payable under the HST Legislation in respect of the Closing by, among other things, at the specific request of the Buyer to the Seller, the Parties filing a joint election in a timely manner under Section 167 of the *Excise Tax Act*

(Canada), if applicable and available). If the Buyer requests the Seller to make any such election, then in addition to any other indemnification obligation of the Buyer to the Seller, the Buyer will at all times indemnify and hold harmless the Seller and its Additional Indemnitees against and in respect of any and all Indemnified Losses, including all amounts assessed (together with any and all interests and penalties) by the Minister of

National Revenue (Canada) or the corresponding Governmental Authority in each other applicable jurisdiction (including all legal and professional fees incurred by the Seller or its shareholders, directors, officers, agents, advisors and/or employees, as a consequence of or in relation to any such assessment) as a consequence of either the Minister or any such other Governmental Authorities determining, for any reason, other than the actions or inaction of the Seller, that either election is unavailable, inapplicable, invalid or not properly made.

(c) If requested by the Seller, the Parties shall enter into an election under Section 22 of the Tax Act.

(d) If requested by Seller, the Seller and the Buyer will duly and timely execute an election pursuant to Subsection 20(24) of the Tax Act and any analogous provisions of any other Tax law to apply to such amount determined and paid by Seller to Buyer for assuming future obligations of Seller in respect of undertakings which arise from the operation of the corresponding business and to which Paragraph 12(1)(a) of the Tax Act or any analogous provision of other Tax law applies or applied.

(e) Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Purchased Assets (including real estate Taxes, personal property Taxes and similar Taxes), but for greater certainty, excluding Taxes imposed or assessed against the Seller in respect of Seller's income, capital gains/losses or similar Taxes, for any Tax period, including prior to the Closing, will be assumed by and shall be the sole responsibility of the Buyer.

ARTICLE 3- ASSUMED OBLIGATIONS AND EXCLUDED OBLIGATIONS

3.1 Assumed Obligations

Subject to Closing, the Buyer agrees to or to cause one or more Buyer Designees to assume, pay, discharge, perform and fulfil, and will indemnify and hold harmless the Seller and its Additional Indemnitees from and against, the following debts, commitments, claims, obligations and liabilities of the Seller with respect to the Business and the Purchased Assets, in each case whether direct or indirect, present or future, absolute, accrued or contingent (collectively, but for greater certainty excluding all Excluded Obligations, the **"Assumed Obligations"**):

(a) all obligations and liabilities in respect of the Assumed Contracts but, for greater certainty, excluding the Excluded Obligations;

(b) all obligations and liabilities in respect of customer loyalty programs, gift cards, food and merchandise credits and other similar customer retainer, engagement and incentive programs of the Business;

(c) all Cure Costs;

(d) all liabilities and obligations in respect of the Deposit Amount;

(e) all liabilities and obligations secured by Permitted Encumbrances prescribed in the clause (xii) of such definition, but, for greater certainty, excluding the Excluded Obligations;

(f) for greater certainty, all obligations under Applicable Law after the Closing with respect to the storage and retention of personal, financial or other records in respect of or included as the Purchased Assets;

(g) all liabilities and obligations assumed by the Buyer as described in Section 8.2;

(h) all liabilities and obligations with respect to Employee Plans duly assigned to, and assumed as a Purchased Asset, by the Buyer pursuant to Sections 2.1(o) and 8.1(c), respectively;

(i) all Taxes that are specified as liabilities and obligations of the Buyer under Section 2.9; and

(j) any other obligations and liabilities expressly assumed under this Agreement.

For greater certainty, the amount or value of the Assumed Liabilities shall not be included in determining the value of a Purchased Asset.

3.2 Excluded Obligations

Except for those arising from, due to or attributable to any violation or breach by the Buyer of any of its covenants, representations or warranties and except as expressly assumed by the Buyer and/or, as applicable, one or more Buyer Designees, pursuant to any of Sections 3.1(a) to 3.1(j) (inclusive), the Buyer and/or, as applicable, one or more Buyer Designees, will not assume and will have no obligation to discharge, perform or fulfill any of the following liabilities, debts, obligations, commitments or claims, direct or indirect, whether present or future, absolute, accrued or contingent, of the Seller (collectively, the **"Excluded Obligations"**):

(a) all liabilities and obligations of any kind relating to the Excluded Assets (including any Contract that is not an Assumed Contract);

(b) all obligations and liabilities of the Seller that are secured by court-ordered charges in the CCAA Proceedings and that are subject to the Cash Reserve, in an amount not less than $100,000;

(c) any liability with respect to any legal, accounting audit, financial advisory, and investment banking fees and any other expenses incurred by the Seller, including with respect to the transactions contemplated by this Agreement or the CCAA Proceedings; and

(d) any other obligations or liabilities expressly excluded from the Assumed Obligations under this Agreement.

The Buyer covenants and agrees that, from and after the Closing Date, (i) it will, at no cost to the Seller, forthwith upon receipt from time to time provide the Seller with all notices, demands and other communications received by or on behalf of the Buyer and/or, as applicable, one or more Buyer Designees, in respect of any Excluded Obligations or Excluded Assets; (ii) it will, at no cost to the Seller, co-operate with the Seller in connection with all reasonable demands under any Excluded Obligations or Excluded Assets, including providing the Seller with access to all personnel, information, data, documents, agreements and instruments reasonably required by the Seller to the extent relating to Excluded Obligations or Excluded Assets; and (iii) the Seller shall be entitled to exercise any rights and remedies that the Seller or the Buyer may have in respect of any of the Excluded Obligations and Excluded Assets, either by contract, law or in equity. This ending provision of Section 3.2 shall survive and not merge on the Closing.

3.3 Assumption of Contractual and Real Property Leases Obligations

(a) Notwithstanding anything contained in this Agreement or elsewhere, other than the obligation of the Buyer to pay all Cure Costs, the Buyer and/or, as applicable, one or more Buyer Designees, will not assume and will have no obligation to discharge any

liability or obligation under any Assumed Contract which is not assignable or assumable in whole or in part without a Third Party Consent, unless such Third Party Consent or, as applicable, a CCAA Assignment Order, has been obtained.

~~(b)~~ (b) Without limiting the generality of the foregoing but subject to the payment by the Buyer of the applicable Cure Costs, in each case in accordance with this Agreement, if any of the Assumed Contracts cannot be assigned to or assumed by the Buyer and/or, as applicable, one or more Buyer Designees, without a Third Party Consent or by way of a novation agreement, or, if applicable, a CCAA Assignment Order (which Third Party Consent, novation agreement or CCAA Assignment Order shall not have been obtained at or prior to the Closing), then notwithstanding anything contained in this Agreement or elsewhere, this Agreement does not constitute an assignment or attempted assignment of any such Assumed Contract if the assignment or attempted assignment would constitute a breach of such Assumed Contract. For greater certainty, in respect of any Assumed Contract (other than a Material Contract), if the consent of any Person is required to assign such Assumed Contract but such consent or CCAA Assignment Order, as applicable, is not obtained prior to Closing, such Assumed Contract shall not form part of the Purchased Assets and (A) neither Party shall be in breach of this Agreement as a consequence thereof, (B) no condition to Closing shall be, or be deemed to be, unsatisfied as a consequence thereof, and (C) the Closing shall not be delayed or restricted in any way as a consequence thereof.~~(c)~~ Each Party shall use reasonable best efforts, acting in good faith, cooperatively and in a timely manner, to obtain, or cause to be obtained, at or prior to the Closing Date, the requisite Third Party Consents or, if applicable, CCAA Assignment Orders, pursuant to the Assumed Contracts.

~~(d)~~ (c) The Seller agrees, as required by the Buyer, to enter into any occupancy agreements on terms acceptable to the Parties, each acting reasonably, in connection with any real property lease that is not an Assumed Real Property Lease.

~~(e)~~ (d) Without limiting the Buyer's obligations under Sections 3.3(c) and 10.1, the Buyer will forthwith (and, in any event, by no later than the Due Diligence Date) provide to the Seller and, if requested by the Seller, the requisite landlords, materials suitable for presentation to landlords of the Leased Locations or any other information required by any Assumed Real Property Lease or any such landlord. Furthermore, the Buyer will execute and deliver all necessary amendments, acknowledgements or assumption agreements required by any counterparty, in form acceptable to the Parties, each acting reasonably, as a condition to the issuance of its consent and that are commercially reasonable and contemplated in the corresponding Assumed Contracts and shall provide all necessary certificates of insurance required under such Assumed Contracts.

~~(f)~~ (e) The Buyer acknowledges that if any Third Party Consents are not obtained in respect of any such Assumed Real Property Lease and such Assumed Real Property Lease is terminated by the landlords thereunder, the Seller shall have no liability therefor to the Buyer and such Assumed Real Property Lease shall be an Excluded Asset and the liabilities thereunder shall be Excluded Obligations.

~~(g)~~ (f) This Section 3.3 shall survive and not merge on the Closing.

38

ARTICLE 4- REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants as follows to the Buyer as of the date hereof and acknowledges and confirms that the Buyer is relying upon the following representations and warranties in completing the Transaction.

4.1 Corporate Power

(a) The Seller is duly organized and validly existing under the laws of its jurisdiction of organization; and

(b) The Seller has the power, authority and capacity to enter into and perform its obligations under this Agreement and to own the Purchased Assets and to carry on the Business as currently conducted.

4.2 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the Tax Act.

4.3 Absence of Conflicts

Subject to receipt of the Court Approvals, the Seller is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Authorizations that would be violated, breached, or under which any default would occur or with notice or the passage of time would be created, as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on the Seller or the Business.

4.4 Due Authorization and Enforceability of Obligations

Subject to receipt of the Court Approvals, the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Seller. Subject to receipt of the Court Approvals, this Agreement has been duly and validly executed by the Seller and constitutes a valid and binding obligation of the Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

4.5 Approvals and Consents

Except for the Court Approvals and the Third Party Consents, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Seller and each of the agreements to be executed and delivered by the Seller hereunder or the sale of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices the failure of which to

receive or obtain would not have a material adverse effect on the Business and the Purchased Assets, taken as a whole.

4.6 Compliance with Laws

The Seller is conducting the Business in compliance with all Applicable Laws except where the failure to be in compliance would not reasonably be expected to result in a material adverse effect on the Business and the Purchased Assets, taken as a whole. No written notice or warning from any Governmental Authority with respect to any failure or alleged failure of, or necessity for, the Seller (solely in respect of the Purchased Assets and the Business) to comply with any Applicable Law has been received by the Seller nor, to the knowledge of the Seller, is any such notice or warning proposed or threatened except as would not reasonably be expected to result in a material adverse effect on the Business and the Purchased Assets, taken as a whole.

4.7 Title to the Purchased Assets

Except in respect of the Leased Locations (which are addressed in Section 4.8) and the leased Purchased Equipment (in which the Seller only has a leasehold interest subject to the terms of the corresponding Personal Property Leases), the Seller is the sole legal and beneficial owner of the Purchased Assets.

4.8 Assumed Real Property Leases

The Seller is not currently a party to, or under any agreement to become a party to, any leases, subleases, licenses, rights of way, easements or other occupation agreement as lessee or occupant with respect to the Leased Locations other than the Assumed Real Property Leases. With respect to each Assumed Real Property Lease, except for defaults (x) due to, arising from or caused by the CCAA Proceedings or the insolvency of the Seller or (y) otherwise disclosed to the Buyer, the Third Party Consents and other than the Cure Costs owing, (i) there are no outstanding defaults by the Seller thereunder which would reasonably be expected to have a material adverse effect on the Purchased Assets and (ii) to the knowledge of the Seller, there exists no outstanding default by the landlord which would reasonably be expected to have a material adverse effect on the Purchased Assets.

4.9 Assumed Contracts

All of the Assumed Contracts are valid and binding against the Seller. Except for defaults (x) due to, arising from or caused by the CCAA Proceedings or the insolvency of the Seller or (y) otherwise disclosed to the Buyer, the Third Party Consents and other than the Cure Costs owing, (i) there are no outstanding defaults by the Seller thereunder which would reasonably be expected to have a material adverse effect on the Purchased Assets and (ii) to the knowledge of the Seller, there exists no outstanding default by the counterparties to the Assumed Contracts which would reasonably be expected to have a material adverse effect on the Purchased Assets.

4.10 Environmental Matters

Other than as set out in Schedule 4.10 and solely with respect to the Leased Locations:

(a) the Seller is conducting the Business in compliance (in all material respects) with Environmental Laws;

(b) the Seller has not received any written notice or warning from any Governmental Authority with respect to any material adverse condition or any material non-compliance with any Environmental Laws that remains outstanding at this time; and

~~(c)~~

(c) no litigation or regulatory action is pending, or, to the knowledge of the Seller, threatened against the Seller with respect to the Business alleging material non-compliance with or material liability under Environmental Laws at the Leased Locations.

Notwithstanding anything else contained in this Agreement, the representations and warranties contained in this Section 4.10 are the sole and exclusive representations and warranties of the Seller pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws.

4.11 Taxes

The Seller is registered for purposes of the Tax imposed under the HST Legislation.

4.12 No Other Representations and Warranties

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 4, neither the Seller nor any other Person on behalf of the Seller makes any representation or warranty, express or implied, with respect to the Seller, the Purchased Assets, the Business, the Assumed Obligations or the Transaction.

ARTICLE 5- REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Corporate Power

(a) The Buyer is duly organized and validly existing under the laws of its jurisdiction of organization; and

(b) The Buyer has the power, authority and capacity to enter into and perform its obligations under this Agreement and to own and lease real property and carry on business.

5.2 Residence of the Buyer

The Buyer:

(a) is not a non-resident of Canada for the purposes of the Tax Act;

(b) is a **"Canadian"** or **"WTO investor"** for the purposes of the *Investment Canada Act* (Canada); and

(c) is not a **"state-owned enterprise"** for the purposes of the *Investment Canada Act* (Canada).

5.3 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Authorizations that would be violated, breached, or under which any default would occur or with notice or the passage of time would be created, as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be

entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on the Buyer.

5.4 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer, if applicable or required. This Agreement has been duly and validly executed by the Buyer, and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

5.5 Approvals and Consents

No authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices that would not have a material adverse effect on the Buyer.

5.6 HST Legislation

The Buyer will be registered at Closing for purposes of the Tax imposed under the HST Legislation.

5.7 Financing and Solvency

The Buyer will, on Closing, have available in immediately-available funds on hand, from its working capital and/or currently available unrestricted credit facilities, all the cash that the Buyer shall need at the Closing to consummate the purchase of the Purchased Assets and the Transaction. As of the Closing and immediately after consummating the transactions contemplated by this Agreement, the Buyer will not (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

5.8 Regulatory

At all relevant times, the Buyer is qualified in all respects (including under Applicable Laws), to acquire and own the Purchased Assets and operate the Business as currently conducted.

5.9 Compliance with Laws

The Buyer is conducting its business and operations in compliance, in all material respects, with all Applicable Laws of each jurisdiction in which its business and operations is carried on. No written notice or warning from any Governmental Authority with respect to any failure or alleged failure of, or

necessity for, its business and operations to comply with any Applicable Law has been received by the Buyer nor, to the knowledge of the Buyer, is any such notice or warning proposed or threatened.

5.10 Informed and Sophisticated Buyer

The Buyer is an informed and sophisticated Buyer, and has engaged expert advisors and is experienced in the evaluation and purchase of property and assets and assumption of liabilities such as the Purchased Assets, the Business and the Assumed Obligations as contemplated hereunder. The Buyer has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

5.11 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Business and the Purchased Assets and assuming the Assumed Obligations on an **"as is, where is"** basis; (b) it ~~has relied~~is relying upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of the Seller for the purpose of the Transaction, as well as of the Business, the Purchased Assets and the Assumed Obligations; and (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business and the Assumed Obligations~~; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence~~. The provisions of this Section 5.11 shall survive and not merge on Closing.

5.12 No Brokers

No agent, broker, person or firm acting on behalf of the Buyer is, or will be, entitled to any commission or brokers' or finders' fees from the Buyer or from any affiliate of the Buyer, in connection with any of the Transaction.

5.13 No Other Representations and Warranties.

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 5, neither the Buyer nor any other Person on behalf of the Buyer makes any representation or warranty, express or implied, with respect to the Buyer or the Transaction.

ARTICLE 6- CONDITIONS AND OTHER AGREEMENTS

6.1 Conduct Prior to Closing

(a) During the Interim Period, except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in connection with the CCAA Proceedings or otherwise pursuant to any orders or directions of the CCAA Court, the Seller will, in all material respects, conduct the Business and deal with the Purchased Assets in the Ordinary Course and in accordance with Applicable Law, including, as may be permitted by the CCAA Court, as applicable, paying and

discharging the liabilities of the Business when due in accordance and consistent with past practice.

(b) Without limiting the generality of Section 6.1(a), but except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in

connection with the CCAA Proceedings or otherwise pursuant to any orders or directions of the CCAA Court, during the Interim Period, the Seller will use Commercially Reasonable Efforts to:

(i) in all material respects, keep available the services of the Seller's Employees and preserve current relations with, and the current goodwill of, suppliers, customers, landlords, Governmental Authorities and all other Persons having material business relationships with the Seller;

(ii) not amend in any material respect or renew, extend the term or accept the surrender of any Assumed Real Property Lease;

(iii) in all material respects, preserve, protect and maintain the Purchased Assets in the Ordinary Course;

(iv) not make any material changes in employment terms or Employee Plan terms for any of the Seller's officers, directors and employees; and

(v) continue and keep in full force and effect all insurance coverage currently held by the Seller.

6.2 Insurance Obligations

(a) Prior to the Closing Date, the Seller shall use Commercially Reasonable Efforts to cause the insurance policies identified for assignment in Schedule 6.2 to be assigned to the Buyer and obtain any consents required in respect thereof. In the event the Seller is unable, despite its Commercially Reasonable Efforts, to assign one or more of such policies to the Buyer, the Seller shall use Commercially Reasonable Efforts to cause the Buyer to be named as an additional insured and loss payee on each such policy. Notwithstanding anything to the contrary contained herein, the Seller will not cancel, terminate or otherwise impair any such insurance policy (other than, in respect of any occurrence based policy with a policy period expiring after the Closing Date, a termination of any portion of the policy period occurring on or after the Closing Date), and, in the event that any such policy is so terminated, cancelled or otherwise impaired by the Seller, any liability which would have otherwise been covered under such policy shall not be an Assumed Obligation and instead shall be an Excluded Obligation.

(b) In the event that the Seller succeeds in assigning one or more of the insurance policies identified for assignment in Section 6.2(a) hereof to the Buyer, the Buyer shall cause the Seller to be named as additional insured and loss payees on each such policy concurrently with the effectiveness of such assignment. Notwithstanding anything to the contrary contained herein, the Buyer will not cancel, terminate or otherwise impair any such transferred insurance policy (other than, in respect of any occurrence based policy with a policy period expiring after the Closing Date, a termination of any portion of the policy period occurring on or after the Closing Date), and, in the event that any such policy is so terminated, cancelled or otherwise impaired by the Buyer, any liability which would have otherwise been covered under such policy shall be treated as an Assumed Liability hereunder.

6.3 CCAA Proceedings

(a) The Seller and the Buyer will effectuate the Transaction pursuant to the CCAA Proceedings under Applicable Laws. Acting in a timely manner and in good faith, the Parties shall amend this Agreement, if required, to effect the Transaction pursuant to the

CCAA Proceedings on or prior to the Sunset Date, including each taking or causing to be taken all such action and executing and delivering or causing to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to effect the Transaction in such other agreed-upon manner.

(b) Without limiting the generality of Section 6.3(a):

(i) The Seller shall file (A) promptly following ~~execution of~~commencement of the Post-Due Diligence Period (if this Agreement~~, an application for an order of the CCAA Court with respect to the CCAA Proceedings, granting the CCAA Initial Order, (B) as soon as practicable thereafter~~ has not been validly terminated prior to the commencement of the Post-Due Diligence Period), a motion for an approval and vesting order of the CCAA Court approving this Agreement and authorizing the Seller to complete the Transaction and vesting the Purchased Assets in the Buyer in accordance with this Agreement and (~~C~~B) as applicable, a motion for the CCAA Assignment Order. The Buyer and the Seller each agree that it or they will promptly take such actions as are reasonably requested by the other of them to assist in the filing of each such motion and to obtain entry of each such order, including filing affidavits. All motions brought by the Seller in respect of any such order shall be brought on notice to such parties as may be reasonably required by the Buyer, in addition to any parties to whom notice is required by the CCAA Court to be given.

(ii) The Buyer and the Seller shall promptly provide to the other of them all such information and assistance as may be reasonably requested to obtain entry of any Court Approval.

6.4 Possession of Purchased Assets; Expenses for Removal

~~(a) On Closing, the Buyer shall take possession of the Purchased Assets *in situ* at Closing. The Buyer acknowledges that the Seller has no obligation to deliver physical possession of the Purchased Assets to the Buyer.~~

~~(b) The Buyer shall promptly notify the Seller of any Excluded Assets that may come into the possession or control of the Buyer or its affiliates, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Seller or its affiliates, or to such other Person as the Seller may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to the Buyer in respect of any Excluded Assets.~~

(a) On Closing, the Buyer shall take possession of the Purchased Assets *in situ* at Closing. The Buyer acknowledges that the Seller has no obligation to deliver physical possession of the Purchased Assets to the Buyer.

~~(c)~~ (b) The ~~Seller~~Buyer shall promptly notify the ~~Buyer~~Seller of any ~~Purchased~~Excluded Assets that may come into the possession or control of the ~~Seller~~Buyer or its affiliates, whether before or after Closing, and thereupon shall promptly release such ~~Purchased~~Excluded Assets to the ~~Buyer~~Seller or ~~their~~its affiliates ~~at the cost and expense of the Buyer to pick~~

~~up and transfer such Purchased Assets~~, or to such other Person as the ~~Buyer~~Seller may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to the ~~Seller~~Buyer in respect of any ~~Purchased~~Excluded Assets.

(c) The Seller shall promptly notify the Buyer of any Purchased Assets that may come into the possession or control of the Seller or its affiliates after Closing, and thereupon shall promptly release such Purchased Assets to the Buyer or their affiliates at the cost and expense of the Buyer to pick up and transfer such Purchased Assets, or to such other Person as the Buyer may direct in writing and, for greater certainty, no title or other license to use shall, or shall be deemed to, vest to the Seller in respect of any Purchased Assets.

~~(d)~~ (d) If the Closing occurs and the Buyer is required pursuant to Section 6.4(e), or decides in its sole and absolute discretion, to dismantle, remove, transport or otherwise move any of the Purchased Assets (there being no obligation or requirement on the Buyer to do so other than as required by Section 6.4(e)), the Seller shall provide such reasonable assistance as is requested by the Buyer with respect to any location that is not subject to an Assumed Real Property Lease, but in all cases the Buyer shall be solely responsible and liable for and pay as and when required:

(i) any and all costs of dismantling or removing Purchased Assets from any location that is not a Leased Location or other location under the control of the Seller and/or transporting them to a new location; and

(ii) the cost of repairing any damage caused to the site exclusively by the dismantling or removal by the Buyer or its representatives of any of the Purchased Assets from any such Leased Location or other location, it being acknowledged that the Buyer will have no responsibility to repair any damage caused by the installation, presence, use or operation of the Purchased Asset at such location.

(e) Within 30 days from the Closing, the Buyer shall ensure that all Purchased Assets are removed, at the Buyer's sole cost and expense, from each location currently occupied by the Business that is not subject to an Assumed Real Property Lease or other location under the control of the Seller.

(f) During the Interim Period, if, with the consent of the Buyer, any Contract for a leased location of the Business is disclaimed or a leased location of the Business is otherwise closed, the Seller shall cause any Purchased Assets (including any Inventory and Supplies and equipment) at such Leased Location to be delivered, at the Seller's expense, to a Leased Location that is reasonably proximate to such disclaimed or closed location on or before Closing. For greater certainty, if any such Contract is disclaimed or any such location is closed at or after the Closing, the Buyer shall ensure that all Purchased Assets are removed, at the Buyer's sole cost and expense, from each such location.

6.5 Access to Information and Due Diligence

Until the Closing Date and to the extent permitted by Applicable Law, the Seller shall give to the Buyer's personnel engaged in this transaction and their accountants, legal advisers, consultants and other Representatives during normal business hours and upon reasonable advance notice, reasonable access to their premises and shall furnish them with all such information relating to the Purchased Assets as the Buyer may reasonably request in connection with the Transaction. Notwithstanding anything in this Section 6.5 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not disrupt the business or any of the assets of the Seller. The Buyer acknowledges and confirms its representations and warranties in Sections 5.10 and 5.11 and that access to information pursuant to this Section 6.5 is not intended to, and shall not, provide after the Due Diligence Date for any due diligence inquiry as a condition to the Closing or otherwise, except as set out in Section 6.6(e).

6.6 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing (or, in the case of condition (e) below, at or prior to 7:00 p.m. on the Due Diligence Date), which conditions are for the exclusive benefit of the Buyer and may be waived, in whole or in part, by the Buyer in its sole discretion:

(a) Truth of Representations and Warranties. The representations and warranties of the Seller contained in this Agreement must be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a

specific time or date), in each case except to the extent that the same would not result in a material adverse effect with respect to the Seller or the Business; *provided* that the Seller must have delivered to the Buyer a signed certificate of a senior officer to that effect.

(b) **Performance of Covenants.** The Seller must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with

by it at or prior to the Closing, and the Seller must have delivered to the Buyer a signed certificate of a senior officer to that effect.

(c) ~~(e)~~ **Deliverables.** The Seller must have delivered to the Buyer the documents contemplated in Section 7.2, in each case in form and substance satisfactory to the Buyer, acting reasonably.

(d) ~~(f)~~ **Proceedings.** All proceedings to be taken in connection with the Transaction on the part of the Seller must be satisfactory in form and substance to the Buyer, acting reasonably, and the Buyer must have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation of the Transaction and the taking of all necessary corporate proceedings in connection therewith.

(e) **Due Diligence.** The Buyer being satisfied, in its sole and absolute discretion, with the results of its due diligence of the Purchased Assets during the Due Diligence Period. Unless the Buyer delivers written notice to the Seller on or prior to 7:00 p.m. on the Due Diligence Date that the Buyer has satisfied or waived the condition in this Section 6.6(e), this Agreement will terminate and will be of no force or effect, other than as subject to section 9.2 of this Agreement.

6.7 Conditions for the Benefit of the Seller

The obligation of the Seller to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Seller and may be waived, in whole or in part, by the Seller in its sole discretion:

(a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement must be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), in each case except to the extent that the same would not result in a material adverse effect with respect to the Buyer; *provided,* that the Buyer must have delivered to the Seller a signed certificate of a senior officer to that effect.

(b) **Performance of Covenants.** The Buyer must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to the Closing, and the Buyer must have delivered to the Seller a signed certificate of a senior officer to that effect.

(c) **Deliverables.** The Buyer must have delivered to the Seller the documents contemplated in Section 7.3, in each case in form and substance satisfactory to the Seller, acting reasonably.

6.8 Mutual Conditions

The obligation of the Parties to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of each of the Seller and the Buyer and may only be waived, in whole or in part, by both the Seller and the Buyer:

(a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement being in effect.

(b) **Court Approvals.** The Seller must have received the Court Approvals as required for the completion of the Transaction in accordance with the terms and conditions of this Agreement and such Court Approvals have not been stayed or varied in a manner prejudicial to the Buyer and/or the Seller, or vacated.

(c) **Consents and Approvals.** The Buyer shall have received a Third Party Consent or a CCAA Assignment Order with respect to each Material Contract which cannot be assigned to the Buyer without such a Third Party Consent or CCAA Assignment Order.

6.9 No Frustration of Closing Condition

Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Sections 6.6, 6.7 and 6.8, as the case may be, to be satisfied if such failure was caused by such Party's or its affiliates' failure to use its reasonable best efforts (or Commercially Reasonable Efforts, to the extent specifically provided) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant of such Party hereunder, including to seek and obtain on reasonably satisfactory terms all requisite Third Party Consent and CCAA Assignment Orders, as applicable, as may be necessary or desirable.

6.10 Change of Name

(a) Prior to the Closing, the Seller shall take all steps required to permit the Buyer, at the Buyer's sole and absolute discretion, to adopt a corporate name in which the words "McEwan" or "Enterprises" are used. Such steps shall include executing any consents and acknowledgements required in order to enable the Buyer, at the Buyer's sole and absolute discretion, to file articles of incorporation or articles of amendment containing a corporate name in which the words "McEwan" or "Enterprises" are used.

(b) From and after the Closing Date, the Seller shall, with respect to its business, operations and locations:

(i) discontinue use of any and all Intellectual Property and do all such acts and make all such filings or otherwise to change the name of itself and its business, operations and locations, if any, to another name that is not confusingly similar to any of the Intellectual Property and any variation or derivative of any one or more of them; and

(ii) remove all the Intellectual Property and any variation or derivative thereof from all public display and signage, and cease creation of any new documents, correspondence or communication of any kind in any format made available or delivered to any other Person or to the public that includes any of the Intellectual Property, including any of its marketing materials, social media and Internet activities.

(c) Forthwith after Closing, Seller shall take all steps necessary to change its corporate name to one which does not include any of the words "McEwan" ~~or~~and "Enterprises".

(d) From and after the Closing Date, at no time may Seller use any of the Intellectual Property to suggest or imply, in any manner, directly or indirectly, that the Seller or its business is in any way, from and after the Closing Date, associated, affiliated, endorsed by, licensed by or related to the Buyer or the Business.

(e) Seller acknowledges and agrees that, from and after the Closing Date, Buyer owns all right, title and interest, in and to the Intellectual Property and any derivatives, modifications, enhancements or improvements thereto.

ARTICLE 7- CLOSING

7.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP at Suite 3400, Bay Adelaide Centre, 333 Bay Street, Toronto, Ontario M5H 2S7 at 10:00 a.m. (EST) on the Closing Date, or at such other place, on such other date and at such other time as may be agreed upon in writing

by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as at 12:01 am (EST) on the Closing Date.

7.2 Seller's Deliverables at Closing

At Closing, the Seller will deliver or cause to be delivered to the Buyer the following:

(a) ~~(a)~~ the Cash and Cash Equivalents, net of the Cash Reserve, by wire transfer of immediately available funds to such accounts as are designated by the Buyer two (2) Business Days prior to the Closing;

(b) the executed Monitor's Certificate;

(c) an issued copy of the CCAA Approval and Vesting Order;

(d) one or more bills of sale executed by the Seller to convey the Purchased Assets to the Buyer and/or, as applicable, one or more Buyer Designees, free and clear of all Encumbrances other than Permitted Encumbrances, duly executed by the Seller;

(e) an assignment of intangible property to transfer the Purchased Assets that are intangible property to the Buyer and/or, as applicable, one or more Buyer Designees, free and clear of all Encumbrances (other than Permitted Encumbrances), duly executed by the Seller;

(f) an assignment and assumption agreement providing for the assignment by the Seller of its right, title, and interest in and to the Purchased Assets and the Buyer and/or, as applicable, one or more Buyer Designees' assumption of the Assumed Obligations executed by the Seller, as may be required by either the Seller or the counterparties thereto, and, if applicable and otherwise agreed to by the Parties, a CCAA Assignment Order in respect of the Assumed Contracts;

(g) ~~an~~a mutually agreeable employment agreement, consulting agreement, termination agreement or other agreement, duly executed ~~and delivered to~~between the Buyer ~~by~~and Dennis Mark McEwan, ~~substantially on the same terms as the current terms of his employment~~or an order of the CCAA Court addressing the same;

(h) if applicable, the elections referred to in Section 2.9, in each case signed by the Seller;

(i) the certificates referred to in Section 6.6(a) and Section 6.6(b);

(j) ~~a)~~ an irrevocable share transfer power of attorney in respect of all of the shares of 2860117, duly executed in blank by the Seller; ~~and~~

(k) resolutions of the board of directors of the Seller and 2860117 in respect of the transfer of shares of 2860117 from the Seller to the Buyer; and

(l) ~~(k)~~ all other documents reasonably requested by the Buyer to be entered into or delivered by the Seller at Closing pursuant to the terms of this Agreement.

7.3 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Seller the following:

(a) the Base Purchase Price, in the manner set forth in Section 2.7;

(b) certified copies of:

(i) the charter documents of the Buyer;

(ii) resolutions of the board of directors of the Buyer approving the entering into of this Agreement and the completion of the Transaction;

(iii) a list of the officers and directors of the Buyer authorized to sign agreements together with their specimen signatures; and

~~(iv)~~

(iv) resolutions of the board of directors of ~~2860117~~the Buyer in respect of the transfer of shares of 2860117 from the Seller to the Buyer;

(b) ~~(c)~~ a certificate of status, compliance, good standing or like certificate with respect to the Buyer issued by the appropriate governmental officials of its jurisdiction of incorporation;

(c) ~~(d)~~ evidence satisfactory to the Seller, acting reasonably, of payment by the Buyer to the Monitor of Cure Costs, if any;

(d) ~~(e)~~ one or more bills of sale executed by the Buyer and/or, as applicable, one or more Buyer Designees, to purchase the Purchased Assets from the Seller free and clear of all Encumbrances other than Permitted Encumbrances;

(e) ~~(f)~~ an assignment of intangible property to transfer the Purchased Assets that are intangible property to the Buyer and/or, as applicable, one or more Buyer Designees, free and clear of all Encumbrances (other than Permitted Encumbrances), duly executed by the Buyer;

(f) ~~(g)~~ an assignment and assumption agreement providing for the assignment by the Seller of its right, title, and interest in and to the Purchased Assets and the Buyer and/or, as applicable, one or more Buyer Designees' assumption of the Assumed Obligations executed by the Buyer, as may be required by either the Seller or the counterparties thereto, in respect of the Assumed Contracts, as well as all documentation, deliveries and assurances, in each case as may be required by the relevant counterparties in connection therewith and that have been agreed to be the Buyer;

(g) ~~(h)~~ a general security agreement delivered in connection with the CF Loan Agreement, in substantially similar form as the general security agreement delivered by the Seller in respect of the CF Loan Agreement and acceptable to the Buyer and Seller, acting reasonably, provided, for certainty, that the general security agreement delivered by the Buyer shall grant security solely with respect to the obligations with respect to the Loan (as defined under the CF Loan Agreement) and no other obligations;

(h) ~~(i)~~ if applicable, the elections referred to in Section 2.9, in each case signed by the Buyer;

(i) ~~(j)~~ the certificates referred to in Section 6.7(a) and Section 6.7(b); and

(j) ~~(k)~~ all other documents reasonably requested by the Seller to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

7.4 Cash Reserve

The Seller shall deliver to the Buyer, within three (3) Business Days by wire transfer of immediately available funds to such accounts as are designated by the Buyer, any funds remaining in the Cash Reserve on the earlier of (i) six (6) months after the Closing Date and (ii) the date the administration of the Seller's wind-down is completed.

ARTICLE 8- EMPLOYEES

8.1 Employees

(a) At least seven (7) days prior to the Closing Date, the Buyer and/or, as applicable, one or more Buyer Designees, shall make an offer of employment, effective as of the Closing Date and contingent upon the Closing, to each of the Seller's Employees on substantially the same terms and conditions of employment as in effect immediately prior to the

Closing, subject to, for greater certainty, reasonably necessary changes on account of the fact that the Buyer is not acquiring the Excluded Assets (including some of the existing locations where certain of the Seller's Employees have been employed), which shall not be conditional (other than Closing) or include any probationary or other similar period. With respect to any Seller's Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Seller's Employee returning to active status. Each Seller's Employee who accepts such offer of employment shall be referred to hereinafter as a "Transferred Employee". ~~Notwithstanding the foregoing, nothing~~Nothing herein shall be construed as to prevent the Buyer and/or, as applicable, one or more Buyer Designees, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with Applicable Law, at any time following the Closing Date.

(b) Each Transferred Employee shall be given credit for all service with the Seller, and its predecessors for all employment purposes, including under any employee benefit plans or arrangements of the Buyer and/or, as applicable, one or more Buyer Designees, maintained by the Buyer and/or, as applicable, one or more Buyer Designees, in which such Transferred Employees participate following the Closing Date, for purposes of eligibility, vesting, and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits). Notwithstanding the foregoing, nothing in this Section 8.1(b) shall be construed to require crediting of service that would result in a duplication of benefits.

(c) Prior to the Closing Date, the Seller shall (i) cause each of the Employee Plans, together with all assets and rights thereunder, to be transferred to the Buyer and/or, as applicable, one or more Buyer Designees, (ii) assign all Contracts entered into in connection with the Employee Plans to the Buyer, and (iii) obtain any consents required in respect thereof, to ensure that all Transferred Employees and their dependents continue to participate in the Employee Plans and accrue benefits thereunder through and after the Closing Date. In the event the Seller is unable to assign one or more of such plans to the Buyer, the Seller shall use Commercially Reasonable Efforts to ensure that the Transferred Employees and their dependents continue to participate in the Employee Plans and accrue benefits thereunder through and after the Closing Date. Notwithstanding anything to the contrary contained herein, the Seller will not cancel, terminate or otherwise impair any of the Employee Plans.

(d) The Buyer shall, or shall cause the applicable Buyer Designees to, provide each Transferred Employee with credit for the same number of vacation and sickness benefit days such Transferred Employee shall have accrued but not used in the calendar year in which the Closing Date occurs. In the event that a Transferred Employee is unable to use such carried over vacation and sickness days within the calendar year in which the Closing Date occurs, the Buyer shall, or shall cause the applicable Buyer Designees to, allow such Transferred Employee to carry over such vacation and sickness days to be used in the subsequent calendar year.

The Parties agree that nothing in this Section 8.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.

Effective upon the Closing Date, the Seller hereby waives, for the benefit of the Buyer and/or, as applicable, one or more Buyer Designees only, any and all restrictions in any Employee Plan or Contract relating to (i) non-competition with the Seller, (ii) non-solicitation of the Seller's Employees or customers, or (iii) maintenance of confidentiality

of any information for the benefit of the Seller, in each case, with or covering any Transferred Employee.

8.2 Employee Liability

The Buyer and/or, as applicable, one or more Buyer Designees, will assume and be responsible for:

(a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, retirement benefits, if any, and pay in lieu thereof, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees prior to and after the Closing Date;

(b) all liabilities for vacation and sick pay and entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date;

(c) all severance payments, payments for notice of termination or in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of the termination by the Seller, Buyer and/or, as applicable, one or more Buyer Designees, of the employment of any employee of the Business;

(d) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees prior to and after the Closing Date; and

(e) all employment-related claims, penalties, contributions, premiums and assessments in respect of the Business arising out of matters which occur prior to and after the Closing Date.

ARTICLE 9- TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

(a) by mutual written consent of the Seller and the Buyer, *provided however* that if this Agreement has been approved by the CCAA Court, any such termination may require approval of the CCAA Court, as applicable;

(b) by the Seller, on the one hand, or the Buyer, on the other hand, if the Closing has not occurred on or before November ~~12~~26, 2021 (the **"Sunset Date"),** *provided however* that if the Closing shall not have occurred on or before the Sunset Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 9.1(b);

(c) by the Seller, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.7 or 6.8 by the Sunset Date and such violation or breach has not been waived by the Seller or cured within fifteen (15) days after written notice thereof from the Seller, unless the Seller is in material breach of its obligations under this Agreement; ~~and~~

~~(d)~~

(d) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.8 by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within fifteen (15) days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement; and

(e) automatically, if the Buyer fails to deliver its notice of satisfaction or waiver of the condition in Section 6.6(e) by the time specified therein.

The Party (or in the case of Section 9.1(a), Parties) desiring to terminate this Agreement pursuant to this Section 9.1 shall provide the Monitor with reasonable advance notice of the termination (other than in the case of Section 9.1(e)).

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force and effect, except as contemplated in Sections 1.11~~, 2.6, 2.7, 3.3~~ and ~~5.11~~2.6(c) and Article 10, each of which shall survive termination. Nothing in this Section 9.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

ARTICLE 10— GENERAL MATTERS

10.1 Further Assurances

(a) Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use Commercially Reasonable Efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable courts to the Parties, including the CCAA Court, the Parties shall use their Commercially Reasonable Efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the Transaction, including using Commercially Reasonable Efforts to satisfy or waive the conditions precedent to the obligations of the Parties hereto.

(b) Without limiting the generality of the foregoing, following the Closing:

(i) the Seller will forward and transfer to the Buyer and/or, as applicable, one or more Buyer Designees, as soon as is commercially reasonable and practicable, any payments, documents, information, communications or correspondence which the Seller or any affiliate thereof may receive from time to time that solely and directly relates to the Purchased Assets or the Assumed Obligations and which should have properly been paid, provided or delivered to the Buyer and/or, as applicable, one or more Buyer Designees,

and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer;

(ii) the Buyer will forward and transfer to the Seller, as soon as is commercially reasonable and practicable, any payments which the Buyer or any affiliate thereof may receive from time to time in respect of any Excluded Asset or Excluded Obligation which should have properly been paid, provided or delivered to the Seller, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer; and

~~(iii)~~

(iii) the Buyer and/or, as applicable, one or more Buyer Designees, shall permit the Seller and its agents reasonable access to the historical records and other documentation relating to the Purchased Assets, the Business (including the books and records), the Assumed Obligations and Seller's Employees (subject to the Seller agreeing to appropriate confidentiality requirements), where required by the Seller in connection with any legal, administrative or other similar inquiry or proceeding.

10.2 Third Party Beneficiaries

Except as otherwise provided in Sections 2.9 and 10.3 in respect of Indemnified Losses only, the Parties intend that this Agreement will not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties to this Agreement and no Person, other than the Parties to this Agreement, will be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Seller acts as trustee and agent on behalf of each of its Additional Indemnitees and holds for their benefit their rights under Section 2.9 and 10.3 in respect of Indemnified Losses only. Each Party agrees that the other Parties may enforce the indemnity for and on behalf of such Additional Indemnitees and, in such event, the indemnifying Party will not in any proceeding to enforce the indemnity by or on behalf of such Additional Indemnitees assert any defence thereto based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defence. The Parties to this Agreement reserve their right to vary or rescind the rights at any time and in any way whatsoever granted by or under this Agreement to any Person who is not a Party to this Agreement, without notice to or consent of that Person, including any of its Additional Indemnitees.

10.3 Confidentiality

(a) Until the Closing Date and, if this Agreement is terminated for any reason, for one (1) year after the date hereof, the Buyer agrees that neither it nor its affiliates nor any of their respective Representatives shall disclose to any third party and shall hold in strict confidence, and each agrees to instruct its Representatives not to disclose to any third party and to hold in strict confidence, all Confidential Information, without the prior written consent of the Seller.

(b) Without limiting the generality of the foregoing, all press releases, notices to third parties (including public store signage) and all other publicity concerning the Transaction (including the CCAA Proceedings) or any matter contemplated or referenced by this Agreement (including the existence of, the terms and conditions of, and the status of the Transaction, all of which constitute Confidential Information), and, to the extent practicable, any announcements, notices or other communications to any employee, customer or supplier, shall be jointly planned and coordinated by the Parties and no Party shall, directly or indirectly, allow, permit or otherwise enable or assist in any such matter without the express prior written approval of the other Parties, each acting reasonably.

(c) Notwithstanding Section 10.3(a), the Buyer shall be entitled to disclose Confidential Information to its Representatives who have a need to know for the sole purpose of the Transaction (including any requisite review and approval thereof).

(d) Without limitation to any rights or remedies of the Seller against the Buyer, its affiliates or any of their respective Representatives, the Buyer shall be principally liable for any and all breaches of the terms of Sections 10.3 and 10.4 by its affiliates or its or their Representatives. In the event of a

breach of the terms of Sections 10.3 and 10.4, the Buyer shall indemnify, defend and hold harmless the Seller and each of its Additional

Indemnitees for any and all Indemnified Losses whatsoever incurred by the Seller or its Additional Indemnitees as a result of such breach.

(e) No Confidential Information shall be copied, reproduced in any form, or stored in a retrieval system or database by the Buyer, its affiliates or any of their respective Representatives without the prior written consent of the Seller, except for such copies and storage as may reasonably be required internally by the foregoing for the purposes herein described. In the event that the Buyer becomes aware that it or any of its affiliates or its or their Representatives has disclosed Confidential Information contrary to Sections 10.1 to 10.4 (inclusive), the Buyer shall forthwith advise the Seller in writing.

Notwithstanding the foregoing or anything to the contrary herein, ~~if the Seller has commenced CCAA Proceedings,~~ (i) this Agreement may be filed ~~by the Seller~~ with the CCAA Court; and (ii) the Transaction may be disclosed ~~by the Seller~~ to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law and rules, including preparation and filing of reports and other documents by the Monitor and other professional advisors and consultants of the ~~Seller~~Parties with the CCAA Court, as applicable or required, containing references to the Transaction and the terms of such Transaction as may reasonably be necessary to obtain the Court Approvals and to complete the Transaction contemplated by this Agreement or to comply with their obligations to the CCAA Court.

10.4 Return and Destruction of Confidential Information

If Closing does not occur by the Closing Date or such earlier date of termination if this Agreement is terminated in accordance with the provisions hereof, upon the written request of the Seller, the Buyer shall return to the Seller or, at the Seller's option, destroy all Confidential Information in the possession or control of the Buyer, any of its affiliates or any of their respective Representatives and shall be liable for ensuring that each of the Buyer's affiliates and its and their respective Representatives either return to the Seller or, at the Seller's option, destroy the Confidential Information in their respective control, and shall delete all Confidential Information from any retrieval system or database in its possession or control and shall be liable for ensuring that each of the Buyer's affiliates and its and their respective Representatives delete all Confidential Information from any retrieval system or database with their respective control, *provided however that:*

(a) the Buyer shall not be required to expunge from its records internally generated documents (including electronic copies) containing any Confidential Information;

(b) the Buyer shall be permitted to maintain one copy of the Confidential Information solely for audit and enforcement purposes;

(c) the Buyer is not required to alter its normal record retention policies; and

(d) legal counsel of the Buyer will be permitted to retain one copy of the Confidential Information,

provided further that in each of the cases in Sections 10.4(a) through 10.4(d), such Confidential Information shall be kept on a confidential basis and continue to be subject to terms and conditions contained in this Agreement, notwithstanding any expiry or termination hereof.

10.5 Privacy Laws

(a) For the purpose of this Section 10.5, **"Personal Information"** means information about an identifiable individual but excludes an individual's name, position name or title, business telephone number, business address, business e-mail, business fax number and

other similar business information collected, used or disclosed to contact an individual in their capacity as an official or employee of an organization. For greater certainty, **"Personal Information"** shall include all health and medical information and records.

(b) Prior to the Closing, none of the Parties will use any Personal Information of any Person (including the Seller's Employees) disclosed to the Buyer by the Seller pursuant to or in connection with this Agreement (the **"Disclosed Personal Information")** for any purposes other than those related to the performance of this Agreement and the completion of the Transaction.

(c) Each of the Parties acknowledges and confirms that the disclosure of Disclosed Personal Information is necessary for the purposes of determining if the Parties will proceed with the Transaction, and that the disclosure of Disclosed Personal Information relates solely to the carrying on of the Seller's business of owning and operating restaurants, catering, gourmet grocery and an events company in Canada and the completion of the Transaction.

(d) The Buyer undertakes, after the Closing, to comply at all times with Applicable Laws as it pertains to privacy which govern the collection, use and disclosure of Personal Information, including in respect of the Disclosed Personal Information and all Personal Information of the Seller's Employees.

(e) The Buyer covenants and agrees that where the Parties do not complete or proceed with the Transaction, the Buyer will, if such information is still in the custody of or under the control of the Buyer, either, at the Buyer's option, destroy (and promptly provide to the Seller an officer's certificate executed by the Chief Executive Officer of the Buyer confirming same) such information or return it to the Seller.

10.6 Survival

None of the representations, warranties or covenants (except the covenants in Sections 1.11, 2.52.9, 3.1, 3.2, 3.3, 5.11, 6.2, 6.4(b), 6.4(c), 6.4(d), 6.4(e), 6.10, 7.4, 8.2 and 9.2, as well as Article 10, in each case to the extent they are to be performed or operate by their express terms after the Closing) of either of the Parties set forth in this Agreement shall survive Closing.

10.7 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or representative of the respective Parties hereto, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transaction (except, in the case of Dennis Mark McEwan, based on, in respect of or by reason of the agreement contemplated by Section 7.2(g)). In addition, under no circumstance shall any of the Parties, their respective affiliates or theirs or their affiliates' Representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction (except, in the case of Dennis Mark McEwan, in connection with, arising out of or relating to the agreement contemplated by Section 7.2(g)).

10.8 Expenses

Except as otherwise specifically provided herein or in the CCAA Initial Order, each of the Seller and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other

professional advisers) incurred by them, respectively, in connection with the negotiation and settlement of this Agreement and the completion of the Transaction.

10.9 Time of the Essence

Time will be of the essence in this Agreement.

10.10 Successors and Assigns

~~(a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns.~~

~~(b) Except as provided herein, neither this Agreement, nor any of the rights or obligations hereunder, will be assignable or transferable by any Party without the prior written consent of the other Party, not be to unreasonably withheld, provided that the Buyer may, without the consent of the Seller, assign or transfer any or all of its right and/or obligations hereunder to one or more of its affiliates (it being understood that the Buyer nonetheless shall remain liable for the performance of all of the Buyer's obligations hereunder to the extent not performed by the assignee or any Buyer Designee); *provided, further,* that, after Closing, the Buyer may, without the consent of the Seller, assign or transfer any or all of its rights and/or obligations hereunder.~~

(a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns.

(b) Except as provided herein, neither this Agreement, nor any of the rights or obligations hereunder, will be assignable or transferable by any Party without the prior written consent of the other Party, not be to unreasonably withheld, provided that the Buyer may, without the consent of the Seller, assign or transfer any or all of its right and/or obligations hereunder to one or more of its affiliates (it being understood that the Buyer nonetheless shall remain liable for the performance of all of the Buyer's obligations hereunder to the extent not performed by the assignee or any Buyer Designee); *provided, further,* that, after Closing, the Buyer may, without the consent of the Seller, assign or transfer any or all of its rights and/or obligations hereunder.

10.11 Access to Books and Records

For (i) a period of two (2) years from the Closing Date or (ii) for such longer period as may be reasonably required for the Seller (or any trustee in bankruptcy of the estate of the Seller) to comply with Applicable Law, *provided that* in the case of (ii), the Seller or such trustee in bankruptcy shall have provided the Buyer with reasonably advanced written notice prior to the expiry of the initial two (2) year period specifying the Applicable Laws requiring an extension and the length of the requested extension, the Buyer will retain, in all material respects, all original Books and Records that are transferred to the Buyer under this Agreement. So long as any such Books and Records are retained by the Buyer pursuant to this Agreement, the Seller (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Seller, including the Monitor) has the right (at its own cost, expense and liability) to inspect and to make copies of them upon reasonable notice and request during normal business hours and without undue interference to the business

operations of the Buyer, for the sole purpose of such Person making the request complying with Applicable Laws, and strictly limited to the extent required for such compliance.

10.12 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by facsimile or e-mail, with confirmed transmission and receipt or the date of transmission by electronic transmission (in each case, if sent during normal business hours of the recipient, and if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested. All notices not delivered personally or by facsimile or e-mail will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to the Buyer at:

2864785 First Capital Holdings (Ontario Corp.) Corporation
38 Karl Fraser Road
c/o Aird & Berlis LLP
181 Bay Street
Suite 1800
Toronto, Ontario M3C 0H75J 2T9

Attention: ~~Dennis Mark McEwan~~Steven L. Graff/ Jeremy Nemers
Facsimile: (416) ~~444-6212~~863-1515
Email: sgraff@airdberlis.com / jnemers@airdberlis.com

(b) If to the Seller at:

McEwan Enterprises Inc.
c/o Goodmans LLP
333 Bay Street
Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert J. Chadwick/ Caroline Descours
Facsimile: (416) 979-1234
E-mail: rchadwick@goodmans.ca/ cdescours@goodmans.ca

Any Party may change its address or other information for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address or such change information.

10.13 Monitor's Certificate

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Buyer, and file with the CCAA Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith.

10.14 No Liability

The Parties acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Seller, shall have no liability in its personal capacity or otherwise, in connection with this Agreement.

10.15 Specific Performance

The Buyer acknowledges and agrees that the Seller and its estates would be damaged irreparably in the event the Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that the Seller may have under law or equity, the Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof. Similarly, the Seller acknowledges and agrees that the Buyer and its estates would be damaged irreparably in the event the Seller does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that the Buyer may have under law or equity, the Buyer shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

10.16 Counterparts, Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature, by email, PDF or other electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

SELLER

MCEWAN ENTERPRISES INC.

~~Per:~~ 

~~Name: Dennis Mark McEwan~~
~~Title: President~~

~~Per:~~

78

~~BUYER~~

~~2864785 ONTARIO CORP.~~

~~Per:~~ 

Name: Dennis Mark McEwan
Title: President

BUYER

79

FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION

_____

Name: Jordan Robins
Title: Executive Vice President and Chief Operating Officer

~~182~~

SCHEDULE 1.1(nn)
EXCLUDED ENCUMBRANCES

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Ontrea Inc. The Cadillac Fairview Corporation Limited **OPB** (TDC) Inc.	McEwan Enterprises Inc.	734565906 - 20171201 1657 1862 0465 (25 years)	Equipment, Other	General security agreement re inducement with respect to Unit No. 0022A in The Toronto Dominion Centre, Toronto, Ontario	
2. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570006 - 20141223 1600 1862 8170 (25 years)	Inventory, Equipment, Accounts, Other		Amended by 20171208 1013 1862 1106 Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc." pursuant to an amalgamation Amended by 20171208 1053 1862 1118 Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan Enterprises Inc."

81

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					pursuant to an amalgamation
3. Toronto Dominion Centre Leaseholds Limited	McEwan Enterprises Inc.	702570015 - 20141223 1600 1862 8171 (25 years)	Inventory, Equipment, Accounts, Other		Amended by 20171208 1013 1862 1105 Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
4. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968355 - 20091203 0938 1862 1141 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	Amended by 20171208 1014 1862 1108 Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
5. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	657968364 - 20091203 0938 1862 1142 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. Q003 in Shops at Don Mills, Toronto, Ontario	Amended by 20171208 1014 1862 1107 Amendment to change the name of the debtor from "2220223 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation
6. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858402 - 20080929 1359 1862 0147 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re loan with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	
7. CF/Realty Holdings Inc.	McEwan Enterprises Inc.	648858465 - 20080929 1401 1862 0150 (25 years)	Inventory, Equipment, Accounts, Other	General security agreement re inducement with respect to Unit No. L002 in Shops at Don Mills, Toronto, Ontario	

83

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
Toronto Dominion Centre Leaseholds	McEwan	883483488 - 20020523 1044 9065	Inventory, Equipment,	Please direct all correspondence to Toronto Dominion Centre Leaseholds Limited, c/o The Cadillac Fairview Corporation Limited 20 Queen St. West, 5th Floor, Toronto, Ontario M5H 3R4	Amended by 20171208 1053 1862 1117 Amendment to change the name of the debtor from "2004995 Ontario Limited" to "McEwan

85

Limited	Enterprises Inc.	0541 (22 years)	Accounts, Other	Attention- Corporate Secretary	Enterprises Inc." pursuant to an amalgamation

~~185~~

SCHEDULE 1.1(zz)

MATERIAL CONTRACTS

1. Assumed Real Property Leases

2. Select Merchant Payment Instrument Processing Agreement dated as of October 6, 2017 between Chase Paymentech Solutions and the Seller

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 1.1(eee)
PERMITTED ENCUMBRANCES

PERSONAL PROPERTY SECURITY ACT (ONTARIO)

(a) McEwan Enterprises Inc., 2004995 Ontario Limited, 2416668 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	771456249 - 20210412 1408 1462 0170 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: $75,334, Date of Maturity: 30APR2026, 2021 Ford Transit 250 1FTBR1C88MKA01283	Includes 1 refridgeration *(sic)* system as detailed on invoice #3416 from Experts In Transportation Climate Control Ltd. Kingtec W/XTCC Insulation System, T235E bearing Serial # 110321200011A121 and all dtailed *(sic)* componets *(sic)*	
2. Highland Chevrolet Buick GMC Cadillac Ltd.	McEwan Enterprises Inc	767005776 - 20201023 1004 1462 1588 (5 years)	Consumer Goods, Equipment, Motor Vehicles, Amount Secured: $76,549, Date of Maturity: 3 1 OCT2025, 2020 Ford Transit 250 1FTBR1C80LKB 19343	1- Kingtec Refrigeration System Serial# 0619216E0041A081	
3. Mercedes-Benz Financial Services Canada Corporation	McEwan Enterprises Inc. Dennis M. McEwan DOB: 07MAY1957	751615011 - 20190527 1622 1532 2624 (4 years)	Equipment, Other, Motor Vehicles, 2019 Mercedes-Benz GLC300 4M WDC0G4KB6KV183759		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
Mercedes-Benz Financial					
4. Xerox Canada Ltd	McEwan Enterprises Inc.	750278826 - 20190417 1704 1462 8901 (6 years)	Equipment, Other		
5. Xerox Canada Ltd	McEwan Enterprises Inc	748565748 - 20190225 1707 1462 8478 (6 years)	Equipment, Other		
6. Royal Bank of Canada	McEwan Enterprises Inc.	746303571 - 20181128 1434 8077 2743 (6 years)	Equipment, Other	Restaurant/Take-Out Equipment and Leasehold, Refrigerator Pressure Package S/N D2018060319 as per lease 201000044268 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities,	Renewed by 20210514 1028 8077 6230 1 year

89

				and rights of insurance payments or any other payments as indemnity or compensation	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				for loss or damage to the collateral or proceeds of the collateral	
7. Royal Bank of Canada	McEwan Enterprises Inc.	740022939 - 20180601 1037 8077 4110 (10 years)	Inventory, Equipment, Accounts, Other	As per master lease agreement dated June 01 2018 together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	Amended by 20180601 1439 8077 4154 Amendment to change the address of the debtor

91

8. Royal Bank of Canada	McEwan Enterprises Inc.	740041893 - 20180601 1439 8077	Equipment, Other	Equipment Purchases and Leasehold Improvements as per	Renewed by 20210514 1028 8077 6229

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
		4141 (5 years)		lease 201000040501 together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral	1 year
9. Royal Bank of Canada	McEwan Enterprises Inc.	737973342 - 20180405 1935 1531 6491 (5 years)	Accounts, Other	Priority agreement dated March 22, 2018 between Ontrea Inc, The Cadillac Fairview Corporation Limited and OPB (TDC) Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	

93

10. Royal Bank	McEwan	736669647 -	Inventory, Equipment,	All present and after-acquired	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	Enterprises Inc.	20180222 1930 1531 4182 (5 years)	Accounts, Other, Motor Vehicles	equipment, securities, chattel paper, instruments and documents of title. Proceeds - a security interest is claimed in all present and after-acquired goods (including trade-ins), chattel paper, securities, documents of title, instruments, money and intangibles of every item or kind that may derived from the sale or other disposition of the collateral described above, all insurance proceeds and any proceeds of any of the foregoing.	
11. Royal Bank of Canada	McEwan Enterprises Inc.	735291927 - 20171229 1034 1529 5381 (5 years)	Other	Priority agreement dated November 23, 2017 between CF/Realty Holdings Inc. and Royal Bank of Canada, in favor of security agreement between Royal Bank of Canada and McEwan Enterprises Inc.	
12. Royal Bank of Canada	McEwan Enterprises Inc.	733881384 - 20171110 1037 1529 0481 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		
13. Royal Bank of Canada *(two addresses*	McEwan Enterprises Inc.	733060917 - 20171018 1035 8077	Inventory, Equipment, Accounts, Other	As per master lease agreement dated October 18, 2017 together with all inventory and equipment now or hereafter acquired by the debtor and	Transferred by 20180517 1039 8077 3262 Transferor: 2004995 Ontario Limited

95

listed)		2049 (10 years)		financed by the secured party together with all attachments, accessories, accessions,	Transferee: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
14. Royal Bank of Canada	McEwan Enterprises Inc.	717156873 - 20160531 1442 1530 4953 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		Amended by 20180103 1932 1531 3423 Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation Renewed by 20210430 1445 1530 9664 5 years

97

15. Royal Bank	McEwan	703429515 - 20150204 1438 8077	Inventory, Equipment,	As per master lease agreement dated January 28th, 2015.	Amended by 20150709 1031

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	Enterprises Inc.	3265 (10 years)	Accounts, Other	Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	8077 5867 Amendment to include an additional address for the debtor Transferred by 20180517 1039 8077 3261 Transferor: 2416668 Ontario Inc. Transferee: McEwan Enterprises Inc.
16. Royal Bank	McEwan	701721396 - 20141120 1428 8077	Inventory, Equipment,	As per master lease agreement dated November 20th, 2014. Together with all inventory and equipment now or hereafter acquired by the debtor and financed by the secured party	Transferred by 20180517 1039

99

of Canada	Enterprises Inc.	8038 (10 years)	Accounts, Other	together with all attachments, accessories, accessions,	8077 3264 Transferor: North 44 Inc. Transferee: McEwan Enterprises Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
				replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral.	
17. Royal Bank of Canada	McEwan Enterprises Inc.	697662945 - 20140703 1434 1530 5522 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		Amended by 20180103 1437 1530 9110 Amendment to change the name of the debtor from "2416668 Ontario Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation Renewed by 20190531 1441 1530 8680 5 years

18. Royal Bank	McEwan	642899511 - 20080225 1129 6005	Equipment, Accounts,	"Master lease dated February 25, 2008 together with all	Transferred by 20090511 1638

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	Enterprises Inc. McEwan	7076 (10 years)	Other	inventory and equipment now or hereafter acquired by the debtor and financed by the secured party together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral."	6005 3022 Transferor: McEwan Enterprises Inc. Transferee: McEwan Enterprises Inc. *(it appears that this amendment was filed to change the address of the debtor)* Renewed by 20160627 1441 8077 1288 10 years Amended by 20160627 1441 8077 1290 Amendment to include a general collateral description
19. Royal Bank	McEwan	642904551 - 20080225 1455 1530	Inventory, Equipment, Accounts, Other, Motor		Renewed by 20130109 1047

of Canada	Enterprises Inc.	5165 (5 years)	Vehicles		1529 4046 5 years Amended by 20180103 1932 1531 3422 Amendment to change the

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					name of the debtor from "McEwan Enterprises Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation and to change the address of the secured party Renewed by 20180119 1428 1530 6115 5 years
20. Royal Bank of Canada	McEwan Enterprises Inc.	892169892 - 20030304 1835 1531 2850 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		Renewed by 20080227 1452 1530 8579 5 years Renewed by 20130111 1945 1531 6991 5 years Amended by 20180103 1932 1531 3419 Amendment to change the name of the debtor from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation and to change the address of the secured party Renewed by 20180126 1932 1531 3277

					5 years
21. Royal Bank	North 44 Degrees	963231255 -	Inventory, Equipment,		Amended by 19890706 0901

~~196~~

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
of Canada	McEwan Enterprises Inc.	19890525 0845 88 6360 (3 years)	Book Debts, Other, Motor Vehicles		88 4523 Amendment to include "Degrees" in the name of the business name Renewed by 19920429 1552 0004 0992 5 years Renewed by 19970220 1906 1529 2013 5 years Amended by 19970221 1907 1529 3883 Amendment to change the address of the secured party Renewed by 20020510 1030 1533 8923 5 years Amended by 20020617 1817 1531 1403 Amendment to change the name of one of the debtors from "821669 Ontario Limited" to "North 44 Inc." pursuant to an amalgamation Renewed by 20070316 1943 1531 3404 5 years

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
					Amended by 20120426 1946 1531 0643 Amendment to change the address of the secured party Renewed by 20120426 1946 1531 0644 5 years Renewed by 20170421 1437 1530 4239 5 years Amended by 20180103 1932 1531 3418 Amendment to change the name of one of the debtors from "North 44 Inc." to "McEwan Enterprises Inc." pursuant to an amalgamation

(b) McEwan One Mark Inc.; and McEwan One Mark

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations

1. Royal Bank of Canada	McEwan One Mark Inc.	701442765 - 20141110 1441 1530	Inventory, Equipment, Accounts, Other, Motor		Renewed by 20191004 1436 1530 8561

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
		2557 (5 years)	Vehicles		5 years

(c) 2220223 Ontario Inc.

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1. Royal Bank of Canada	2220223 Ontario Inc.	663817158 - 20100819 1451 1530 6635 (5 years)	Other	Inter-company creditor agreement dated (August 4,2010)) *(sic)*, between Royal Bank of Canada (CF/Realty Holdings Inc. and 2220223	Renewed by 20150717 1945 1531 9693 5 years Renewed by 20200717 1442

				Ontario Inc.)	1530 4305 5 years

~~199~~

SCHEDULE 2.1(a)

LEASED LOCATIONS / ASSUMED REAL PROPERTY LEASES

1. Bymark — Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and the Seller, as tenant, as amended by the Third Tenant Assistance Agreement dated May 6, 2021 between The Cadillac Fairview Corporation Limited (as agent for Ontrea Inc., OPB (TDC) Inc. and C/F Realty Holdings Inc.), the Seller and Mark McEwan, and as may have been further amended pursuant to negotiations between the parties as at the date of this Agreement, provided such further amendments are disclosed to the Buyer (collectively, ~~(~~the "TAA")

2. Fabbrica Rustic Italian Market — Lease dated as of October 1, 2017 between Ontrea Inc., The Cadillac Fairview Corporation Limited and OPB (TDC) Inc., as landlord, and the Seller, as tenant, as amended by the TAA, and as may have been further amended pursuant to negotiations between the parties as at the date of this Agreement, provided such further amendments are disclosed to the Buyer

3. McEwan — Lease dated as of May 2, 2014 between Toronto Dominion Centre Leaseholds Limited, as landlord, and 2416668 Ontario Inc. (a predecessor of Seller), as tenant, as amended by the TAA, and as may have been further amended pursuant to negotiations between the parties as at the date of this Agreement, provided such further amendments are disclosed to the Buyer

4. McEwan — Lease dated as of June 28, 2007 between CF/Realty Holdings Inc., as landlord, and the Seller, as tenant, as amended by a lease and loan amending agreement dated as of December 15, 2008, and as may have been further amended pursuant to negotiations between the parties as at the date of this Agreement, provided such further amendments are disclosed to the Buyer

5. Fabbrica Thornbury — Lease dated as of April 21, 2018, between Denyse Sterio, as landlord, and
the Seller, as tenant, as may have been amended pursuant to negotiations between the parties as at the date of this Agreement, provided such amendments are disclosed to the Buyer

6. McEwan — Lease dated as of April 27, 2018, between First Capital Holdings (Ontario) Corporation, as landlord, and the Seller, as tenant, as amended by lease amending agreements dated December 21, 2018, April 22, 2019, June 7, 2019, April 3, 2020 and April 6, 2021

To be amended and updated prior to Closing pursuant to Section 2.4.

~~200~~SCHEDULE 2.1(c)

ASSUMED CONTRACTS

All contracts to which the Seller is a party as of the Closing Date (other than the Excluded Contracts) including, but not limited to:

1. The Material Contracts listed in Schedule 1.1(zz)

2. The Loan Agreements, as may have been amended pursuant to negotiations between the parties as at the date of this Agreement, provided such amendments are disclosed to the Buyer

3. Master Lease Agreement dated as of October 18, 2017, between Royal Bank of Canada, as lessor, and 2004995 Ontario Limited (a predecessor of the Seller), as lessee

4. Master Lease Agreement dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as lessee

5. Equipment Lease #201000044268 dated as of June 1, 2018 between Royal Bank of Canada, as lessor, and the Seller, as Lessee

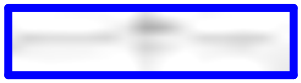
To be amended and updated prior to Closing pursuant to Section 2.4.

~~201~~ SCHEDULE 2.1(f)

INTELLECTUAL PROPERTY

Trademarks

Trademark	Status	Security
McEWAN KOSHER	Registered **App** 1593654 App 11-SEP-2012 Reg TMA848695 Reg 17-APR-2013	None
North 44 & Design 	Registered App 1579704 App 28-MAY-2012 Reg TMA852576 Reg 05-JUN-2013	None
Bymark & Design 	Registered App 1579705 App 28-MAY-2012 Reg TMA852575 Reg 05-JUN-2013	None
THE McEWAN GROUP 	Registered App 1572192 App 05-APR-2012 Reg TMA859196 Reg 04-SEP-2013	None
We Deliver... Experiences 	Registered **App** 1572193 App 05-APR-2012 Reg TMA858174 Reg 20-AUG-2013	None

personal shopper & DESIGN 	Registered App 1523277 App 08-APR-2011 Reg TMA832405 Reg 20-SEP-2012	None
FABBRICA	Registered App 1457215 App 28-OCT-2009 Reg TMA777529 Reg 20-SEP-2010	None

Trademark	Status	Security
mcewan & DESIGN ~~mcewan~~ 	Registered **App** 1429860 App 24-FEB-2009 Reg TMA785167 Reg 17-DEC-2010	None
SUPPER GASTRO PUB	Registered App 1285262 App 20-DEC-2005 Reg TMA679301 Reg 11-JAN-2007	None

Business Names

Business name/style	Effective From	Effective To
McEwan Kosher	March 21, 2013	March 19, 2023
Fabbrica	October 4, 2017	October 3, 2022
North 44	October 4, 2017	October 3, 2022
Bymark	October 4, 2017	October 3, 2022
Fabbrica Italian Rustic Market	October 4, 2017	October 3, 2022
McEwan	October 4, 2017	October 3, 2022
McEwan at Aga Khan Museum	October 4, 2017	October 3, 2022
The McEwan Group	October 4, 2017	October 3, 2022
McEwan Restaurant Consultants	October 4, 2017	October 3, 2022
McEwan at TD Centre	October 4, 2017	October 3, 2022
Fabbrica Rustic Italian Market	October 4, 2017	October 3, 2022
McEwan at Bloor Yonge	October 4, 2017	October 3, 2022

McEwan One Mark	October 17, 2017	October 16, 2022
Fabbrica at Thombury	May 14, 2018	May 13, 2023

Domain Names

bymark.ca

~~203~~

~~3~~ chefmcewan.ca
chefmcewan.com
fabbrica.ca

mcewan.catering
mcewan.properties
mcewancatering.ca
mcewancatering.com
mcewanfinefoods.ca
mcewanfinefoods.com
mcewanfoods.com
mcewangroup.ca
mcewan-group.ca
mcewan-group.corn
mcewanrestaurants.ca
mcewanrestaurants. corn
north44caters.com
north44restaurant.com
onehazelton.com
themcewangroup.ca
themcewangroup.com

Social Media Handles

- **Instagram:** @mcewanfoods, @chefmarkmcewan, @themcewangroup, @mcewanfoods, @fabbricarestaurant
- **Twitter:** @Chef MarkMcEwan
- **Facebook:** The McEwan Group (https://www.facebook.com/McEwanGroup/)
- **Linkedln:** The McEwan Group (https://www.linkedin.com/company/the-mcewan-group/)

~~204~~ **SCHEDULE 2.1(1)**
SECURITIES

Issuer	Owner	Description of Security
2860117 Ontario Limited	McEwan Enterprises Inc.	100% of the shares of the Issuer owned by the Seller

~~205~~ **SCHEDULE 2.2(a)**

EXCLUDED CONTRACTS

~~1. McEwan — Lease dated as of April 27, 2018, between First Capital Holdings (Ontario) Corporation, as landlord, and the Seller, as tenant, as amended by lease amending agreements dated December 21, 2018, April 22, 2019, June 7, 2019, April 3, 2020 and April 6, 2021~~

1. ~~2.~~ Fabbrica — Lease dated as of October 9, 2009 between CF/Realty Holdings Inc., as landlord, and 2220223 Ontario Inc. (a predecessor of the Seller), as tenant, as amended by the Tenant Assistance Agreement dated February 19, 2019 between C/F Realty Holdings Inc. and the Seller and as further amended by the TAA

2. ~~3.~~ Any and all security agreements and priority agreements entered into in connection with (i) the CF Loan Agreement, (ii) the Assumed Real Property Leases and/or (iii) any other Excluded Contracts

3. ~~4.~~ Engagement letter dated as of September 10, 2021, between Alvarez & Marsal Canada ULC and the Seller

4. Purchase Agreement dated September 27, 2021 between the Seller and 2864785 Ontario Corp.

To be amended and updated prior to Closing pursuant to Section 2.4.

SCHEDULE 4.10
ENVIRONMENTAL MATTERS

Nil.

SCHEDULE 6.2(a)
INSURANCE POLICIES

1. Property, liability and fleet vehicle policy with Federated Insurance

2. Directors and officers policy with Northbridge Insurance

3. Errors and omissions policy with CFC Underwriting

Document comparison by Workshare Compare on October 11, 2021 6:17:20 PM

Input:	
Document 1 ID	iManage://wsc.airdberlis.com/cm/46179826/1
Description	#46179826v1<wsc.airdberlis.com> - Asset Purchase Agreement
Document 2 ID	iManage://wsc.airdberlis.com/cm/46179826/7
Description	#46179826v7<wsc.airdberlis.com> - Asset Purchase Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	208
Deletions	245
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	457

TAB L

Attached is Exhibit “L”

Referred to in the

AFFIDAVIT OF JORDAN ROBINS

Sworn before me

this 4th day of November, 2021

_____

Commissioner for taking Affidavits, etc

Court File No.: CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

SECOND REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

OCTOBER 14, 2021

TABLE OF CONTENTS

APPENDICES

1.0 INTRODUCTION

1.1 On September 28, 2021 (the "**Filing Date**"), McEwan Enterprises Inc. ("**MEI**" or the "**Applicant**") obtained an initial order (the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The proceedings commenced by the Applicant under the CCAA are referred to herein as the "**CCAA Proceedings**". Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. ("**A&M**") as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**").

1.2 On October 7, 2021, the Applicant obtained an amended and restated Initial Order (the "**Amended and Restated Initial Order**") that, among other things: (i) extended the Stay Period (as defined in the Initial Order) until and including November 1, 2021; and (ii) increased the Administration Charge and the Directors' Charge (each as defined in the Initial Order) up to a maximum of $350,000 and $1.45 million, respectively.

1.3 In connection with the CCAA Proceedings, A&M filed the Pre-Filing Report of the Proposed Monitor dated September 27, 2021 (the "**Pre-Filing Report**"). The Monitor has also filed the First Report of the Monitor dated October 5, 2021 (the "**First Report**", and together with the Pre-Filing Report, the "**Monitor's Reports**"). The Monitor's Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor's case website at www.alvarezandmarsal.com/McEwanEnterprises (the "**Case Website**"). The Pre-Filing Report and the First Report are also attached hereto as **Appendix "A"** and **Appendix "B"**, respectively.

1.4 MEI's business is comprised of six high-end restaurant locations, three gourmet grocery locations, a catering business and an events business, each operating in the Greater Toronto Area, with the exception of one of the restaurants located in Thornbury, Ontario. MEI's brands include *Bymark*, *Fabbrica*, *Diwan*, *McEwan Fine Foods*, *McEwan Catering* and *ONE Restaurant*.[1] MEI also generates revenue from various television and media interests, as well as a partnership with Goodfood Market Corp., a subscription based food-delivery service.

1.5 MEI's equity is owned 55% by a subsidiary of Fairfax Financial Holdings Limited ("**Fairfax**") and 45% by McEwan Holdco Inc. ("**McEwan Holdco**"). Dennis Mark McEwan is the sole shareholder of McEwan Holdco. MEI is incorporated under the laws of Ontario and its registered head office is located in Toronto.

1.6 As described in the Pre-Filing Report and further herein, a key aspect of the Applicant's restructuring plan is to effectuate the going concern sale and transfer of substantially all of its assets and liabilities, with the exception of certain excluded lease agreements and related

[1] MEI's interest in ONE Restaurant consists of a 50% partnership interest established pursuant to a partnership agreement dated June 1, 2005 (the "**Partnership Agreement**"), which is currently held in a wholly owned subsidiary, 2860117 Ontario Limited (the "**McEwan Subsidiary**"). The McEwan Subsidiary is not an applicant in these CCAA Proceedings, however, pursuant to the Initial Order, the stay of proceedings has been extended to the benefit of the McEwan Subsidiary. The McEwan Subsidiary assumed its partnership interest in ONE Restaurant pursuant to an Assignment Agreement dated August 24, 2021 (the "**Assignment Agreement**"), between MEI, the McEwan Subsidiary and Dawsco (Food Services) Limited, Starwood (Food Services) Limited and Yorkset (Food Services) Limited carrying on business under the firm name of DSY Food Services Partnership (the "**ONE Restaurant Partner**"). The ONE Restaurant Partner holds the remaining 50% partnership interest in ONE Restaurant pursuant to the Partnership Agreement. The Monitor notes that an overview of the foregoing is set out in the McEwan Affidavit. In light of the proximity between the Assignment Agreement and the Filing Date, A&M, in its capacity as Proposed Monitor, requested and was provided with a copy of the Partnership Agreement and the Assignment Agreement and engaged in discussions with MEI's counsel regarding each agreement. Based on its review of the Partnership Agreement and the Assignment Agreement and its discussions with MEI's counsel, the Monitor is of the view that the incorporation of the McEwan Subsidiary and the assignment of MEI's interest in ONE Restaurant to the McEwan Subsidiary were undertaken for legitimate business and corporate purposes and do not otherwise impact MEI's creditors.

excluded liabilities, to a new entity (the "**Purchaser**") formed by the Applicant's current shareholders, being Fairfax and McEwan Holdco (the "**Proposed Transaction**"). The Proposed Transaction includes a cash deposit of up to $2.25 million to be funded by the Purchaser, which, if approved by the Court, is intended to be utilized by the Applicant to finance its short term liquidity requirements (the "**Transaction Deposit**").

1.7 The purpose of this report (the "**Second Report**") is to provide the Court with information, and where applicable, the Monitor's views on:

(i) the Applicant's motion for an Order (the "**Approval and Vesting Order**"), among other things:

(a) approving the Proposed Transaction and the purchase agreement dated September 27, 2021 (the "**Purchase Agreement**") between the Applicant and the Purchaser, and vesting in the Purchaser or one or more of its designees (each a "**Buyer Designee**"), all of the Applicant's right, title and interest in and to the Purchased Assets (as discussed below) free and clear from any Claims and Encumbrances (each as defined in the Approval and Vesting Order);

(b) approving the Transaction Deposit and granting the Transaction Deposit Charge (as defined and described below) on the Applicant's Property (as defined in the Initial Order);

(c) authorizing the Monitor to: (i) hold a cash reserve on behalf of the Applicant for the wind-down of the CCAA Proceedings (the "**Cash Reserve**"); (ii)

pay certain amounts from the Cash Reserve on behalf of the Applicant following the completion of the Proposed Transaction with the consent of the Applicant; and (iii) deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Purchase Agreement;

(d) from and after the closing of the Proposed Transaction, waiving any and all defaults and events of default of MEI under the Assumed Contracts (as defined and described below) committed by MEI, or caused by MEI, as a result of the insolvency of the Applicant, the commencement or continuation of the CCAA Proceedings by the Applicant, by any of the provisions in the Purchase Agreement or steps or transactions contemplated in the Purchase Agreement and/or any other Orders of this Court; and

(e) extending the Stay Period until and including December 17, 2021;

(ii) cash flow results for the two-week period ended October 8, 2021;

(iii) the Monitor's activities since the date of the First Report (October 5, 2021); and

(iv) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

1.8 Given certain very recent developments discussed below, the Monitor needed to discuss, consider, and assess various new facts and circumstances in the days leading up to the motion for the Approval and Vesting Order. Accordingly, the Monitor was only able to finalize, serve and file the Second Report on the date hereof.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Second Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon unaudited financial information and the books and records prepared by MEI, and has had discussions with management of MEI and its legal counsel (collectively, the "**Information**"). Except as otherwise described in this Second Report in respect of the Applicant's cash flow forecast:

(i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

(ii) some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.2 Future oriented financial information referred to in this Second Report was prepared based on MEI management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 This Second Report should be read in conjunction with: (i) the Affidavit of Dennis Mark McEwan, sworn on September 27, 2021, and filed in support of the Applicant's application for relief under the CCAA (the "**McEwan Affidavit**"); and (ii) the Affidavit of Dennis Mark McEwan, sworn on October 1, 2021, and filed in support of the Approval and Vesting Order (the "**Second McEwan Affidavit**", and together with the McEwan Affidavit, the "**McEwan Affidavits**"). Capitalized terms used and not defined in this Second Report have the meanings given to them in the Monitor's Reports, the McEwan Affidavits or the Purchase Agreement, as applicable.

2.4 While this Second Report considers certain of the potential future impacts of the COVID-19 pandemic on MEI's business and operations, such impacts cannot be fully determined at this time.

2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars ("**CAD**").

3.0 APPROVAL AND VESTING ORDER

Events Leading to the Proposed Transaction

3.1 The events leading to and culminating in the Proposed Transaction are set out in further detail in the Pre-Filing Report and the McEwan Affidavits. Certain of the key events are summarized below:

(i) although many of MEI's locations have historically been profitable, certain of its locations have been underperforming for a number of years, causing a significant strain on the business as a whole and resulting in declining financial results;

(ii) the negative impacts of the COVID-19 pandemic over the past approximately 20 months, including restaurant closures, capacity constraints and other restrictions have exacerbated MEI's operating challenges and have resulted in significant cash losses, tightening liquidity and breaches under its Secured Credit Facilities held with RBC;

(iii) to address these headwinds, MEI implemented extensive cost-saving and cash conservation measures, negotiated landlord concessions at certain of its locations, utilized a number of government subsidies made available during the COVID-19 pandemic and received additional debt and equity financing from its shareholders;

(iv) in June, 2021, MEI engaged legal counsel to assist it in reviewing and assessing its various strategic alternatives, including obtaining additional financing, reducing the size of the business, considering a potential sale of the business and exploring whether consensual arrangements with its landlords could be reached to improve lease terms, reduce lease obligations and/or exit certain unprofitable locations. As it relates to discussions and negotiations with landlords, the Monitor understands that:

(a) positive discussions were held, and are ongoing, with the Cadillac Fairview Entities in respect of the leases for Bymark, Fabbrica TD, McEwan TD, Fabbrica Don Mills and McEwan Don Mills (collectively, the "**Cadillac Fairview Leases**") and the parties are working to finalize satisfactory arrangements on a consensual basis in respect of the Cadillac Fairview

Leases. The Monitor understands that the business terms are substantially finalized after many months of discussions; and

(b) MEI had ongoing discussions over many months with its landlord (the "**Yonge & Bloor Landlord**") in respect of the McEwan Yonge & Bloor grocery location (the "**Yonge & Bloor Location**"), however the parties were not able to reach a mutually satisfactory resolution to modify the lease terms or consensually terminate the lease.

3.2 After extensive review and consideration of its circumstances and available alternatives, MEI ultimately determined to pursue the Proposed Transaction. In that regard, MEI and the Purchaser entered into the Purchase Agreement on September 27, 2021 and MEI commenced the CCAA Proceedings on September 28, 2021 to implement its restructuring and effectuate the Proposed Transaction, subject to its approval by this Court.

Proposed Transaction

3.3 As described above, the Proposed Transaction involves the sale and transfer of substantially all of MEI's assets and liabilities to the Purchaser, a newly incorporated company formed by the Applicant's current shareholders. The Proposed Transaction will allow the Purchaser to continue to operate the restructured business of MEI as a going concern, including maintaining each of MEI's current locations, with the exception of Fabricca Don Mills and the Yonge & Bloor Location (together, the "**Excluded Locations**"), subject to finalizing its agreement with the Cadillac Fairview Entities.[2]

[2] To the extent additional leases are designated to be terminated or disclaimed in the CCAA Proceedings, such terminated or disclaimed locations could also become Excluded Locations. The Purchase Agreement requires that the

3.4 The Monitor understands that pursuant to the Purchase Agreement, the Purchaser will offer employment to all of MEI's 268 full-time and part-time employees and assume all related employee obligations. Notably, this includes all of the employees currently working at the Excluded Locations.

Purchase Agreement

3.5 The Approval and Vesting Order provides for the vesting of all of the Applicant's right, title and interest in and to the Purchased Assets in the Purchaser and/or one or more Buyer Designees, free and clear from any Claims and Encumbrances.

3.6 The Purchase Agreement is described in detail in the Second McEwan Affidavit and attached thereto as Exhibit "C". The following table summarizes certain key terms of the Purchase Agreement:

Purchase Agreement – Summary of Key Terms	
Purchase Price	• The aggregate consideration for the Purchased Assets under the Purchase Agreement is the sum of: i. the assumption of the Assumed Obligations (described below), which are estimated by the Applicant to be approximately $11 million; and ii. cash payments of: (a) $520,000 (the "**Base Purchase Price**"); and (b) an amount equal to the Cure Costs • The $520,000 Base Purchase Price was calculated by the Applicant to be approximately the amount equal to the Yonge & Bloor Landlord's entitlement upon the disclaimer of the lease relating to the Yonge & Bloor Location (the "**Yonge & Bloor Lease**") as determined with reference to subsection 136(1)(f)

Monitor be consulted prior to any further leases becoming Excluded Locations. Furthermore, the proposed Approval and Vesting Order provides that the Applicant is not entitled to remove any of the Assumed Real Property Leases, which are Cadillac Fairview Leases, from the list of Material Contracts, Assumed Real Property Leases or Assumed Contracts or otherwise designate any such lease as an Excluded Asset, Excluded Contract or Excluded Obligation, without the prior written consent of the Cadillac Fairview Entities or further Order of the Court on notice to the Cadillac Fairview Entities.

Purchase Agreement – Summary of Key Terms	
	of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") (equivalent to three months' accelerated rent[3])
Purchased Assets	• The Purchased Assets comprise of all of MEI's right, title and interest in and to the assets and properties of MEI used, maintained, owned or operated for, in respect of or in connection with MEI's business, in each case free and clear of all Encumbrances other than the Permitted Encumbrances, excluding the Excluded Assets (including, for greater certainty, the Excluded Contracts), including the following, among other things: cash and cash equivalents, accounts receivable, prepaid assets, inventory, supplies, motor vehicles owned or leased by MEI, property and equipment, intellectual property, insurance proceeds, and MEI's partnership interest in ONE Restaurant • The Purchased Assets also include certain Real Property Leases, capital leases and other contracts to be assumed by the Purchaser (the "**Assumed Contracts**") • Pursuant to the Purchase Agreement, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to not acquire any assets, properties, and rights of MEI (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets); provided that, with respect to Contracts, such designation must be made in accordance with Section 2.4 of the Purchase Agreement
Assumed Obligations	• Pursuant to the Purchase Agreement, the Purchaser agrees to or to cause one or more Buyer Designees to assume, pay, discharge, perform and fulfill, among others, the following debts, commitments, claims, obligations and liabilities of MEI with respect to MEI's business and the Purchased Assets, in each case whether direct or indirect, present or future, absolute, accrued or contingent: all pre-filing and post-filing trade obligations and accrued operating expenses; all employee liabilities and obligations, including accrued payroll and accrued vacation liabilities; all obligations in respect of MEI's gift cards and other customer loyalty programs; all obligations under the Assumed Contracts; all Cure Costs; all obligations in respect of the Transaction Deposit; and other obligations expressly assumed under the Purchase Agreement
Employees	• The Purchaser will make an offer of employment to each of MEI's current employees (approximately 268 individuals) on the same terms and conditions as their current employment terms
Excluded Assets	• Pursuant to the Purchase Agreement, the Purchased Assets do not, and will not be deemed to, include any of the following assets, property, rights, benefits or undertakings of MEI: all rights and interests in and to the Excluded Contracts; all of MEI's rights and benefits under the Purchase Agreement and the Transaction; any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period, or otherwise in compliance with the terms of the Purchase Agreement; and all director and officer insurance policies and any entitlements and any proceeds paid or payable thereunder to or on behalf of the directors and officers of the Purchaser

[3] Based on the Monitor's review of the Applicant's books and records, no rent arrears are currently owing in connection with the Yonge & Bloor Lease.

Purchase Agreement – Summary of Key Terms	
	• Pursuant to the Purchase Agreement, the Purchaser may, at any time up to the day prior to the closing of the Transaction, elect to not acquire any assets, properties, and rights of MEI (and any such assets, properties, and rights shall be Purchased Assets shall be Excluded Assets); provided that, with respect to Contracts, such designation must be made in accordance with Section 2.4 of the Purchase Agreement
Excluded Obligations	• Pursuant to the Purchase Agreement, the Purchaser and/or, as applicable, one or more Buyer Designees, will not assume and will have no obligation to discharge, perform or fulfill any of the following liabilities, debts, obligations, commitments or claims, direct or indirect, whether present or future, absolute, accrued or contingent, of MEI: all liabilities and obligations of any kind relating to the Excluded Assets; all obligations and liabilities of MEI that are secured by court-ordered charges in the CCAA Proceedings and that are subject to the Cash Reserve; any liability with respect to any legal, accounting audit, financial advisory, and investment banking fees and any other expenses incurred by MEI, including with respect to the transactions contemplated by the Purchase Agreement or the CCAA Proceedings; and any other obligations or liabilities expressly excluded from the Assumed Obligations under the Purchase Agreement
Transaction Deposit	• $2.25 million, payable in one or more installments, to be repaid or assumed, as the case may be, in accordance with the terms of the Purchase Agreement and/or such additional terms as may be entered into between MEI and the Purchaser • Proceeds to be used by MEI to fund its working capital requirements, other general corporate expenditures, and the costs of the CCAA Proceedings • No fees or interest will be payable in connection with the Transaction Deposit • If the Purchase Agreement is terminated for any reason, then the Transaction Deposit shall be immediately due and payable in full by MEI to the Purchaser without any additional notice, demand or other action or otherwise to MEI or from the Purchaser • Subject to the Approval and Vesting Order and the Transaction Deposit Charge each having been granted by the Court
Cash Reserve	• On the closing of the Proposed Transaction, MEI shall retain the Cash Reserve in an amount agreed to by MEI and the Purchaser, with the consent of the Monitor to fund the costs of completing the CCAA Proceedings • Within three business days of the earlier of: (i) six months after the closing date of the Proposed Transaction; and (ii) the date the administration of MEI's wind-down is completed, MEI shall deliver to the Purchaser any funds remaining in the Cash Reserve • Pursuant to the proposed Approval and Vesting Order, the Monitor will be authorized to: (i) hold the Cash Reserve on behalf of MEI; (ii) pay certain amounts from the Cash Reserve on behalf of MEI following the completion of the Proposed Transaction; and (iii) deliver to the Purchaser any remaining funds in the Cash Reserve on the terms set out in the Purchaser Agreement
Conditions	• No due diligence or financing condition

Purchase Agreement – Summary of Key Terms	
	• Satisfactory arrangements entered into with the Cadillac Fairview Entities or a CCAA Assignment Order with respect to the assignment of certain of the Cadillac Fairview Leases • The granting by the Court of the Approval and Vesting Order • The receipt by the Purchaser of a Third Party Consent or the CCAA Assignment Order with respect to each Material Contract which cannot be assigned to the Purchaser without such a Third Party Consent or CCAA Assignment Order • Other customary conditions for a transaction of this nature

3.7 Based on MEI's balance sheet as at August 31, 2021:

(i) the Purchased Assets are comprised primarily of:

- cash of approximately $1.0 million, although the Monitor understands that since August 31, 2021, this balance has been substantially utilized to fund normal course expenditures in connection with MEI's business and the CCAA Proceedings;
- accounts receivable of approximately $343,000;
- inventory and prepaids of approximately $1.4 million;
- MEI's partnership interest in ONE Restaurant of approximately $1.0 million; and
- property, plant and equipment of approximately $5.9 million; and

(ii) the Assumed Obligations are comprised primarily of:

- trade payables and accrued liabilities owing to third-party vendors of approximately $2.7 million;
- amounts owing to employees for accrued wages and vacation payable of approximately $687,000;
- gift card and similar customer loyalty obligations of approximately $488,000;

- amounts currently secured owing to the Cadillac Fairview Entities in connection with a fixtures loan of approximately $198,000 and deferred rent amounts of approximately $539,000;
- amounts owing to RBC of approximately $3.2 million, comprised of: (a) secured obligations of approximately $2.2 million; and (b) unsecured obligations of approximately $964,000; and
- unsecured shareholder loans owing to Fairfax of approximately $2.3 million.

The Yonge & Bloor Landlord

3.8 Subsequent to the comeback hearing held on October 7, 2021, the Monitor had separate discussions with counsel to the Applicant, and with the financial advisor and counsel to the Yonge & Bloor Landlord. These meetings were intended to, among other things: (i) assist the Monitor in understanding the Yonge & Bloor Landlord's concerns regarding the Proposed Transaction; and (ii) explore whether the Monitor could facilitate further conversations between the parties to advance a mutually satisfactory resolution to the parties' business dispute. To date, these conversations have not resulted in a resolution between the parties. The Monitor understands that the Yonge & Bloor Landlord intends to oppose the approval of the Proposed Transaction and the granting of the Approval and Vesting Order given, among other things, the lack of a third-party sale process having been undertaken to canvass the market for MEI's business and/or assets.

3.9 In connection with its opposition to the approval of the Proposed Transaction and the granting of the Approval and Vesting Order, the Yonge & Bloor Landlord, through its counsel, provided the Monitor with an email on the evening of October 11, 2021 with the following:

(i) a purchase agreement executed by the Yonge & Bloor Landlord (the "**Yonge & Bloor Landlord's Purchase Agreement**") in substantially the same form as the proposed Purchase Agreement, subject to certain revisions described below; and

(ii) an unsigned debtor-in-possession term sheet (the "**DIP Term Sheet**") pursuant to which the Yonge & Bloor Landlord would provide interim financing to MEI during a 14-day due diligence period (the "**Due Diligence Period**"), which commences the date next following the full execution of the Yonge & Bloor Landlord's Purchase Agreement, as well as further financing consistent with the Transaction Deposit if the Yonge & Bloor Landlord waives its diligence condition and the Yonge & Bloor Landlord's Purchase Agreement is approved.

3.10 The Yonge & Bloor Landlord's Purchase Agreement differs from the Purchase Agreement in the following ways:

(i) it includes the Due Diligence Period;

(ii) it includes, as a condition precedent to the completion of the transaction, the Yonge & Bloor Landlord being satisfied, in its sole and absolute discretion, with the results of its due diligence of the Purchased Assets during the Due Diligence Period;

(iii) it modifies the closing deliverables of MEI to include the execution and delivery of a consulting agreement, termination or other agreement between the Yonge & Bloor Landlord and Mr. McEwan or an order of this Court addressing same; and

(iv) adds the Yonge & Bloor Lease (as defined below) to the Assumed Real Property Leases.

3.11 Key substantive differences between the Purchase Agreement and the Yonge & Bloor Landlord's Purchase Agreement are as follows:

(i) the addition of the Yonge & Bloor Lease as a go forward operating location would appear to make the Yonge & Bloor Landlord's Purchase Agreement, on its face, financially superior;

(ii) the potential for employee severance and termination claims to arise as a result of Mr. McEwan and potentially other employees not accepting new employment offers from the Yonge & Bloor Landlord, which may be material;[4] and

(iii) the inclusion of the Due Diligence Period.

3.12 It is the Monitor's view that the Due Diligence Period introduces a higher level of execution risk and, given the complexities of MEI's business, could very well require more than 14-days to complete. In addition to the customary diligence risks for a transaction of this nature (financial, operational, legal), certain additional factors impacting the consummation of the transaction contemplated by the Yonge & Bloor Landlord's Purchase Agreement include:

(i) the prospect that the Yonge & Bloor Landlord would not be able to reach satisfactory arrangements in respect of the Cadillac Fairview Leases, or that such arrangements could require significant time to settle. The Monitor understands that many months and significant resources were required for MEI to reach its

[4] As described in the Second McEwan Affidavit, the Monitor understands that Mr. McEwan's continued involvement as chef and operator of MEI's business is premised on a continuation of his ownership interests and ongoing partnership with Fairfax.

substantially finalized consensual arrangements with the Cadillac Fairview Entities; and

(ii) that Mr. McEwan and possibly other key personnel are not prepared to accept new employment offers from the Yonge & Bloor Landlord, and that the resulting disruption to the business either prevents the Yonge & Bloor Landlord from waiving the due diligence condition precedent, or requires extended time to allow the Yonge & Bloor Landlord to identify and hire replacement personnel. If Mr. McEwan and/or other key personnel choose not to accept new employment offers from the Yonge & Bloor Landlord, that could also create material employment related unsecured claims against MEI.

3.13 The Monitor understands that the Cadillac Fairview Entities have been made aware of the Yonge & Bloor Landlord's interest in acquiring MEI's business, and that the Cadillac Fairview Entities and/or its counsel have had discussions with each of MEI and the Yonge & Bloor Landlord (or their respective counsel). Counsel to the Cadillac Fairview Entities has advised the Monitor that the Cadillac Fairview Entities (i) remain supportive of the Proposed Transaction, taking a significant degree of comfort having "Mr. McEwan at the helm"; and (ii) if the Proposed Transaction is not approved, third parties considering this opportunity should not expect to receive the same terms that have been agreed to with MEI.

3.14 The Cadillac Fairview Entities are secured creditors of MEI. In addition, unless a purchaser is prepared to take an assignment of the Cadillac Fairview Leases without amendment, the consent of the Cadillac Fairview Entities will be essential to MEI's ongoing business and the consummation of any sale transaction. The Cadillac Fairview Leases are currently

subject to a number of near-final negotiated and consensually agreed to concessions, which may not be afforded to a third party acquirer of the Cadillac Fairview Leases.

Affected Landlord Claim

3.15 The Monitor understands that the Applicant is close to finalizing its arrangements with the Cadillac Fairview Entities, including a settlement and termination payment in connection with Fabricca Don Mills (an Excluded Location). Accordingly, the only outstanding obligations known to the Monitor to be excluded from the Proposed Transaction are the obligations owing and potential claims in respect of the Yonge & Bloor Location (the "**Affected Landlord Claim**").

3.16 As set out in the Second McEwan Affidavit, the Applicant intends for the Base Purchase Price to satisfy the Affected Landlord Claim. The Base Purchase Price was determined based on the Yonge & Bloor Landlord's estimated maximum entitlement upon the disclaimer of the Yonge & Bloor Lease in a bankruptcy, as determined pursuant to subsection 136(1)(f) of the BIA.

3.17 To consider the potential impact of the Affected Landlord Claim – being the only affected claim, the Monitor prepared an illustrative analysis (the "**Illustrative Liquidation and Valuation Range Analysis**") from available information provided by MEI, that compares the Proposed Transaction to estimated realizations that may be available to MEI's creditors under:

(i) a liquidation scenario involving a bankruptcy of MEI;[5] and

(ii) various going concern sale transaction scenarios assumed to be completed with independent third-party purchasers and implemented through the CCAA Proceedings.

3.18 The Monitor's Illustrative Liquidation and Valuation Range Analysis includes a variety of wind-down and going concern transaction scenarios, each considering a range of low and high liquidation and/or enterprise values for each of MEI's restaurant and grocery locations on a stand-alone basis. Among other things, this analysis examines each of MEI's restaurant and grocery locations' operations, cash flows and EBITDA (both prior to and during the COVID-19 pandemic) as well as comparable trading multiples and recent transactions as a valuation proxy. Estimated creditor claims were based on the Applicant's books and records, as at August 31, 2021, and other estimates made by the Monitor. Certain creditor claims, particularly as it relates to the potential damage claims of landlords, are inherently subjective, and may differ from how they are determined under various claim scenarios.

Illustrative Bankruptcy Liquidation Analysis

3.19 Having regard to claims that could arise in a bankruptcy liquidation, such as secured and unsecured creditor claims, employee termination and severance claims, lease termination/disclaimer claims and other damages claims for non-performance, the Monitor's Illustrative Liquidation and Valuation Range Analysis projects that in a

[5] An illustrative liquidation through a receivership proceeding combined with a bankruptcy would result in the same or similar outcome as the illustrative liquidation scenario involving just a bankruptcy.

bankruptcy liquidation scenario, creditor recoveries are estimated to be (all figures approximate):

(i) full payment (100% recovery) in respect of RBC's secured claim of $2.2 million;

(ii) full payment (100% recovery) in respect of the Cadillac Fairview Entities' secured claim, including: (a) a fixtures loan of $198,000; and (b) amounts totalling $1.1 million in respect of the Cadillac Fairview Leases (calculated pursuant to subsection 136(1)(f) of the BIA);

(iii) full payment (100% recovery) in respect of the remaining two lease claims totalling $540,000 (calculated pursuant to subsection 136(1)(f) of the BIA); and

(iv) a recovery to remaining creditors in the range of approximately 1.8% to 26% in respect of unsecured claims estimated to be $11 million in aggregate.

3.20 In comparison to the above bankruptcy liquidation analysis, the Monitor is of the view that the Proposed Transaction would provide a favourable outcome, for the following reasons:

(i) it is beneficial to MEI's secured and unsecured creditors as it provides for either a full settlement or the full assumption of the obligations owing, with the exception of the Affected Landlord Claim, and avoids the unfortunate termination and dislocation of MEI's 268 employees, which may result in unpaid wages and vacation pay as well as severance and termination claims estimated to be in excess of $4 million, termination of the Assumed Contracts, and termination of MEI's existing customer and trade relationships;

(ii) it is beneficial to the landlord group as a whole as it: (a) provides for the continued operation of six of MEI's eight locations;[6] and (b) provides for a cash payment of approximately $520,000 to the Yonge & Bloor Landlord in respect of the Affected Landlord Claim, which is estimated to be the maximum amount that it would otherwise receive in a bankruptcy; and

(iii) the Proposed Transaction is consistent with the rehabilitative intent of the CCAA by preserving the majority of the business to avoid liquidation.

Illustrative Sale Transaction Scenarios

3.21 Neither the Applicant nor the Monitor has completed any formal or informal third-party sale process. As described in the Second McEwan Affidavit:

(i) the Applicant and its shareholders do not believe that a third-party purchaser would be in a position to acquire MEI's business absent Mr. McEwan's continued involvement (which is contingent upon the continuation of his partnership with Fairfax as co-owners of the business) for a purchase price that is equal or superior to that provided under the Proposed Transaction. Although the Monitor notes that the Yonge & Bloor Landlord's Purchase Agreement, on its face, would appear to be financially superior to the Proposed Transaction given that it includes the assumption of an additional location resulting in less claims and accordingly higher available recoveries. These potential benefits are tempered by the additional risk factors set out in paragraph 3.12 of this Second Report;

[6] There is no lease arrangement or rent charged at the Diwan location, which is a restaurant located within the Aga Khan Museum in Toronto.

(ii) based on the terms of the leases in respect of the Excluded Locations, including the Yonge & Bloor Lease, and the financial performance of such locations, it is not apparent that an independent economic third-party purchaser would likely acquire the Excluded Locations pursuant to their existing leases;

(iii) the Proposed Transaction contemplates the acquisition and assumption of substantially all of MEI's assets and liabilities, with the exception of the Excluded Locations and certain limited excluded obligations, and provides consideration for the Affected Landlord Claim in the maximum amount to be recovered by the Yonge & Bloor Landlord in a bankruptcy;

(iv) the Applicant believes that there is a significant risk that stakeholders, including the Yonge & Bloor Landlord, would receive materially less in a third-party sale transaction if the Proposed Transaction is not approved pursuant to the Approval and Vesting Order;

(v) the Applicant is in need of additional financing to fund its ordinary course operations, which would be provided under the Purchase Agreement in the form of the Transaction Deposit if approved by the Court. However, the Monitor notes that interim financing may be obtained from other sources, including pursuant to the DIP Term Sheet; and

(vi) without the support of Mr. McEwan, MEI's management team and Fairfax, the Applicant believes that there is a significant risk that MEI's stakeholders could be negatively impacted.

3.22 The Monitor is of the view that when valuing a going concern business or otherwise comparing one or more potential transactions to another, a full canvassing of the market through a third-party sale process should generally be encouraged. Without such a sale process, any discussion of potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict.

3.23 However, in an effort to consider the proposed treatment of the Affected Landlord Claim under various illustrative sale transaction scenarios, the Monitor included within its Illustrative Liquidation and Valuation Range Analysis an analysis to consider illustrative enterprise values of each of MEI's restaurant and grocery locations on a stand-alone basis.

3.24 Based on this component of the Monitor's Illustrative Liquidation and Valuation Range Analysis:

(i) the potential range of enterprise values could be material, resulting in a wide range of potential recoveries to creditors. In certain scenarios, proceeds would not be sufficient to fully repay secured creditors (resulting in no recovery on the Affected Landlord Claim and all other unsecured claims). However, when considering the higher range of potential enterprise values, recoveries to unsecured creditors were estimated to be greater than those in a bankruptcy, including with respect to the distribution on the Affected Landlord Claim in comparison to the claim prescribed by subsection 136(1)(f) of the BIA (assuming that the Yonge & Bloor Lease were to be disclaimed prior to a bankruptcy);

(ii) as there is no prescribed formula for determining a landlord claim in the CCAA, the claims that could be submitted by landlords within CCAA proceedings in

respect of one or more disclaimed lease may also range, but in most circumstances, it is expected that the submitted claim would be significantly larger than those in a bankruptcy. By applying such a higher claim amount (as compared to a bankruptcy claim) to the higher range of potential recoveries, there could be certain illustrative sale transaction scenarios where the recovery on the Affected Landlord Claim is greater than $520,000. Conversely in the lower range of potential recoveries, even with a higher claim amount, the recovery on the Affected Landlord Claim is less than $520,000. However, as described in the Second McEwan Affidavit, the Monitor understands that the Applicant has considered and is prepared to advance the Proposed Transaction through a concurrent receivership and bankruptcy process, which in the Applicant's view, effectively limits the Yonge & Bloor Landlord's recovery in any scenario to $520,000;

(iii) in comparison to the range of outcomes under various illustrative transaction scenarios, the Monitor would expect the Proposed Transaction to provide for the greatest number of locations and employees to be maintained, the greatest mitigation and reduction of claims to unsecured creditors and the least amount of disruption to the other creditors, landlords and stakeholders of MEI's business. The Monitor notes that the Yonge & Bloor Landlord's Purchase Agreement may result in a greater number of locations (i.e. because of the inclusion of the Yonge & Bloor Location) and therefore a greater mitigation and reduction of claims to unsecured creditors, however, as discussed herein, it is subject to certain additional risk factors; and

(iv) the Proposed Transaction would appear to provide a low level of execution risk, while in comparison, the range of outcomes under various illustrative transaction scenarios and the transaction contemplated under the Yonge & Bloor Landlord's Purchase Agreement, include a higher level of risk and more uncertainty as to their outcome, particularly as they may require the consent of the Cadillac Fairview Entities.

Transaction Deposit & Transaction Deposit Charge

3.25 The Applicant projects that it will require additional funding to continue the CCAA Proceedings and to complete the Proposed Transaction, if approved by the Court. For further information regarding the Applicant's cash flow forecast, the Monitor directs readers to Section 5.0 of the Pre-Filing Report, attached hereto as Appendix "A".

3.26 Pursuant to the Purchase Agreement, the Purchaser has agreed to provide the Transaction Deposit of up to $2.25 million for use by MEI to fund working capital requirements, general corporate expenditures and the costs of the CCAA Proceedings. Provision of the Transaction Deposit under the Purchase Agreement is subject to Court approval and the granting of a charge (the "**Transaction Deposit Charge**") to secure the repayment of the Transaction Deposit to the Purchaser should the Proposed Transaction not be completed. As noted above, if the Purchase Agreement is terminated for any reason, any amounts outstanding under the Transaction Deposit would be immediately due and payable in full by MEI to the Purchaser.

3.27 The proposed Transaction Deposit Charge, if approved, will rank in priority to all other secured creditors, other than statutory-priority deemed trust and liens for unpaid employee

source deductions or taxes, but subordinate to the RBC Security and the other Charges, pursuant to the Amended and Rested Initial Order.

3.28 Subject to the foregoing, the contemplated priorities of the Charges are as follows:

(i) First – Administration Charge (to the maximum amount of $350,000);

(ii) Second – Directors' Charge (to the maximum amount of $1.45 million); and

(iii) Third – Transaction Deposit Charge (to the maximum amount of $2.25 million).

3.29 If the Proposed Transaction is approved by the Court, the Monitor supports providing the Purchaser with the benefits of the proposed Transaction Deposit Charge in the manner described given that: (i) it will provide the Applicant with the necessary liquidity to advance the CCAA Proceedings and complete the Proposed Transaction; and (ii) it does not increase the cost of the CCAA Proceedings as there are no fees or interest contemplated to be paid in connection with the Transaction Deposit.

Monitor's Review and Assessment of the Proposed Transaction

3.30 Underlying the Proposed Transaction are the unique financial circumstances surrounding MEI and certain economic and market conditions, including certain unsustainable locations and the ongoing impacts and future uncertainty of the COVID-19 pandemic. In assessing the reasonableness of the Proposed Transaction and the Approval and Vesting Order, the Monitor considered each of the factors set out in subsections 36(3) and 36(4) of the CCAA. In doing so, the Monitor was cognizant that: (i) the factors enumerated under subsection 36(3) of the CCAA are not exhaustive and need not be applied as a formulaic check list; (ii) the Proposed Transaction should be considered as a whole; and (iii) Canadian Courts

have previously indicated that subsection 36(4)(a) of the CCAA may be satisfied, in appropriate circumstances, without a formal sale process having been conducted. The Monitor's assessment in this regard is summarized immediately below:

36(3)(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances

(i) as discussed in this Second Report, the Monitor understands that the Proposed Transaction resulted from an extensive review by the Applicant and its legal counsel of certain available restructuring alternatives, including obtaining additional financing, downsizing MEI's business, restructuring and/or exiting certain leases, and exploring a sale of MEI's business. Additionally, the Monitor understands that the Proposed Transaction was pursued by the Applicant only after it determined that it would not be able to reach a mutually satisfactory resolution with the Yonge & Bloor Landlord following extensive discussions and negotiations;

(ii) although no third-party sale process was conducted, it would appear to be uneconomic for an independent third-party purchaser (potentially save and except for the Yonge & Bloor Landlord) to assume the material lease obligations in respect of the Yonge & Bloor Location, absent amendments to the Yonge & Bloor Lease. Accordingly, the Proposed Transaction would appear to be the most effective way to preserve the going concern value of the business and the greatest number of locations and employees without introducing additional transaction risk, time and cost;

36(3)(b) whether the monitor approved the process leading to the proposed sale or disposition

(iii) the Monitor was not involved in the development of the Applicant's strategic process leading to the Proposed Transaction. However, since being retained as of September 10, 2021 and beginning its mandate on September 14, 2021, A&M, and then subsequently as the Monitor, has been apprised of the Applicant's strategic process leading to the Proposed Transaction and has engaged with MEI and its legal counsel regarding same;

(iv) following the commencement of its engagement, the Monitor did suggest to the Applicant the option of commencing a formal or informal third-party sale process, however was advised by the Applicant that it was not prepared to do so;

(v) given the economic benefit to MEI's creditors and other key stakeholders who support the Proposed Transaction, and that the Applicant undertook significant steps to reach consensual resolution with its landlords, the Monitor is of the view the Applicant's process leading to the consummation of the Proposed Transaction was not unreasonable in the circumstances;

36(3)(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy

(vi) as discussed in this Second Report, the Monitor is of the view that the Proposed Transaction provides more commercial benefit to the creditors and stakeholders of MEI than would otherwise be available to creditors in a bankruptcy liquidation scenario;

36(3)(d) the extent to which the creditors were consulted

(vii) the Monitor understands that prior to commencing the CCAA Proceedings, the Applicant engaged in discussions with RBC, and that RBC is supportive of MEI's restructuring efforts. In light of its support, notwithstanding that MEI is in breach of the Secured Credit Facilities, RBC has continued to provide MEI with access to the Secured Credit Facilities, on the condition that it would be an unaffected creditor in the CCAA Proceedings;

(viii) the Monitor also understands that during the months leading to the commencement of the CCAA Proceedings, the Applicant engaged in extensive discussions and negotiations with the Cadillac Fairview Entities;

(ix) outside of RBC and MEI's landlords, the Monitor is not aware of further consultation with creditors regarding the Proposed Transaction. As all of MEI's other creditors are unaffected under the Proposed Transaction no consultation with such parties was considered necessary by the Applicant;

36(3)(e) the effects of the proposed sale or disposition on the creditors and other interested parties

(x) as discussed in this Second Report, with the exception of the Affected Landlord Claim, all obligations owing to MEI's creditors will be assumed by the Purchaser. As a result, nearly all of MEI's creditors (including all of its employees) will be unaffected by the Proposed Transaction and are expected to benefit from the continued operations of MEI's restructured business;

(xi) as set out in the Applicant's Factum dated October 13, 2021 in support of the Approval and Vesting Order, the Applicant believes that the Base Purchase Price provided pursuant to the Proposed Transaction in consideration for the Affected Landlord Claim is equal to the maximum amount the Yonge & Bloor Landlord could receive in any transaction executed in an insolvency proceeding in the circumstances;

36(3)(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value

(xii) as discussed in this Second Report, without the benefit of a third-party sale process having been conducted, any discussion of potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict. In the present circumstances where no such sale process has been conducted but, substantially all of MEI's creditors are anticipated to be unaffected by the Proposed Transaction, the Monitor has analysed the consideration to be received by the Yonge & Bloor Landlord in respect of its Affected Landlord Claim. In this regard, the Monitor's Illustrative Liquidation and Valuation Range Analysis suggests that the treatment of the Affected Landlord Claim is fair and reasonable in the context of a bankruptcy liquidation scenario and in the projected outcomes under a hypothetical CCAA sale process, other than at the higher range of enterprise values (without any bankruptcy proceedings, which as described above, could be commenced by the Applicant following a sale, ultimately limiting the Affected Landlord Claim to $520,000);

(xiii) although the Yonge & Bloor Landlord's Purchase Agreement could potentially result in fewer Excluded Locations, the Due Diligence Period would invariably be attended by increased risk, time and costs, which could ultimately reduce the market value of the business and creditor recoveries. As described above, the Yonge & Bloor Landlord's Purchase Agreement could very well create additional claims from MEI's employees; and

(xiv) further to the above, the Monitor notes that it has received correspondence from Miller Thomson LLP, counsel to an independent third-party purchaser, who has expressed an interest in conducting due diligence and submitting a bid for some or all of MEI's assets.

3.31 As described in subsection 36(4) of the CCAA, if a proposed sale or disposition is to a related party, the court may, after considering the factors referred to in subsection 36(3) of the CCAA grant the authorization only if it is satisfied that subsections 36(4)(a) and 36(4)(b) of the CCAA have been satisfied.

3.32 The Monitor regards the provisions within subsection 36(4) of the CCAA, in light of the dispute before the Court between the parties, as a significant threshold issue to the Proposed Transaction's approval. Further, the Monitor views the determination as to whether the circumstances of this case and the Applicant's efforts to ensure that the proposed related party transaction is in the best interests of MEI's stakeholders satisfy the requirement of subsection 36(4) of the CCAA as a question to be determined by the Court. To assist the Court in in its determination the Monitor has outlined certain relevant considerations in respect of subsections 36(4)(a) and 36(4)(b) of the CCAA below:

36(4)(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company

(i) no third-party sales process or other market test was conducted in or before these CCAA Proceedings;

(ii) the Monitor understands the Yonge & Bloor Landlord's position to be that the Proposed Transaction cannot be approved absent a third-party sale process;

(iii) the Monitor is aware that Canadian Courts have previously held that subsection 36(4)(a) of the CCAA may be satisfied, in appropriate circumstances, without a formal sale process having been conducted;

(iv) as described in the Second McEwan Affidavit:

(a) prior to entering into the Purchase Agreement the Applicant, in consultation with its legal advisors, considered, among other things, the alternatives available to MEI, the viability and value of MEI's business absent the involvement of Mr. McEwan, Fairfax and MEI's management and the likelihood that an independent third-party purchaser would propose a superior transaction; and

(b) the Applicant has concluded that the Proposed Transaction is in the best interests of MEI and its stakeholders. More to the point, the Applicant has also concluded that the Purchaser is the only party likely to complete a going-concern transaction that would see substantially all of MEI's assets and liabilities acquired and assumed;

(v) the Applicant's secured creditors – RBC and the Cadillac Fairview Entities – support the transaction and each believe that Mr. McEwan is well positioned to lead MEI's business going forward for the benefit of all stakeholders;

36(4)(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition

(vi) in the absence of a third-party sale process being conducted, potential enterprise values, transaction proceeds and ultimate creditor recoveries are necessarily theoretical, uncertain and difficult to predict;

(vii) in the circumstances and under the process conducted by the Applicant, the Monitor regards the consideration to be received under the Proposed Transaction as fair and reasonable and offers a significant recovery to nearly all creditors. Moreover, it would appear to be the highest consideration that could be obtained without exposing MEI's business to greater transaction risk, including the potential risks posed by diligence periods to conduct a sale process, and additional costs in the CCAA Proceedings. As discussed previously, the Proposed Transaction currently results in substantially all of MEI's creditors being unaffected and the Affected Landlord Claim receiving the amount it would be entitled to if the Yonge & Bloor Lease were to be disclaimed in a bankruptcy; and

(viii) on its face (and if executable) the Yonge & Bloor Landlord's Purchase Agreement is financially superior to the Proposed Transaction. However, the Monitor notes that the Applicant's secured creditors view the Proposed Transaction as providing more certainty and less risk for the go forward business.

4.0 CASH FLOW RESULTS RELATIVE TO FORECAST

4.1 Actual receipts and disbursements for the two-week period September 25 to October 8, 2021 (the "**Reporting Period**"), as compared to the cash flow forecast attached as Appendix "A" to the Pre-Filing Report, are summarized in the following table:

Cash Flow Results			**CAD$000's**
	Budget	**Actual**	**Variance**
Receipts	**1,320**	**1,758**	**438**
Disbursements			
Vendors	(955)	(1,145)	(190)
Employee wages	(416)	(463)	(47)
Rent	(486)	(404)	82
Other SG&A	(78)	(295)	(217)
RBC principal, lease payments & interest	(30)	(18)	12
Restructuring professional Fees	(226)	(202)	24
Net Cash Flow	**(871)**	**(769)**	**102**
Cash balance, opening	930	1,138	208
Net Cash Flow	(871)	(769)	102
Revolving Facility draws	225	20	(205)
Transaction Deposit	-	-	-
Ending Cash Balance	**284**	**389**	**105**

4.2 During the Reporting Period:

(i) total receipts were approximately $438,000 greater than forecast, attributed primarily to higher than projected sales at MEI's restaurant locations;

(ii) total disbursements were approximately $336,000 greater than forecast, attributed to: (a) increased vendor purchases to restock inventory associated with higher sales; and (b) certain timing variances that are expected to reverse in future weeks; and

(iii) overall, MEI experienced a positive net cash flow variance of approximately $105,000.

4.3 As at October 8, 2021, MEI's available liquidity was $1.1 million, comprised of: (i) $389,000 cash on hand; and (ii) $735,000 available under the Revolving Facility.

4.4 As described further above, the Applicant proposes to use the Transaction Deposit of up to $2.25 million to provide the Applicant with sufficient liquidity through the 13-week period ending December 24, 2021. The funding of the multiple draw Transaction Deposit is subject to obtaining Court approval of the Proposed Transaction and the Transaction Deposit Charge. Following Court approval, if the Purchase Agreement is terminated for any reason, any amounts drawn under the Transaction Deposit would be immediately due and payable in full by the Applicant to the Purchaser. Without access to the Transaction Deposit or alternative financing, the Applicant will not have sufficient liquidity through the requested Stay Period extension of December 17, 2021.

Yonge & Bloor Rent Reserve

4.5 As described in the First Report, a dispute has arisen between the Applicant and the Yonge & Bloor Landlord (as defined below) in respect of the Applicant's payment of October rent. Until this dispute is resolved, the Applicant agreed to fund the disputed amount to the Monitor in trust (the "**Yonge & Bloor Rent Reserve**"). The Yonge & Bloor Rent Reserve was funded and received by the Monitor on October 7, 2021, and such payment is reflected in the cash flow results for the Reporting Period above.

Pre-Filing Payments

4.6 In accordance with paragraph 7(e) of the Initial Order, the Applicant is entitled to pay, with the consent of the Monitor, amounts owing for goods and services supplied prior to the Filing Date, if in the opinion of the Applicant, such payment is necessary or desirable to avoid disruption to the operations of the business or the Applicant during the CCAA Proceedings. The Applicant set out in its materials filed in support of the Initial Order that it intends to provide payment to all trade suppliers in the normal course, subject to the terms of the Initial Order, in order to protect its ongoing business.

4.7 As of the date of this Second Report, the Applicant has issued, with the consent of the Monitor, pre-filing payments totaling approximately $800,000 to third-party suppliers in respect of goods and services provided prior to the Filing Date. Each such payment was made with the consent of the Monitor in accordance with the Initial Order.

5.0 EXTENSION OF THE STAY PERIOD

5.1 Pursuant to the Amended and Restated Initial Order, the current Stay Period expires on November 1, 2021. The Applicant is seeking an extension of the Stay Period to and including December 17, 2021.

5.2 If the Approval and Vesting Order is granted by the Court such that the Applicant obtains the proposed Transaction Deposit, the Monitor supports the Applicant's request to extend the Stay Period for the following reasons:

(i) the extension is necessary to enable the Applicant to: (a) implement the Proposed Transaction and transition MEI's business to the Purchaser; and (b) complete the CCAA Proceedings;

(ii) the Transaction Deposit to be approved pursuant to the Approval and Vesting Order is projected to provide the Applicant with sufficient liquidity through the extended Stay Period; and

(iii) the Applicant has acted, and continues to act, in good faith and with due diligence to advance the CCAA Proceedings and its restructuring efforts.

5.3 If the proposed Approval and Vesting Order is not granted, the Monitor anticipates that the Applicant will return to Court prior to the expiry of the current Stay Period to seek further relief.

6.0 ACTIVITIES OF THE MONITOR SINCE THE FIRST REPORT

6.1 In addition to those activities described above, the activities of the Monitor from the date of the First Report have also included the following:

(i) engaging in discussions with MEI and its legal counsel regarding the CCAA Proceedings, including in connection with the Monitor's review of the Proposed Transaction and associated purchase agreement, as well as MEI's ongoing discussions with its landlords;

(ii) engaging in discussions with the legal and financial advisors to the Yonge & Bloor Landlord with respect to its concerns with the Proposed Transaction, as well as with respect to the Yonge & Bloor Landlord's Purchase Agreement;

(iii) engaging in discussions with counsel for the Cadillac Fairview Entities;

(iv) responding to inquiries from creditors and other stakeholders, including with respect to certain parties who contacted the Monitor to express interest in potentially submitting a bid for some or all of MEI's assets;

(v) monitoring the Applicant's cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;

(vi) corresponding with the Applicant's finance team and considering requests for disbursements for goods or services supplied to the Applicant prior to the Filing Date in accordance with the Initial Order;

(vii) posting non-confidential materials filed with the Court to the Case Website;

(viii) with its counsel, attending at the Yonge & Bloor Landlord's cross-examination of Mr. McEwan on October 12, 2021;

(ix) responding to inquiries from creditors, stakeholders and other interested parties, including addressing questions or inquiries of parties potentially interested in acquiring certain of MEI's assets; and

(x) with the assistance of its legal counsel, preparing this Second Report.

7.0 ACTIVITIES TO COMPLETE IF THE APPROVAL AND VESTING ORDER IS GRANTED

7.1 If the proposed Approval and Vesting Order is granted, the Monitor anticipates engaging in the following activities prior to the termination of the CCAA Proceedings and the Monitor's discharge:

(i) assisting the Applicant with the implementation of the Proposed Transaction, as required;

(ii) on completion of the Proposed Transaction, delivering the Monitor's Certificate (as defined in the Approval and Vesting Order) to the Purchaser and filing the Monitor's Certificate with this Court;

(iii) administering the Cash Reserve, on behalf of the Applicant, to pay certain amounts following the completion of the Proposed Transaction, and to deliver to the Purchaser any remaining funds in the Cash Reserve in accordance with the terms of the Purchase Agreement;

(iv) pursuant to paragraph 33 of the Amended and Restated Initial Order, returning to Court to pass the fees and disbursements of the Monitor and its counsel since the Filing Date;

(v) completing statutory and administrative duties and filings;

(vi) attending to other administrative and wind-down matters; and

(vii) pending resolution of the October rent dispute between the Applicant and the Yonge & Bloor Landlord, distributing the funds held in the Yonge & Bloor Rent Reserve accordingly.

8.0 CONCLUSIONS

8.1 There is a legal dispute between the parties as to whether the Applicant has satisfied subsections 36(4)(a) and 36(4)(b) of the CCAA, and if so, whether the Applicant should still be required to pursue one or more other transactions before the Proposed Transaction can be approved. On the one hand, the Applicant takes the position that it has satisfied the statutory requirements and that no sale process of any kind is required, and on the other hand, the Yonge & Bloor Landlord takes the opposite position.

8.2 If this Court agrees with the Applicant's positions on those threshold questions, the Monitor is of the view that the Proposed Transaction and Approval and Vesting Order are fair and reasonable in the circumstances and supports the Proposed Transaction. In assessing the reasonableness of the Proposed Transaction to be approved pursuant to the Approval and Vesting Order, the Monitor considered, among other things, the following factors:

(i) with the exception of the Affected Landlord Claim, the Proposed Transaction provides that all secured and unsecured claims are paid in full or assumed;

(ii) the Proposed Transaction provides for a better recovery than is estimated to be realized in a bankruptcy;

(iii) the Proposed Transaction would appear to have a low level of transaction risk and can be closed expeditiously;

(iv) the Proposed Transaction is supported by MEI's secured creditors, RBC and the Cadillac Fairview Entities;

(v) the Proposed Transaction allows MEI's business to continue to operate as a going concern, preserving the employment of approximately 268 employees, continuing the leases for each of the continuing locations and maintaining customer and trade relationships, which is expected to provide greater economic benefit to the majority of the Applicant's stakeholders than in a liquidation or bankruptcy;

(vi) the Proposed Transaction is consistent with the rehabilitative intent of the CCAA insofar as it will preserve the majority of MEI's business, avoid a bankruptcy or liquidation, and benefit substantially all of MEI's creditors and other stakeholders;

(vii) unless the Yonge & Bloor Lease is assumed by a purchaser (which would appear to be uneconomic such that no party would do so on its existing terms other than possibly the Yonge & Bloor Landlord), the Affected Landlord Claim will receive the same or better treatment under the Proposed Transaction than it would receive in any other scenario, in the event that the Applicant disclaims the lease in a bankruptcy prior to making distributions; and

(viii) the Transaction Deposit will provide the projected required financing to the Applicant with no fees or interest charged.

8.3 If the Approval and Vesting Order is granted, the Monitor is supportive of extending the Stay Period to December 17, 2021. However, if the Approval and Vesting Order is not

granted, the Applicant is not projected to have sufficient cash to support such an extension of the Stay Period.

****

All of which is respectfully submitted to the Court this 14th day of October, 2021

Alvarez & Marsal Canada Inc., solely in its capacity as Monitor of McEwan Enterprises Inc., and not in its personal or corporate capacity

Per: 

Greg Karpel
Senior Vice-President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No.:CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

SECOND REPORT OF THE MONITOR

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Counsel for Alvarez & Marsal Canada Inc., solely in its capacity as the Monitor and not in its personal or corporate capacity

TAB 5

Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Applicant

AFFIDAVIT OF SAYAN NAVARATNAM
(sworn October 14, 2021)

I, Sayan Navaratnam, of the City of Richmond Hill, in the Province of Ontario,

MAKE OATH AND SAY:

1. I have reviewed with my counsel the application record filed by McEwan Enterprises Inc. ("**MEI**") in these *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings, including the affidavit of Dennis Mark McEwan sworn on October 1, 2021, and the First Report of Alvarez & Marsal Canada in its capacity as the Court-appointed Monitor of MEI (in such capacity, the "**Monitor**"). I have knowledge of the facts to which I depose. Where this affidavit is on information and belief, I have stated the source of that information and believe it to be true.

2. I am a businessman and have successfully started, managed, sold and acquired multiple ventures. I have experience acquiring distressed assets through Canadian insolvency proceedings, most recently in the food delivery industry.

3. Through media publicity, I learned that MEI recently commenced insolvency proceedings. In my experience, distressed assets are often marketed for sale in the context of insolvency proceedings.

4. I believe that there would be synergies between my business interests and MEI's iconic brand and reputation in the Toronto restaurant scene, so, after learning about the CCAA proceedings, I contacted my lawyers and asked them to express my interest in participating in any sale process for MEI's assets.

5. I understand from my counsel that MEI has entered into an agreement of purchase and sale (the "**Sale Agreement**") with 2864785 Ontario Corp. (the "**Purchaser**"), a new entity owned by the current shareholders of MEI, for the purchase and sale of substantially all of the assets of MEI, except for certain excluded assets (the "**Sale Transaction**"), and MEI seeks approval of the Sale Transaction at this motion. I understand that MEI does not intend to run a sale process in these CCAA proceedings and has not tried to market its assets to a third party.

6. On October 12, 2021, my counsel sent a letter to the Monitor, among other things, expressing:

(a) my interest in purchasing MEI's assets should a sale process be conducted;

(b) my interest in participating constructively in any sales process with a view to submitting a winning bid;

(c) my willingness and financial wherewithal to submit a competitive bid for some or all of MEI's assets (including the assets excluded by the Sale Agreement) for consideration that exceeds the purchase price contemplated in the Sale Agreement;

(d) that Mr. McEwan's continued involvement in the business may not be necessary as a condition to an offer submitted by our client in an open sale process; and

(e) that interim financing for MEI's operations, on the same terms as the Transaction Deposit (as defined in the Sale Agreement), and for the administration costs of a sale process, could be provided.

7. A copy of my counsel's October 12 letter to the Monitor is attached as **Exhibit** "**A**" to this affidavit.

8. I am advised by Mr. Ward of Miller Thomson that Miller Thomson, the Monitor and its counsel had a telephone call on October 13, 2021 in response to the October 12 Letter. Following that telephone call, my counsel sent another letter to the Monitor:

(a) confirming my interest in acquiring MEI's assets;

(b) expressing my willingness to provide the Monitor and MEI with whatever additional information or disclosures they may reasonably require to better establish my ability to compete successfully in a court-supervised sale process; and

(c) seeking an opportunity to address any specific outstanding concerns that the Monitor may have with respect to my desire to compete for and acquire the MEI Assets.

9. A copy of my counsel's October 13 letter to the Monitor is attached as **Exhibit** "**B**" to this affidavit.

SWORN by Sayan Navaratnam of the City of Richmond Hill, in the Province of Ontario, before me at the Town of Milton, in the Province of Ontario, on October 14, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
6F056F5F3BC8405...

A Commissioner for taking Affidavits
ASIM IQBAL

DocuSigned by:
E035A084A8D2441...

Sayan Navaratnam

TAB A

This is **Exhibit "A"** referred to in the Affidavit of **Sayan Navaratnam** and SWORN BEFORE ME via video-conference with the deponent in the City of Richmond Hill, Ontario, and the Commissioner in the Town of Milton, Ontario this 14th day of October, 2021

DocuSigned by:

6F056F5F3BC8405...

A Commissioner for Taking Affidavits
ASIM IQBAL

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October 12, 2021

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Private and Confidential

Sent via Email: zweigs@bennettjones.com

Bennett Jones LLP
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Attention: Sean Zweig

Dear Mr. Zweig:

Re: In re McEwan Enterprises Inc.

We are counsel for Sayan Navaratnam (or a nominee corporation). Our client is a liquid, serial entrepreneur with substantial resources that has successfully started, managed, sold and acquired multiple ventures, including distressed assets.

We understand that McEwan Enterprises Inc. ("**MEI**" or the "**Company**") commenced proceedings under the *Companies' Creditors Arrangement Act* (the "***CCAA***") on September 28, 2021, and Alvarez & Marsal Canada Inc. was appointed as the Monitor of MEI (in such capacity, the "**Monitor**"). We also understand that you are counsel to the Monitor.

In reviewing the court materials posted on the Monitor's website, it appears that MEI has entered into an agreement of purchase and sale (the "**Sale Agreement**") with 2864785 Ontario Corp. (the "**Purchaser**"), a new entity owned by the current shareholders of MEI, for the purchase and sale of substantially all of the assets of MEI, except for certain Excluded Assets (as defined in the Sale Agreement) (the "**Sale Transaction**").

We also understand that MEI does not intend to run a formal sale and investment solicitation process within the *CCAA* proceedings. Rather, on October 15, 2021, MEI seeks an order of the Court approving the Sale Transaction and vesting in the Purchaser all right and title in the Purchased Assets (as defined in the Sale Agreement) free and clear of all encumbrances.

We write this letter to express our client's keen interest in purchasing MEI's assets, including the Excluded Assets. MEI's restaurants and locations are a valuable and iconic brand in the Toronto restaurant scene, and our client will participate constructively in any insolvency sales process with a view to submitting a winning bid.

Given the opportunity to conduct the basic due diligence that is typically afforded to bidders in an open and competitive CCAA sale process, our client has the willingness and wherewithal to submit a competitive bid for some or all of MEI's assets (including the

Excluded Assets) for consideration that exceeds the purchase price contemplated by the Sale Agreement. Our client advises that Mr. McEwan's continued involvement may not be necessary as a condition to any transaction with our client. Our client can also provide MEI with interim financing on terms substantially the same as the Transaction Deposit (as defined in the Sale Agreement) to fund MEI's operations during the CCAA proceedings (including funding the costs of a sale process).

We would be happy to make ourselves or our client available to the Monitor to further discuss and/or demonstrate our client's interest in and wherewithal to pursue and close a transaction in short order. We will do our best to respond promptly to any inquiries or information requests the Monitor or the Company may wish to make to establish the seriousness of this approach.

Thank you for your prompt attention. We look forward to hearing from you and/or the appropriate representatives of MEI as soon as possible and we would be grateful if the Monitor would coordinate in this regard.

We expect to receive instructions to attend the hearing on October 15, 2021 and would appreciate receiving the customary calendar invite with the Zoom link. Kindly add us to the Service List as well as counsel for Mr. Navaratnam.

Yours truly,

MILLER THOMSON LLP

Per:

For:
David Ward
DW/AI

TAB B

This is **Exhibit "B"** referred to in the Affidavit of **Sayan Navaratnam** and SWORN BEFORE ME via video-conference with the deponent in the City of Richmond Hill, Ontario, and the Commissioner in the Town of Milton, Ontario this 14th day of October, 2021

DocuSigned by:

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A Commissioner for Taking Affidavits

ASIM IQBAL

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October 13, 2021

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Private and Confidential

Sent via Email: zweigs@bennettjones.com

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Attention: Sean Zweig

Dear Mr. Zweig:

Re: In re McEwan Enterprises Inc.

Thank you for the call this morning in response to our letter of October 12, 2021.

We understand that the Monitor will shortly be filing a report in respect of considerations relevant to the applicant's motion for court approval of its proposed transaction.

We accordingly take this opportunity to reiterate important points that we ask be given appropriate consideration in terms of the process going forward.

First, our client, Mr. Sayan Navaratnam, has a sincere interest in acquiring the MEI assets. The assets have significant synergies with other assets within our client's investment portfolio.

Second, in addition to such interest, our client has the motivation and the financial wherewithal to pursue and close a transaction for consideration that is greater than the Sale Agreement. We are instructed to work with you and MEI to this end. While Mr. Navaratnam's preference is also to work with Mr. McEwan, our client's interest in the MEI assets is not contingent on Mr. McEwan's continued involvement in the business.

Third, Mr. Navaratnam stands willing to provide you, the company, or the court with whatever additional information or disclosures as may be reasonably required to further or better establish his ability to compete successfully in a court-supervised sale process. As part of this exchange of information, he looks forward to an opportunity to complete usual and customary due diligence and participate constructively in a sale or investment solicitation process.

Finally, from our client's perspective, the purpose of this morning's call was to attempt to address the totality of the Monitor's concerns as it relates to the efficacy of a sale process. We believe we have done so. However, if there are any other specific concerns that the Monitor believes we have not addressed and that go to the efficacy of a sale process we would appreciate clearly understanding those concerns in advance of the hearing on Friday.

We would be grateful if the Monitor would include fair reference to these points and our related correspondence in its monitor's report.

We anticipate receiving instructions to attend the October 15 hearing to participate as appropriate, including in terms of being available to answer questions from parties.

Yours truly,

MILLER THOMSON LLP

Per:

David Ward

David Ward
DW/AI

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF SAYAN NAVARATNAM
(SWORN OCTOBER 14, 2021)

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Lawyers for Sayan Navaratnam

TAB 6

Court File No. CV-21-00669445-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

CONSENT

The undersigned, Grant Thornton Limited ("**GTL**"), hereby consents to the appointment of GTL as receiver, without security, of all the assets, undertakings and properties of McEwan Enterprises Inc. (the "**Debtor**") and all proceeds thereof, pursuant to the provisions of section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

DATED at Toronto, this 4th day of November, 2021.

GRANT THORNTON LIMITED

Name: Jonathan Krieger
Title: Senior Vice President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No. CV-21-00669445-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

CONSENT

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TAB 7

Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Applicant

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

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