

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

B E T W E E N :

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. AND
9654445 CANADA INC.**

Respondents

**MOTION RECORD
(Returnable June 1, 2023)
(Approval of Sale Procedure and Ancillary Matters)**

May 3, 2023

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Lawyers for the Court-appointed Receiver,
RSM Canada Limited

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

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

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3	Draft Order (Approval of Sale Procedure and Ancillary Matters)

TAB 1

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

B E T W E E N:

2615333 ONTARIO INC.

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9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and
9654445 CANADA INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985 c. B-3, AS AMENDED AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**NOTICE OF MOTION
(Motion returnable June 1, 2023)**

RSM CANADA LIMITED (“RSM”), in its capacity as receiver, without security (in such capacity, the “**Receiver**”) of the lands and premises municipally known as 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, Ontario (the “**Harwood Properties**”) and the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands, including all proceeds thereof (collectively, the “**Property**”), will make a motion before the Honourable Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 1, 2023, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario. Please advise if you intend to join the hearing of the motion by email to Alexander Soutter at asoutter@tgf.ca.

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

- ☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference, via Zoom, the details of which will be made available by the Court in CaseLines.

THIS MOTION IS FOR:

1. An order, substantially in the form attached at Tab 3 of the Motion Record (the “**Draft Order**”), that, among other things:
 - (a) approves a sale procedure in respect of the Property (the “**Sale Procedure**”) substantially in the form attached as Schedule “B” to the Draft Order, that permits the Receiver to solicit and identify bids for the Property;
 - (b) authorizes the Receiver to enter into an agreement with Avison Young Commercial Real Estate Services, LP (the “**Broker**”) for the purpose of listing the Property for sale (the “**Listing Agreement**”);
 - (c) approves the First Report of the Receiver dated May 14, 2021 (the “**First Report**”), the Second Report of the Receiver dated May 2, 2023 (the “**Second Report**”), and the activities, decisions and conduct of the Receiver set out therein;
 - (d) permits the sealing of Confidential Appendices “1” and “2” to the Second Report; and

(e) increases the Receiver's Borrowings Charge (as defined in the Order of Justice Cavanagh dated April 15, 2021 (the "**Appointment Order**")) from \$500,000 to \$1,500,000 and authorizes the Receiver to borrow up to an additional \$1,000,000 in principal for the purpose of funding the exercise of the powers and duties conferred upon the Receiver in this proceeding.

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

THE GROUNDS FOR THIS MOTION ARE:

3. The Harwood Properties are real property located in Ajax, Ontario, across the street from the City Hall for the Town of Ajax (the "**Town**"). The Harwood Properties consist of a strip mall and parking lot.

4. Certain Harwood Properties are subject to a development agreement (the "**Development Agreement**") between Lemine Real Estate Consulting Inc. ("**Lemine**") and the Town. Lemine is a developer and an affiliate of the Respondents. The Respondents are single-purpose corporations that own the various parcels that comprise the Harwood Properties.

5. One feature of the Development Agreement was that, if Lemine defaulted under the Development Agreement, the Town would have the right to repurchase the Harwood Properties at a certain price.

6. Prior to this proceeding, the Town commenced an action and alleged that Lemine did default under the Development Agreement. The Town was successful in obtaining a

finding that Lemine breached the Development Agreement. That result was upheld by the Ontario Court of Appeal.

7. Following the Court of Appeal's decision, the Town commenced another proceeding for a determination of the price it was to pay to repurchase the Harwood Properties (the "**Town Repurchase Price**"). The amount of the Town Repurchase Price was disputed in that proceeding.
8. Lemine had also defaulted in respect of its obligations to the Applicant, a secured creditor. The Applicant commenced this proceeding for an order appointing the Receiver.
9. Pursuant to the Appointment Order, RSM was appointed as receiver, without security, over the Property.
10. The Appointment Order was made with the consent of the Applicant and the Town, over the objections of the Respondents and others.

The Town's Rights Under the Appointment Order

11. The Appointment Order provides, among other things, that the Receiver may:
 - (a) market and negotiate the terms and conditions of sale of the Property, provided that such terms and conditions are satisfactory to the Town, unless otherwise ordered by the Court; and
 - (b) sell, convey, transfer, lease or assign the Property with the approval of the Court, in consultation with the Town.
12. The Appointment Order also provides that, unless otherwise agreed to by the Town and the applicable purchaser or transferee (a "**Prospective Purchaser**"), none of the Harwood

Properties subject to the Development Agreement could be sold, conveyed, transferred, leased or assigned by the Receiver without the Prospective Purchaser agreeing to enter into a development agreement (a “**New Development Agreement**”) with the Town, on mutually agreeable terms, which include a “Right of Repurchase” in favour of the Town. Such right was to be “substantively similar to such right provided for in the Development Agreement”.

13. There was no provision in the Appointment Order that the New Development Agreement would be on the *same* terms as the Development Agreement, or that the business terms of the New Development Agreement were to be the same or similar.

A Draft New Development Agreement was Necessary

14. It is the Receiver’s view that too much uncertainty would have resulted had it obtained Court approval to market the Harwood Properties for sale without being able to present to the market a draft of a New Development Agreement acceptable to the Town (while still being subject to further negotiation between the Town and the applicable purchaser). That uncertainty would have likely depressed the number of bids for the Property and their value. This would have prejudiced the Respondents’ secured creditors.
15. The Receiver therefore made efforts to negotiate a draft of a New Development Agreement with the Town. These efforts were significant and time consuming because, among other reasons, the Receiver was attempting to balance two competing interests – those of the Town and those of the Respondents’ mortgagees.

The Competing Interests of the Town and the Respondents' Creditors

16. The Town's interests include ensuring that it enters into a New Development Agreement with a reputable, capable developer who will re-develop the Harwood Properties. Pursuant to the Appointment Order, the New Development Agreement is to include a "Right of Repurchase" that is "substantively similar to such right provided for in the Development Agreement".
17. The Town Repurchase Price was set pursuant to the Development Agreement, an agreement that was entered into 10 years ago. In the Receiver's view, which is not believed to be controversial, the Town Repurchase Price was an amount significantly below the current market price for the Harwood Properties. Had the Receiver gone to market with a New Development Agreement that contained the same language as the Town's Right of Repurchase, the Town Repurchase Price would have effectively imposed a price ceiling on the Harwood Properties.
18. The interests of the Respondents' creditors include maximizing the value of the Property. Their interests would have been negatively affected by a price ceiling on the Harwood Properties.

The Proposed Draft Development Agreement Achieves a Balance

19. After significant negotiations with the Town and consultations with stakeholders, the Receiver and the Town have prepared a draft New Development Agreement that the Receiver believes balances the stakeholders' interests and avoids effectively imposing a price ceiling. That draft New Development Agreement is appended to the proposed Sale Procedure.

20. Generally, and as more particularly described in the draft New Development Agreement, if the successful purchaser under the Sale Procedure fails to commence construction within 150 days from the date of the sale of the lands from the Receiver to such purchaser, the Town will have the right to require the purchaser to convey the Property to the Receiver. During that period, the purchase price paid will be held in escrow by the Receiver, less an amount equal to the costs of the Sale Procedure. If the Town exercises the above right, the Receiver would thereafter re-market the Property and the balance of the purchase price would be returned to the purchaser.
21. The terms of the draft New Development Agreement can still be negotiated between the Town and a prospective purchaser.

The Sale Procedure

22. The Receiver retained the Broker to assist in the development and execution of the Sale Procedure and related marketing strategy. The Broker was selected for their strength in selling and marketing properties of this nature.
23. In consultation with the Broker, the Receiver developed the Sale Procedure, which is intended to canvass the market for the opportunity to acquire the Property.
24. The proposed Sale Procedure would involve (the following capitalized terms have the meaning given to them in the Sale Procedure):
 - (a) identifying Potential Bidders and providing them with certain Confidential Information;
 - (b) Potential Bidders submitting Qualified Bids by the Bid Deadline; and

- (c) identifying whether Potential Bidders that submitted Qualified Bids are Qualified Bidders and negotiating with such Qualified Bidders (if more than one) to determine the Successful Bid and Back-up Bid, if any.
25. Once the Receiver identifies the Successful Bid, the Receiver will seek Court approval of, and authority to consummate, the Successful Bid by the Outside Date.
26. The timeline for the proposed Sale Procedure was designed, in consultation with the Broker, to efficiently identify the highest and best offer for the Property. The proposed Sale Procedure is expected to take 16 weeks from the date that the order sought on this motion is granted. Certain milestone dates in the Sale Procedure are summarized in the following table.

Summary of Proposed Sale Process	
Pre-Marketing <i>Execute Listing Agreement</i> <i>Pre-marketing due diligence</i> <ul style="list-style-type: none">• Review of available documents <i>Preliminary discussions</i> <ul style="list-style-type: none">• Pre-market conversations with targeted purchasers <i>Finalize marketing material</i> <ul style="list-style-type: none">• Prepare marketing materials, teaser brochure and NDA• Online data room• Finalization of due diligence material• <i>List on MLS</i>	Weeks 0-5
Marketing <i>3-Staged marketing process</i> <ul style="list-style-type: none">• Stage 1: Personal introduction to target prospects• Stage 2: Mass Marketing introduction• Stage 3: Detailed information to qualified prospects <i>Bid Deadline: August 24, 2023 (12 weeks)</i>	Weeks 5-12

Summary of Proposed Sale Process	
<p>Negotiation/Closing</p> <p><i>Negotiating</i></p> <ul style="list-style-type: none">• Review and summarize all offers• Set final negotiation strategy• Discussion between the Town of Ajax and certain Qualified Bidders selected by the Receiver regarding a form of New Development Agreement acceptable to the Town, the Qualified Bidder and the Receiver• Select Successful Bid and potential Back-Up Bid• Finalize APS with Successful Bidder including any due diligence period <p><i>Closing</i> (including Court approval of proposed sale, etc.)</p> <ul style="list-style-type: none">• Motion for approval of the sale may extend past 16 weeks depending on terms of the Successful Bid, Court availability, and the time necessary for discussions between the Town and the Qualified Bidders selected by the Receiver <p>Closing not expected to be later than 30 days following approval of the Successful Bid</p>	<p>Weeks 13-16+</p>

Fair and Reasonable Process

27. The Receiver is of the view that the proposed Sale Procedure is fair and reasonable in the circumstances:

- (a) the timelines and marketing process have been developed in consultation with the Broker to provide maximum exposure of the Property to the market, balanced with the need to have an efficient and timely process in light of the ongoing costs of this proceeding; and
- (b) the proposed Sale Procedure is clear and transparent, while also providing flexibility for the Receiver to return to Court for further directions or to take further steps if doing so becomes appropriate.

28. The Receiver is of the view that the proposed Sale Procedure reflects the best path to identify the highest and best offer in the circumstances and to maximize the value of the Property for the benefit of all stakeholders.

Sealing Order

29. Confidential Appendices “1” and “2” to the Second Report contain commercially sensitive information, such as views on the market value of the Harwood Properties, and a summary of salient points of each of the listing proposals presented to the Receiver.
30. The Receiver requests that an order be made sealing such information from the public record, until further Order of the Court.

Increase in the Receiver’s Borrowings Charge Limit

31. The Receiver has exhausted the current funding available under the Receiver’s Borrowings Charge. In order to carry out the Sale Procedure, the Receiver seeks an order increasing the borrowing limit set out in paragraph 20 of the Appointment Order from \$500,000 to \$1,500,000. This additional funding will only be used if necessary.

Approval of Receiver’s Activities

32. The Receiver has acted reasonably, prudently, and not arbitrarily, in carrying out its activities, and has discharged its duties and responsibilities in accordance with the terms of the Appointment Order.
33. The Receiver relies on:
- (a) the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, including s. 243 thereof;
 - (b) the *Courts of Justice Act*, RSO 1990, c C.43, as amended, including s.101 thereof;

- (c) the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended, including Rules 2.03, 3.02 and 37 thereof;
- (d) the Appointment Order and the equitable and inherent jurisdiction of this Court;
and
- (e) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the First Report;
- (b) the Second Report; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

May 3, 2023

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Lawyers for the Court-appointed Receiver,
RSM Canada Limited

TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

2615333 ONTARIO INC.

- and - **CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., et al**

Applicant

Respondents

Court File No. CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

NOTICE OF MOTION

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(as at May 2, 2023)

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TAB 2

Court File No.: CV-20-00651299-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

2615333 ONTARIO INC.

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Respondents

SECOND REPORT OF THE RECEIVER
May 2, 2023

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APPENDICES

Appendix “A” – Appointment Order dated April 15, 2021

Appendix “B” – Sale Procedure

Appendix “C” – Development Agreement and amendments

Appendix “D” – First Report of the Receiver (without appendices) dated May 14, 2021

Appendix “E” – Listing Agreement (without schedule)

Appendix “F” – Interim R&D

CONFIDENTIAL APPENDICES (*to be provided to the Court subject to a request for sealing order*)

Confidential Appendix “1” – Summary of salient points of each of the listing proposals received

Confidential Appendix “2” – Schedule “A” to the Listing Agreement

I. INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”), without security, of certain lands and premises owned by the Respondents, identified in Schedule “A” hereto (the “**Harwood Properties**”), and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”**.
2. Capitalized terms used in this report (the “**Second Report**”) and not defined herein are as defined in the Appointment Order or in the first report of the Receiver dated May 14, 2021 (the “**First Report**”).
3. The purpose of this Second Report is to:
 - (a) report to the Court on the activities of the Receiver from February 2022 to the date of this Second Report, including the Receiver’s negotiations with the Town of Ajax (the “**Town**”) regarding a New Development Agreement (as defined below);
 - (b) seek approval of a sale procedure in respect of the Property (the “**Sale Procedure**”), a copy of which is attached at **Appendix “B”**;
 - (c) authorizing the Receiver to enter into an agreement with Avison-Young Commercial Real Estate Services, LP (“**Avison Young**”) for the purpose of listing the Property for sale (the “**Listing Agreement**”); and

- (d) seek an order: (i) approving of the Receiver's activities and conduct as set out in the First Report and in this Second Report; (ii) increasing the Receiver's Borrowings Charge limit from \$500,000.00 to \$1,500,000.00; (iii) sealing the Receiver's summary of salient points of each of the listing proposals received by the Receiver, and Schedule "A" to the Listing Agreement; and (iv) approving the Interim R&D (as defined herein).

II. TERMS OF REFERENCE

4. In preparing this Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver 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 pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
5. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

III. BACKGROUND

The Harwood Properties

6. The Harwood Properties are parcels of real property located in Ajax, Ontario, across the street from the Town City Hall. The Harwood Properties consist of part of a strip mall and parking lot. The Respondents own the Harwood Properties.
7. The Harwood Properties are not identically encumbered. Set out below, listed in order of registration,¹ is a summary of the charges registered on title to the Harwood Properties by the Applicant 2615333 Ontario Inc. (“**261**”), the Town of Ajax (the “**Town**”), My Capital Club Inc. (“**MCC**”), Scougall Management (1987) Limited (“**Scougall**”), Lawco Limited (“**Lawco**”, which took an assignment of the mortgage held by Ajax Master Holdings Inc. (“**AMHI**”)) and Investecs Developments Inc. (“**Investecs**”):

Harwood Properties by municipal address on Harwood Ave South						
134	148	152	184-188	214	224	116
261 (\$2.05MM)	261 (\$2.05MM)	261 (\$2.05MM)	Town (\$1.422MM)	261 (\$2.05MM)	261 (\$2.05MM)	261 (\$0.5MM)
261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	MCC (\$1.3MM)
MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	Lawco, formerly AMHI (\$18.5MM)
Scougall (\$2MM)	Scougall (\$2MM)	Scougall (\$2MM)	Lawco (\$18.5MM)	Lawco (\$18.5MM)	Lawco (\$18.5MM)	261 (\$4MM)
			261 (\$4MM)	261 (\$4MM)	261 (\$4MM)	Scougall (\$2MM)
			Scougall (\$2MM)	Scougall (\$2MM)	Scougall (\$2MM)	Investecs (\$1MM)
			Investecs (\$1MM)	Investecs (\$1MM)	Investecs (\$1MM)	

¹ For greater certainty, this summary does not include any construction lien or other encumbrance registered on title to the Harwood Properties, or execution registered in the appropriate Land Registry Office against the Respondent that owns the applicable Harwood Property.

The Development Agreement

8. In 2013, the Town entered into a development agreement with a developer regarding the Harwood Property municipally known as 184-188 Harwood Ave South.² The developer's interest in that development agreement (as amended, the "**Development Agreement**") was later assigned to Lemine Real Estate Consulting Inc. ("**Lemine**"). Lemine is an affiliate of the Respondents. A copy of the Development Agreement and its amendments are collectively attached as **Appendix "C"**.
9. One feature of the Development Agreement was that, if Lemine defaulted under the Development Agreement, the Town would have the right to repurchase the Harwood Properties at a price determined pursuant to the terms and conditions of the Development Agreement (the "**Town Repurchase Price**").

Litigation Prior to the Appointment Order

10. Prior to this proceeding, the Town commenced an action and alleged that Lemine defaulted under the Development Agreement. The Town was successful in obtaining a finding that Lemine breached the Development Agreement.³ That result was upheld by the Ontario Court of Appeal.⁴
11. Following the Court of Appeal's decision, the Town commenced another proceeding for a determination of the Town Repurchase Price, which was disputed in that proceeding.

² The development agreement does refer to other Harwood Properties which were acquired by the developer and/or its assignee after the development agreement was entered into.

³ *Central Park Ajax Developments Phase 1 Inc v Ajax (Town)*, 2018 ONSC 5769.

⁴ *Central Park Ajax Developments Phase 1 Inc v Ajax (Town)*, 2019 ONCA 793.

The Appointment Order

12. The Respondents had also defaulted under their obligations to 261 in respect of 261's charges over the Harwood Properties. 261 therefore commenced this application for an order appointing the Receiver. The application was heard on February 11, 2021 (the "**Hearing Date**"). The Appointment Order was made with the consent of the Town over the objections of the Respondents.
13. The Appointment Order provides, among other things, that the Receiver may:
 - (a) market and negotiate the terms and conditions of sale of the Property, provided that such terms and conditions are satisfactory to the Town, unless otherwise ordered by the Court; and
 - (b) sell, convey, transfer, lease or assign the Property with the approval of the Court, in consultation with the Town.
14. The Appointment Order also provides that, unless otherwise agreed to by the Town and the applicable purchaser or transferee, none of the Harwood Properties subject to the Development Agreement could be sold, conveyed, transferred, leased or assigned by the Receiver without the Prospective Purchaser agreeing to enter into a development agreement (a "**New Development Agreement**") with the Town, on mutually agreeable terms, including a "Right of Repurchase" in favour of the Town. Such right was to be "substantively similar to such right provided for in the Development Agreement".
15. There was no provision in the Appointment Order that the New Development Agreement would be on the *same* terms as the Development Agreement, or that the business terms of the New Development Agreement were to be the same or similar.

16. Rather, the New Development Agreement must be on mutually agreeable terms between the Town and the applicable purchaser. The Town has confirmed to the Receiver that it will not enter into a New Development Agreement on the same terms as the Development Agreement.

State of the Harwood Properties upon the Receiver's Appointment

17. As described in the First Report, as at the Hearing Date the Receiver understood that the Harwood Properties were all vacant. That was not the case. After the Appointment Order was made, the Receiver attended at the Property and discovered that, while some units were vacant, there were several tenanted commercial units at the Harwood Properties. As further detailed in the First Report, the Vacant Units were dilapidated and showed signs of damage. They were not properly secured and showed signs of having been attended by unknown persons for the purpose of seeking shelter or to vandalize the vacant units. A copy of the First Report (without appendices) is attached hereto as **Appendix "D"**.

IV. APPEAL OF THE RECEIVERSHIP ORDER

18. On April 26, 2021, the Respondents served a Notice of Appeal pursuant to which they sought to appeal the Appointment Order.
19. In May 2021, the Receiver and 261 jointly brought a motion to this Court for an order permitting the Receiver to take certain conservatory measures (eg. to obtain adequate insurance and to secure the Vacant Units and prevent unauthorized access to them) given the state of the Harwood Properties. That motion was dismissed.

20. The Respondents' appeal was scheduled to be heard by the Court of Appeal on Monday, February 28, 2022. On Thursday, February 24, 2022, the Respondents advised the Court of Appeal that the appeal was settled on a without costs basis.
21. Given the Respondents' appeal, the Receiver took no steps in respect of the Property (other than bringing the motion for an order permitting conservatory measures) between April 26, 2021, and February 23, 2022. On February 24, 2022, the Receiver resumed its activities pursuant to the Appointment Order.

V. ACTIVITIES OF THE RECEIVER

22. When the Receiver resumed its activities, it focussed primarily on: (a) negotiating with the Town regarding a draft New Development Agreement; and (b) securing the Harwood Properties.

Negotiations Regarding a Draft New Development Agreement

23. It is the Receiver's view that too much uncertainty would have resulted if the Receiver had obtained Court approval to market the Harwood Properties for sale without being able to present to the market a draft of a New Development Agreement that was acceptable to the Town (while still being subject to further negotiation between the Town and the applicable purchaser). That uncertainty would have likely depressed the number of bids for the Property and their value. This would have prejudiced the Respondents' secured creditors.
24. The Receiver therefore made efforts to negotiate a draft of a New Development Agreement with the Town. These efforts were significant and time consuming because, among other reasons, the Receiver was attempting to balance two competing interests – those of the Town and those of the Respondents' mortgagees.

Competing Interests of the Town and the Respondents' Creditors

25. The Town's interests include ensuring that it enters into a New Development Agreement with a reputable, capable developer who will re-develop the Harwood Properties. Pursuant to the Appointment Order, the New Development Agreement is to include a "Right of Repurchase" that is "substantively similar to such right provided for in the Development Agreement".
26. The Town Repurchase Price was set pursuant to the Development Agreement, an agreement that was entered into 10 years ago. In the Receiver's view, which is not believed to be controversial, the Town Repurchase Price was an amount significantly below the current market price for the Harwood Properties. Had the Receiver gone to market with a New Development Agreement that contained the same language as the Town's Right of Repurchase, the Town Repurchase Price would have effectively imposed a price ceiling on the Harwood Properties.
27. The interests of the Respondents' creditors include maximizing the value of the Property. The creditors' interests would have been negatively affected by a price ceiling on the Harwood Properties.
28. As described above, the without prejudice negotiation between the Receiver and the Town regarding the draft New Development Agreement was extensive. Several potential development agreement models were considered and rejected by both parties, including after consultation with 261. Given that the Town is a municipality it also took time, sometimes weeks or more, for the Town to review and comment on proposed development agreement terms. For example,

- (a) discussions began in early March 2022. The Town took until early June 2022 before it sent a written draft New Development Agreement, on terms that it would have accepted, to the Receiver for its review;
- (b) as discussed below, the Receiver understands that, in or around July 2022, the Town began prioritizing discussions regarding a draft New Development Agreement with a potential stalking horse bidder, rather than with the Receiver; and
- (c) after such discussions terminated, summer holidays of Town representatives stalled further discussions with the Receiver for a time.

29. Given,

- (a) the requirement in the Appointment Order that a purchaser of the Harwood Properties enter into a New Development Agreement on terms that are mutually agreeable between that purchaser and the Town, and
- (b) the Receiver's view that the uncertainty associated with going to market without including in the Sale Procedure a draft New Development Agreement that the Town has confirmed it would be willing to accept, and the likelihood that the market price for the Harwood Properties would be depressed as a result,

the Receiver was, and remains, of the view that continuing the negotiations with the Town in order to arrive at an acceptable draft New Development Agreement was the most appropriate course of action, despite being time consuming.

The Proposed New Development Agreement Achieves a Balance

30. After this significant negotiation with the Town, and in consultation with stakeholders, the Receiver and the Town have prepared a draft New Development Agreement that the

Receiver believes balances the stakeholders' interests and avoids effectively imposing a price ceiling. That draft New Development Agreement is appended to the proposed Sale Procedure.

31. Generally, and as more particularly described in the draft New Development Agreement, subject to any amendments agreed to by the prospective purchaser, the Town and the Receiver, if the successful purchaser under the Sale Procedure fails to commence construction within 150 days from the date of the sale from the Receiver to such purchaser, the Town will have the right to require the purchaser to convey the Property to the Receiver. During that period, the purchase price paid will be held in escrow by the Receiver, less an amount equal to the costs of the Sale Procedure. If the Town exercises the above right, the Receiver would thereafter re-market the Property and the balance of the purchase price would be returned to the purchaser.
32. The terms of the draft New Development Agreement can still be negotiated between the Town and a prospective purchaser.

Securing the Harwood Properties

33. Throughout the Receiver's negotiations with the Town, but particularly around the time when the Receiver resumed activities pursuant to the Appointment Order, the Receiver took steps to secure the Harwood Properties. For example, the Receiver:
 - (a) engaged Richmond Advisory Services Inc. ("RAS") to provide certain property management services;
 - (b) attended at the Harwood Properties with RAS in late February 2022 to, among other things, (i) notify the tenants of the Receiver's appointment, (ii) establish the present

condition of the Harwood Properties and to identify any maintenance needs or health and safety concerns, and (iii) meet with Ms. Hughes, a tenant who advised that she was the Respondents' *ad hoc* property manager;

- (c) identified several maintenance issues, including (i) deficiencies in the HVAC and electrical systems, (ii) a broken boiler used to heat tenant spaces during the winter, and (iii) damage to the Vacant Units, including broken windows and doors that appeared to permit access to such units by unauthorized persons;
- (d) responded to tenant complaints regarding people who appeared to be homeless blocking the entrances to their businesses by contacting local police; and
- (e) retained Orkin Canada Ltd. to address issues with rats and other pests at one of the units at the Harwood Properties.

Insurance

- 34. Once the Respondents' appeal was withdrawn, the Receiver arranged for commercial general liability insurance for the Harwood Properties, which came into effect on March 21, 2022. Due to the Harwood Properties' condition, no property insurance coverage was available to the Receiver.

Books and Records

- 35. On March 9, 2022, the Receiver obtained access to an online drive containing the Respondents' books and records, including:
 - (a) copies of all bank statements for the period January 1, 2020 through February 24, 2022;
 - (b) a digital copy of the Company's accounting records (i.e. Quickbooks file);

- (c) copies of any contracts entered into by the Borrower, including sales agreements, leases, service agreements, contractor agreements, etc.; and
- (d) information relating to the Properties (i.e. environmental reports, blueprints and architectural drawings, vehicle registrations, etc.).

Property Taxes

36. The Receiver is advised by the Town that property taxes payable in connection with the Harwood Properties are past due. As at April 30, 2023, unpaid property taxes in respect of the Harwood Properties will total approximately \$1.349 million. As the Receiver does not have funds with which to pay the property taxes, the Receiver intends to address any outstanding property taxes at the time of the sale of the Harwood Properties.

Other Activities

37. Since its appointment, the Receiver has also,
- (a) registered a copy of the Appointment Order against title to the Property;
 - (b) established a website for these Receivership proceedings with the following URL link: <http://www.rsmcanada.com/harwood-avenue-ajax>;
 - (c) requested and obtained information from certain secured creditors and other stakeholders relating to the Property;
 - (d) retained independent counsel to provide an opinion regarding the validity and enforceability of the charges in favour of 261 registered on title to the Harwood Properties;
 - (e) engaged in a review of the mortgage held by Lawco (formerly AMHI), which numerous stakeholders have suggested is invalid. This review is ongoing;

- (f) issued the notices required pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act* to known creditors of the Property; and
- (g) collected rent from the tenants at the Harwood Properties, which in the aggregate is approximately \$10,215 per month. The Receiver has also addressed issues that have arisen in relation to tenants at the Harwood Properties, including incidents involving fire code violations, pest control issues and a shooting at the Harwood Properties, all of which relate to the unit tenanted by DAM Foods.

VI. RESPONDENTS' ATTEMPT TO DEAL WITH THE PROPERTY

- 38. In late July 2022, the Receiver received correspondence from counsel to a prospective purchaser claiming that the Respondents had purportedly entered into an agreement of purchase and sale with respect to the Harwood Properties on February 25, 2022, the day after their appeal was withdrawn.
- 39. The Receiver reviewed this purported agreement and determined that it was not acceptable to the Receiver for a number of reasons, including, among other things, the prospective purchaser was (i) not able to demonstrate its development experience, and (ii) appeared to be related to the Respondents. The Town has advised the Receiver that it would not, and will not, support a sale to any party with insufficient development experience, or any party with ties to the Respondents.
- 40. The Receiver advised the prospective purchaser that the Respondents lacked the capacity to enter into an agreement to sell the Harwood Properties and that the Receiver would seek Court approval of its Sale Procedure.

41. As detailed below, the Receiver held further discussions with this prospective purchaser regarding the potential for them to submit a stalking horse offer for the Harwood Properties, subject to providing satisfactory evidence regarding the prospective purchaser's development experience and relationship to the Respondents.

VII. PROPOSED SALE PROCEDURE

42. The Appointment Order authorizes the Receiver to market the Harwood Properties for sale, including advertising and soliciting offers in respect of the Harwood Properties.
43. In order to assist the Receiver in ascertaining the market value of the Harwood Properties and determining the best sale strategy, the Receiver:
- (a) engaged Colliers International Realty Advisors Inc. to provide an appraisal of the Harwood Properties, which has been provided to the Receiver;
 - (b) entered into discussions with three (3) parties regarding their interest in submitting a stalking horse offer for the Harwood Properties; and
 - (c) sought listing proposals from each of CBRE Limited ("CBRE"), Avison-Young, Jones Lang LaSalle, Cushman & Wakefield ULC and Colliers Inc. ("Colliers").

Stalking Horse Bids

44. Since the Receiver's appointment, the Receiver has been approached by three separate parties all of which expressed an interest in submitting a stalking horse offer for the Harwood Properties.
45. The Receiver and its counsel spent a significant amount of time attempting to come to an acceptable stalking horse agreement with these parties. However, the Receiver ultimately

determined that the proposed stalking horse offers would not be acceptable, primarily for one or more of the following reasons:

- (a) the potential stalking horse bidder was unable to demonstrate their ability to fund the transaction to the Receiver's satisfaction;
- (b) the potential stalking horse bidder was not an experienced developer, and did not have a commitment from a development partner; and/or
- (c) the potential stalking horse bidder was related to the Respondents, and therefore would not be acceptable to the Town.

46. One of the potential stalking horse bidders engaged the Town in discussions regarding a potentially acceptable New Development Agreement. During this time, the Town focused its efforts on negotiating a New Development Agreement with the potential stalking horse bidder, which resulted in further delays to the Receiver and the Town agreeing to a form of draft New Development Agreement that could form part of the Sale Procedure.
47. By September 2022, the Receiver notified the three potential stalking horse bidders that the Receiver would not be proceeding with a stalking horse process. The Receiver advised these parties that they would be welcome to participate and submit an offer for the Harwood Properties in the Sale Procedure.

Listing Proposals

48. The Receiver received listing proposals from CBRE, Colliers and Avison Young. Attached as **Confidential Appendix "1"** is a summary of salient points of each of the listing proposals received. The Receiver seeks a sealing order with respect to this document given that views on the market value of the Harwood Properties are expressed therein.

49. After reviewing the proposals submitted, including information provided by each of the realtors on their views on the Harwood Properties' estimated realizable value, their proposed marketing strategy and compensation structure, the Receiver, with the concurrence of 261, proposes to enter into a listing agreement with Avison Young to market the Harwood Properties for sale.
50. A copy of the Listing Agreement (without schedule) the Receiver proposes to sign is attached as **Appendix "E"**. The schedule to the Listing Agreement is attached as **Confidential Appendix "2"**. The Receiver is seeking an Order authorizing it to enter into the Listing Agreement.

Proposed Sale Procedure

51. The proposed Sale Procedure is summarized below, and may be subject to revision by the Receiver in accordance with the terms of the Sale Procedure:

Summary of Proposed Sale Procedure	
Pre-Marketing <i>Execute listing agreement</i> <i>Pre-marketing due diligence</i> <ul style="list-style-type: none"> • Review of available documents <i>Preliminary discussions</i> <ul style="list-style-type: none"> • Pre-market conversations with targeted purchasers <i>Finalize marketing material</i> <ul style="list-style-type: none"> • Prepare marketing materials, teaser brochure and NDA • Online data room • Finalization of due diligence material <i>List on MLS</i>	Weeks 0-5
Marketing <i>3-Staged marketing process</i> <ul style="list-style-type: none"> • Stage 1: Personal introduction to target prospects • Stage 2: Mass Marketing introduction • Stage 3: Detailed information to qualified prospects 	Weeks 5-12

<i>Bid Deadline: August 24, 2023 (12 weeks)</i>	
<p>Negotiation/Closing</p> <p><i>Negotiating</i></p> <ul style="list-style-type: none"> • Review and summarize all offers • Set final negotiation strategy • Discussion between the Town of Ajax and certain Qualified Bidders selected by the Receiver regarding a form of New Development Agreement acceptable to the Town, the Qualified Bidder and the Receiver • Select Successful Bid and potential Back-Up Bid • Finalize APS with Successful Bidder including any due diligence period <p><i>Closing</i> (including Court approval of proposed sale, etc.)</p> <ul style="list-style-type: none"> • Motion for approval of the sale may extend past 16 weeks depending on terms of the Successful Bid, Court availability, and the time necessary for discussions between the Town and the Qualified Bidders selected by the Receiver • Closing not expected to be later than 30 days following approval of the Successful Bid 	<p>Weeks 13-16+</p>

52. Additional aspects of the proposed Sale Procedure include:

- (a) the Harwood Properties will be marketed on an “as is, where is” basis;
- (b) the Harwood Properties will be listed “unpriced”;
- (c) the Harwood Properties will be listed on MLS;
- (d) the Receiver will have the right to reject any and all offers, including the highest offer; and
- (e) any transaction by the Receiver for the Harwood Properties will be subject to Court approval.

53. The Receiver will provide information on its marketing efforts at the time that the Receiver seeks the approval of the Court for any agreement of purchase and sale that the Receiver proposes to enter.

VIII. RECEIVER'S CERTIFICATES AND INTERIM R&D

54. The Receiver's Interim Statement of Receipts and Disbursements (the "**Interim R&D**") for the period April 15, 2021 to April 15, 2023 is attached as **Appendix "F"** to this Second Report. As set out in the Interim R&D, the Receiver's cash receipts were \$611,719, and cash disbursements were \$550,711, resulting in a net cash balance of \$61,008.
55. Pursuant to paragraph 20 of the Appointment Order, the Receiver is authorized to borrow a maximum amount of \$500,000. Given the ongoing professional fees of the Receiver and its counsel and the costs associated with continuing to maintain and secure the Harwood Properties, the borrowing limit of \$500,000 is not sufficient for the Receiver to carry out its mandate.
56. Accordingly, the Receiver respectfully requests that the borrowing limit in paragraph 20 of the Appointment Order be increased to \$1,500,000. While the Receiver is uncertain of the amount of funds it will need to borrow, the Receiver is of the view that a limit of \$1,500,000 will avoid the need for further court applications requesting an increase to the borrowing limit.

IX. CONCLUSIONS

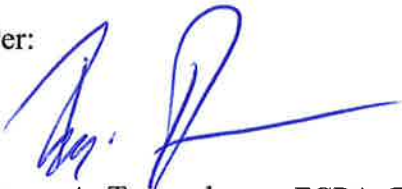
57. The Receiver respectfully requests that the Court make an Order:
- (a) approving the Second Report and the Receiver's conduct and activities set out herein;

- (b) approving the First Report and the Receiver's conduct and activities set out therein;
- (c) increasing the Receiver's Borrowings Charge limit to \$1,500,000.00;
- (d) approving the Interim R&D;
- (e) approving the Sale Procedure;
- (f) authorizing the Receiver to enter into the Listing Agreement; and
- (g) sealing the Receiver's summary of salient points of each of the listing proposals received by the Receiver, and Schedule "A" to the Listing Agreement, attached as **Confidential Appendices "1" and "2"**, respectively.

All of which is respectfully submitted to this Court as of this 2nd day of May, 2023.

RSM Canada Limited, in its capacity as Court-appointed Receiver of the Property listed on Schedule "A" hereto, and not in its personal or corporate capacity

Per:



Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Schedule "A"

PIN:26459-0050(LT) -PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN: 26459-0046(LT)- LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN: 26459-0045(LT)- LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN: 26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX-184/188 HARWOOD

PIN: 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN: 26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN: 26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

APPENDIX C

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 15TH
MR. JUSTICE CAVANAGH)	
)	DAY OF APRIL, 2021

B E T W E E N:

2615333 ONTARIO INC.

Applicant

and

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. AND
9654445 CANADA INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE
***ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver (in such capacities, the "Receiver"), without security, over the lands and premises described as:

PIN:26459-0050(LT) -PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134
HARWOOD

PIN: 26459-0046(LT)- LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN 26459-0045(LT)- LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN:26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX- 184/188 HARWOOD

PIN: 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN:26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

(collectively the “**Harwood Properties**”) owned by Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc., 9654372 Canada Inc., 9617680 Canada Inc., and 9654445 Canada Inc. (the “**Debtors**”) was heard February 11, 2021 via videoconference at Toronto, Ontario.

ON READING the Application Record of the Applicant, the Responding Record of the Respondents, the Application Record of the Responding Party the Corporation of the Town of Ajax, the Supplementary Responding Record of the Respondents, the Affidavits of Baozheng Zheng and Allen Rutman on behalf of the Responding Party Ajax Master Holdings Inc., and the Reply Record of the Applicant and on hearing the submissions of counsel for the Applicant, the Respondents, The Corporation of the Town of Ajax, Ajax Master Holdings Inc. and Investecs Developments Inc., and on reading the consent of RSM Canada Limited to act as the Receiver and on being advised of the Consent of the Town of Ajax:

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of the Harwood Properties and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Harwood Properties, including all proceeds thereof (together with the Harwood Properties, (hereinafter collectively referred to as the "**Property**").

RECEIVER'S POWERS

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

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

- (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 receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in respect of the Property in collecting such monies, including, without limitation, to enforce any security held by the Debtors in respect of the Property;
- (f) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of 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;
- (i) 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, provided, however, that such terms and conditions must be satisfactory to the Town of Ajax, unless otherwise ordered by this Court;

- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court, in consultation with the Town of Ajax, in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required; and
- (iii) unless otherwise agreed to by the Town of Ajax and the applicable purchaser or transferee, none of the real property presently subject to the Development Agreement and Agreement of Purchase and Sale between Windcorp Grand Harwood Place Ltd. and the Town of Ajax, as amended (The “Development Agreement”) shall be sold, conveyed, transferred, leased or assigned by the Receiver without the purchaser or transferee agreeing to enter into a development agreement with the Town of Ajax, on mutually agreeable terms, which include a Right of Repurchase in favour of the Town of Ajax, substantively similar to such right provided for in the Development Agreement.
- (k) 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; other than such permitted encumbrances as may be acceptable to the purchaser or rights that run with the land.

- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors in respect of the Property;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Debtors;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Property; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS IN RESPECT OF THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors in respect of the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors in respect of the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Property, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts"). For certainty, all receipts in respect of the Property shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include realty taxes, utilities, insurance, maintenance expenses, other reasonable Property-specific expenses, and business expenses associated with the Property. 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

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, 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

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

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

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the 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

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

26. 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.

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

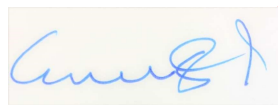
28. THIS COURT ORDERS that the Land Registry Office for the Land Titles Division of Durham (No. 40) shall register this Order against title to the Harwood Properties.

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

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

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

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



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") of the Property, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 2020 appointing the Receiver (the "Order") made in an application having Court file number CV-20-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

2615333 ONTARIO INC.
Applicant

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1
INC. et al.
Respondents

Court File No. CV-20-00651299-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-
3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED
Proceeding commenced at Toronto

ORDER

GARFINKLE BIDERMAN LLP

Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, Ontario
M5C 2V9

Wendy Greenspoon-Soer LSUC#: 34698L
Tel: 416-869-1234
Fax: 416-869-0547

Lawyers for the Applicant,
2615333 ONTARIO INC.

File Number: 12256-001

APPENDIX D

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of the lands and premises set out on **Schedule “A”** attached hereto (collectively, the “**Harwood Properties**”) owned by the Debtors (as defined herein) and of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Harwood Properties, including all proceeds thereof.

On June 1, 2023, the Court made an order (the “**Sale Procedure Order**”) among other things, approving this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Harwood Properties.

Accordingly, the following Sale Procedure shall govern the sale process relating to the solicitation by the Receiver of one or more Bids for the Harwood Properties.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Procedure**” means an acknowledgement of the Sale Procedure in the form attached as **Schedule “B”** hereto;

“**Agreement of Purchase and Sale**” shall be the form of agreement uploaded to the Confidential Data Room;

“**Back-up Bid**” means the next highest and/or best Qualified Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“**Back-up Bidder**” means the Bidder that submits the Back-up Bid;

“**Bid**” means a bid submitted by a Bidder pursuant to Section 2 hereof;

“**Bid Deadline**” means 3 p.m. (Toronto time) on August 24, 2023;

“**Bidder**” means a party that submits a Bid in accordance with Section 2;

“Confidential Data Room” means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the Harwood Properties;

“Confidential Information” means the confidential information in the Confidential Data Room;

“Confidential Information Memorandum” means the confidential information memorandum prepared by the Listing Agent providing certain confidential information in respect of or related to the Harwood Properties;

“Confidentiality Agreement” means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

“Debtors” means, collectively, 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and 9654445 Canada Inc.;

“Encumbrances” has the meaning given to such term in the Agreement of Purchase and Sale;

“Good Faith Deposit” means a cash deposit in an amount equal to 10% of the purchase price as set out in the Agreement of Purchase and Sale;

“Interested Party” means a party participating in this Sale Procedure;

“Listing Agent” shall mean Avison-Young Commercial Real Estate (Ontario) Inc.;

“Notice Parties” means the Receiver, its counsel and the Listing Agent;

“Participant Requirements” has the meaning set out in Section 3 hereof;

“Potential Bidder” means an Interested Parties that satisfies the Participant Requirements;

“Qualified Bid” means a Bid that satisfies the conditions set out in Section 6 hereof as determined by the Receiver;

“Qualified Bidder” means a Bidder submitting a Qualified Bid;

“Sale Hearing” means the hearing of a motion by the Receiver for an Order approving the sale of the Harwood Properties to the Successful Bidder, together with such other relief as the Receiver may deem appropriate to seek;

“Successful Bid” means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including the Expense Reimbursement, if applicable, and those factors affecting the speed and certainty of consummating the proposed sale; and

“Successful Bidder” means the Bidder that submits the Successful Bid.

1. Assets for Sale

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to some or all of the Harwood Properties.

An en bloc sale of the Harwood Properties is preferred.

2. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be given the Confidential Information Memorandum and access to the Confidential Information.

All offers to purchase the assets for sale in this Sale Procedure must be submitted to the Notice Parties by email, at the same time, in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Bid Deadline, failing which they will not constitute a Bid and shall be disqualified.

3. Participant Requirements

To participate in the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the **“Participant Requirements”**).

4. Access to Due Diligence Materials

Only Potential Bidders will be eligible to receive the Confidential Information Memorandum and access to the Confidential Data Room.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Bid Deadline. Neither the Receiver nor the Listing Agent, nor their agents, shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Harwood Properties, or any of them.

5. Information from Interested Parties

Each Potential Bidder shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Potential Bidder is not a Qualified Bidder.

6. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

- a) *Written Submission of Agreement of Purchase and Sale.* The Bidder must submit a clean and redline version of the Agreement of Purchase and Sale that must constitute a written and binding commitment to close on a transaction for the purchase some or all of the Harwood Properties, or such subset of the Harwood Properties as permitted by the Agreement of Purchase and Sale, on the terms and conditions set forth therein;
- b) *Irrevocable.* A Bid must irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- c) *Conditions.* A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Bid may not, in aggregate, be more burdensome in the sole and exclusive opinion of the Receiver;
- d) *Financing Sources.* A Bid must be accompanied by: (i) written evidence of a commitment for financing or other evidence of the Bidder's ability to close on the Agreement of Purchase and Sale satisfactory to the Receiver; (ii) appropriate contact information for such financing sources; and (iii) names of all principals of the Purchaser together with names of all development partners whether corporate or personal in sufficient detail to allow the Receiver to make a determination as to the Purchaser's ability to complete the transaction in accordance with the terms of the Agreement of Purchase and Sale;
- e) *Development Agreement.* Each Bid must be accompanied by a clean and

redline copy of the Development Agreement is appended hereto as **Schedule “C”**; and

- f) *Good-Faith Deposit*. Each Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the Deposit under the Agreement of Purchase and Sale.

The Receiver shall be entitled to seek additional information and clarifications from Bidders in respect of their Bids at any time.

7. Designation as Qualified Bidder

Following the Bid Deadline, the Receiver shall determine which Bidders are Qualified Bidders. The Receiver shall notify each Bidder of its determination as to whether the Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline.

If no Qualified Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated.

8. Determination of Successful Bid

If one or more Qualified Bids is received by the Bid Deadline, the Receiver may: (i) conduct an auction amongst the Qualified Bidders, on terms to be determined by the Receiver and communicated to the Qualified Bidders; and/or (ii) negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.

As noted above, an *en bloc* sale of the Harwood Properties is preferred. If, however, a Qualified Bid is received for the Development Lands and Utility Lands, and another Qualified Bid is received for the Commercial Lands, and the Receiver determines such Qualified Bids should be treated together as the Successful Bid or the Back-up Bid, the Receiver may then select both such Qualified Bids to be, jointly, the Successful Bid or Back-up Bid, as applicable.

As part of any negotiation with one or more Qualified Bidders, the Receiver may select one or more Qualified Bidders to negotiate with the Town of Ajax for the purpose of arriving at a form of Development Agreement that is acceptable to the Town of Ajax, the Qualified Bidder and the Receiver, and which the Town of Ajax and the Qualified Bidder confirm in writing to the Receiver that they would enter into if the Qualified Bidder were selected as the Successful Bidder.

For greater certainty, a Qualified Bidder will not be selected as the Successful Bidder or Back-up Bidder, if any, if the Receiver has not received that above confirmation from such Qualified Bidder and the Town of Ajax.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall, as soon as reasonably practicable, seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein. The Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established pursuant to the Appointment Order.

9. Acceptance of Successful Bid

Subject to the terms of the Agreement of Purchase and Sale, the Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

10. “As Is, Where Is”

The sale of the Harwood Properties, or any of them, pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. Each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Harwood Properties prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Harwood Properties in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the Harwood Properties, made by the Receiver or Listing Agent or their respective officers, directors, employees, representatives or agents, or the accuracy or completeness of any such information, except as expressly stated in this Sale Procedure or, as to the Successful Bidder, the applicable Agreement of Purchase and Sale.

11. Free Of Any and All Encumbrances

Except as otherwise provided in the Successful Bid, those Harwood Properties that the Successful Bidder proposes to purchase pursuant to the Successful Bid shall be sold free and clear of all Encumbrances, except as set out in the Agreement of Purchase and Sale, in accordance with a vesting order of the Court, with all Encumbrances on or against the Harwood Properties that are sold, except for such Encumbrances set out in the Agreement of Purchase and Sale, to attach to the net

proceeds of the sale of such Harwood Properties after completion of such sale under a Successful Bid.

12. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall be entitled, but not required, to deem the Back-up Bid the Successful Bid. The Receiver may seek the Court's approval to consummate the transaction with the Back-up Bidder at the Sale Hearing on a conditional basis, or may seek such approval in the event that it deems the Back-up Bid to be the Successful Bid under this section.

13. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder, if any. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder, if any, shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the Agreement of Purchase and Sale of the Back-up Bidder at closing.

14. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

Schedule "A"

Hardwood Properties

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

**Schedule “B”
ACKNOWLEDGEMENT**

TO: RSM Canada Limited, in its capacity as court-appointed receiver and manager of the lands and premises described on Schedule “B” to the Sale Procedure (collectively, the “**Harwood Properties**”) (the “**Receiver**”)

RE: The sale procedure with respect to the sale by the Receiver of the Harwood Properties, as approved by the Court on June 1, 2023 (the “**Sale Procedure**”)

The undersigned hereby acknowledges receipt of, and its agreement with, the Sale Procedure.

DATED this ____ day of _____, 2023.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

**Schedule “C”
DEVELOPMENT AGREEMENT**

DEVELOPMENT AND PURCHASE AGREEMENT between

THE CORPORATION OF THE TOWN OF AJAX
(the “Town” or “Ajax”)

- And -

THE DEVELOPER CORPORATION
PURCHASER IN RECEIVERSHIP PROCESS
(the “Developer”)

WHEREAS the Developer, through the Receivership process defined herein, acquired title to the properties identified in Schedule “A” to this Agreement (hereinafter the “Schedule “A” Lands”)

AND WHEREAS the Developer has assured the Town of Ajax that the Developer will construct a mixed-use development in accordance with the Development Plans listed in Schedule “B” to this Agreement (hereinafter “the Development Plans”);

AND WHEREAS the Developer acquired title to the Schedule “A” Lands knowing that the Town of Ajax would require the Developer to enter into a Development Agreement for the purpose of ensuring that the mixed-use development and services upon a portion of the Schedule “A” Lands are constructed in accordance with the Development Plans;

AND WHEREAS the Developer acquired title to the Schedule “A” Lands knowing that its rights would be subject to a potential Conveyance Event (as defined below), if the Developer does not proceed with the construction of the mixed-use development in accordance with the terms of this Agreement;

AND WHEREAS it is vital to Ajax to see that the mixed-use development is developed upon a portion of the Schedule “A” Lands in a timely manner in accordance with the Development Plans;

AND WHEREAS the Developer had an opportunity to review this Agreement prior to acquiring title to the Schedule “A” Lands through the Receivership process;

AND WHEREAS the Town of Ajax approved of the Developer in accordance with the terms of the Receivership Order on the basis that the Developer would execute this Agreement, which requires the Developer to construct the mixed-use development and services upon a portion of the Schedule “A” Lands in accordance with the Development Plans and which also provides for a potential Conveyance Event;

NOW WITNESSETH that in consideration of the exchange of \$5.00 of lawful money of Canada

from one party to the other and other good and valuable consideration which each party acknowledges as having been exchanged between the parties, and the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are accurate and form part of this Agreement.

2. **DEFINITIONS**

- a. *Commence construction* means the day upon which (i) the Developer first starts excavation for the construction of the foundation and underground parking for the mixed-use development, (ii) the Developer first starts demolition of the buildings located on the Utility Lands, and (iii) the Receiver has confirmed, in its sole discretion, that such excavation and demolition has begun by giving written notice to the Developer and the Town.
- b. *Complete construction* means the conclusion of both the construction and clean-up process on the Development Lands, and ready for occupancy closing of the units.
- c. *Conveyance Event* means the event described in section 17 of this Agreement.
- d. *Development Lands* means the lands shown and described in Schedule “C” of this Agreement and which are the part of the Schedule “A” Lands upon which the Developer is to construct the mixed-use development. In the event of any discrepancy between the Development Lands as described by way of their legal description or as shown on the map as part of Schedule “C”, the legal description shall prevail.
- d. *Development Plans* means the plans, which have been agreed to as between the Town and the Developer prior to the Developer executing this agreement and as set out in Schedule “B” to this Agreement. The Development Plans shall be substantially in accordance with the existing approved Site Plan Agreement, which can be found at Schedule “D” of this Agreement, and the Development Plans shall be used and implemented by the Developer to construct the mixed-use development upon the Development Lands.
- e. *Escrow Funds* has the meaning given to it in section 19 of this Agreement.
- f. *Mixed-use development* means the mixed-use development and services that the Developer is obligated to construct in accordance with the terms of this Agreement upon the Development Lands.

- g. *Receiver* means RSM Canada Limited, in its capacity as the Receiver of the Schedule “A” Lands, by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, made in the proceeding bearing Court File No. CV-20-00651299-00CL.
- h. *Receivership process* means the Receivership that was ordered by the Court by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, as part of the proceeding bearing Court File No. CV-20-00651299-00CL.
- i. *Sales and Marketing Costs* means all costs of the Receiver associated with the marketing and sale of the Schedule “A” Lands to the Developer, including the costs of the Receiver’s sales agent, the Receiver’s professional costs, and those of their counsel, associated with the sales process, including negotiating with the Town, potential purchasers and the Developer, and the costs Receiver’s professional costs, and those of their counsel, associated with bringing a motion for approval of the sale to the Developer in the Receivership process.
- j. *Schedule “A” Lands* are all of the lands to which the Developer obtained title by way of acquiring all rights, title and interests in through the Receivership process and which are shown and described in Schedule “A” of this Agreement.

OBLIGATION TO CONSTRUCT MIXED-USE DEVELOPMENT IN ACCORDANCE WITH DEVELOPMENT PLANS

- 3. The Developer shall apply for a permit to allow construction to commence within 60 days after the date on which the Developer’s purchase of the Schedule “A” lands from the Receiver closes, and commence construction of the mixed-use development within the greater of 150 days after such permit has been obtained, or such other period mutually agreed to by the Developer, the Receiver and Ajax (the “Construction Commencement Date”). Should the Developer refuse or fail to commence the construction of the mixed-use development within the time permitted in Section 3 herein, the refusal or failure to commence is considered a Conveyance Event under the terms of this Agreement.
- 4. The Developer shall give the Receiver and Ajax five business days’ notice before the date that the Developer intends to start excavation for the construction of the foundation and underground parking for the mixed-use development. Representatives of the Receiver and Ajax will attend the Development on the date that the Developer commences construction.
- 5. The Developer shall complete construction of the mixed-use development within 30 months from the date on which the Developer commences construction.

6. Should the Developer refuse or fail to complete the construction of the mixed-use development within the time permitted in Section 5 herein, the Developer shall, within ten (10) days thereafter provide a written report to the Town explaining the reason or reasons for the delay and the expected completion date for the construction of the mixed-use development.
7. Should the Town, acting reasonably, be satisfied with the explanation for the delay and the expected completion date for the completion of the mixed-use development as set out in the report referenced in Section 6, above, the Town will so advise the Developer in writing within ten (10) days of receipt of the report from the Developer, and shall permit the construction to proceed without the payment of liquidated damages paid by the Developer as contemplated in Section 9 herein.
8. Should the Town not be satisfied with the explanation for the delay or the expected completion date of the mixed-use development as set out in the report referenced in Section 6, above, or should the Developer fail to submit the required report, the Town may impose a deadline upon the Developer, which cannot be less than ninety (90) days from original completion date by which the construction of the mixed-use development must be completed by the Developer (the “deadline extension date”).
9. Should the Developer refuse or fail to complete the construction of the mixed-use development by the expected completion date established by the Town in accordance with Section 7 or by the deadline extension date established by the Town in accordance with Section 8, above, the Town may claim liquidated damages against the Developer commencing the day after the expected completion date or the deadline extension date, as the case may be, of \$1000 per day, which liquidated damages shall be payable by the Developer on the Monday of the following week and every Monday thereafter until construction of the mixed-use development has been completed.
10. Should the Developer refuse or fail to pay the liquidated damages referenced in Section 9, above, the Town may, if and when it sees fit to do so, draw upon the Letter of Credit posted with the Town by the Developer, as referenced in Section 28, below, for the purpose of recovering the amount of the liquidated damages owed to the Town.

ABILITY OF THE DEVELOPER TO SEEK CHANGES TO THE DEVELOPMENT

PLANS AFTER DEVELOPER ACQUIRES TITLE TO THE DEVELOPMENT LANDS

11. Should the Developer wish to alter the Development Plans prior to or during the construction of the mixed-use development, it may do so by way of filing all reports and documents as required by the Town and in accordance with all applicable statutes, regulation, and policies of the Town.
12. It is acknowledged and agreed by the Developer that the Town, as decision maker (and not as a contracting party to this Agreement) under the *Planning Act* or any other applicable statute, may, at its sole discretion, approve or reject the alteration of the Development Plans as proposed by the Developer and the Developer agrees to abide by the decision of the Town, as decision maker.
13. Should the Developer file an application for an Official Plan Amendment, a Zoning By-law Amendment, or a Site Plan Amendment that in any way relates to the Development Lands and appeal any such application to the Ontario Land Tribunal, the filing of such an appeal is a Conveyance Event under the terms of this Agreement.
14. Should a Conveyance Event arise under the terms of this Agreement by way of the Developer filing an appeal in relation to any of an Official Plan Amendment application, a Zoning By-law Amendment application, or a Site Plan Amendment application that in any way relates to the Development Lands, the Developer shall, on the day that the appeal is filed and without taking any steps, be deemed to have, and will in fact have, assigned, any such appeal to the Town (as a contracting party to this Agreement) as it relates to the Development Lands. The Town may rely upon the terms of this Agreement to confirm that the appeal related to the Development Lands has been assigned to the Town.
15. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, the Developer agrees to pursue the approval of the minor variance at the Committee of Adjustment only if Town staff files a staff report in support of the requested variance(s).
16. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, and should Town staff file a staff report that recommends refusal of the requested variance(s), the Developer shall, within two (2) days of the release of the staff report, withdraw its request, prior to any decision having been rendered by the Committee of Adjustment, including a deferral of the consideration of the application, for any variances which staff recommends be refused through its staff report.

CONVEYANCE OF THE SCHEDULE “A” LANDS

17. A Conveyance Event means the following:
 - a. The attempted assignment of this Agreement without the prior written consent of the Town of Ajax and the Receiver;
 - b. The Developer filing an appeal to the Ontario Land Tribunal in furtherance of seeking approval for an Official Plan Amendment, a Zoning By-law Amendment or a Site Plan Amendment in relation to any of the Development Lands;
 - c. The Developer refusing or neglecting to withdraw its application for a minor variance or minor variances as required under Section 16 of this Agreement;
 - d. The Developer failing, for any reason, to commence construction of the mixed-use development, in accordance with the Development Plans, as may be amended pursuant to the terms of this Agreement, upon the Development Lands by the date set out in Section 3, above;
 - e. The Developer attempting to sell or selling, without the prior written consent of the Town of Ajax and the Receiver, any or all of the Schedule “A” Lands.
18. In the event that a Conveyance Event arises, the Town shall have the right to require that the Developer convey title to all, but not less than all of the Schedule “A” Lands, to the Receiver, free and clear of all encumbrances in accordance with the terms of this Agreement (a “Conveyance”).
19. Until the Construction Commencement Date, the Receiver will hold the price paid by the Developer for the Schedule “A” Lands, less an amount equal to the Sales and Marketing Costs, in escrow, such amounts being the “Escrow Funds”.
20. Notwithstanding anything to the contrary in this Agreement, after the Construction Commencement Date the Town shall have no right to require a Conveyance and the Receiver shall be under no obligation to hold the Escrow Funds in escrow.
21. In the event that a Conveyance Event arises, and the Town chooses to require a Conveyance, then the Town shall, within fifteen (15) days of the Town becoming aware of the fact that a Conveyance Event occurred, provide written notice to the Developer and the Receiver, of the Town’s intention to require a Conveyance pursuant to this Agreement.
22. Upon receiving notice in writing from the Town that the Town intends to require a Conveyance, the Developer shall transfer the title of Schedule “A” Lands, free and clear of

all encumbrances, to the Receiver, on or before fifteen (15) days from receipt of the written notice from the Town.

23. Upon a Conveyance, the Receiver shall pay to the Developer the Escrow Funds as consideration for the Conveyance.

RECEIVER'S RIGHT TO NOT CONVEY THE SCHEDULE "A" LANDS

24. Should a Conveyance Event arise, and the Town choose not to exercise its right to require a Conveyance of the Schedule "A" Lands, the Town may, at its sole discretion, permit the Developer to continue to deal with the Schedule "A" Lands in such manner as agreed to by the Town, in writing.
25. Any decision by the Town to allow the Developer to continue to deal with the Schedule "A" Lands for any period of time after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance pursuant to the terms of this Agreement, unless such right has expired pursuant to the terms of this Agreement or the Town has expressly, in writing, waived or otherwise limited its right to require a Conveyance by making specific reference to this section of this Agreement and by confirming its intention to waive or otherwise limit its right.
26. Any delay or failure of the Town to exercise its right to require a Conveyance after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance at any time after another Conveyance Event has been discovered by the Town to have occurred.
27. The Developer expressly waives any and all claims that the Developer may have, or could have, against the Town or Receiver that in any way relate to an allegation that the Town or Receiver has been unjustly enriched, or that are based upon quantum meruit and/or betterment, as a result of the Receiver exercising its right to require a Conveyance pursuant to the terms of this Agreement.

LETTER OF CREDIT

28. Concurrent with the execution of this Agreement, the Developer shall post a letter of credit, in a form satisfactory to the Town and in an amount of \$250,000.00, for the purpose allowing the Town to draw upon the letter of credit pursuant to Section 10, above.

REPRESENTATIONS AND WARRANTIES

29. The Town represents and warrants to the Developer that:
 - a. as of the date of this Agreement, the Durham Region in-force Official Plan, the Town's in-force Official Plan and the in-force Zoning By-law applicable to the Development Lands permits the mixed-use development to be constructed upon the Development Lands;

- b. the Town will not initiate or grant any amendment to the in-force Official Plan or any amendment to the in-force Zoning By-law applicable to the Development Lands or pass an interim control by-law which would have the effect of prohibiting or delaying the construction of the mixed-use development.
- 30. The Developer represents and warrants to the Town that as of the date of this Agreement:
 - a. the Developer has the authority to enter into this Agreement and the ability to complete the obligations contemplated herein.

ARBITRATION TO RESOLVE DISPUTES

- 31. If the parties cannot, after good faith, discussions, agree upon the resolution of any dispute arising from the interpretation of a provision of this agreement, except as noted in Section 33, below, then the parties agree that such dispute will be resolved by binding arbitration pursuant to the *Arbitrations Act* 1991, S.O. 1991, c. 17, as may be amended from time to time, on the following basis:
 - a. The arbitration shall commence within 20 business days of delivery of an arbitration notice, which either party may deliver once one or both parties believe that a dispute is unlikely to be resolved in the absence of arbitration.
 - b. Upon receipt of the arbitration notice, the parties have seven (7) business days to agree upon a single arbitrator. In the event that the parties cannot agree upon a single arbitrator, each party shall, within three (3) business days thereafter, name an arbitrator. The two arbitrators chosen shall then, within five (5) days of being named, select a third arbitrator who shall serve as the sole arbitrator.
 - c. The selected arbitrator shall establish all procedural requirements of the arbitration pursuant to the *Arbitrations Act*, as well as the determination of costs that may be payable by one party to the other.
 - d. In selecting an arbitrator, the parties acknowledge and agree that the arbitration shall commence no later than twenty (20) business days after the delivery of the arbitration notice and any arbitrator nominated shall be available within such dates.
- 32. The parties acknowledge and agree that the right of the Town to require a Conveyance is not a matter that can be subject to the arbitration process set out above, and the parties further agree that the arbitrator has no jurisdiction to determine if the Town has the right, or had the right, to require a Conveyance pursuant to the terms of this Agreement. The Developer agrees that its obligation to effect a Conveyance in accordance with the terms of this Agreement is enforceable by specific performance and that an award of damages for breach of such obligation is not sufficient.
- 33. The parties acknowledge and agree that the decision of the arbitrator shall be final.

34. The parties acknowledge and agree that the expenses of any arbitration shall be borne by the parties in accordance with the decision of the arbitrator.

NOTICE AND SERVICE UNDER THIS AGREEMENT

35. The Town can be served at:

65 Harwood Avenue South
Ajax, ON
L1S 2H9
Attention: Chief Administrative Officer

36. The Developer can be served at:

XXXXXXXXXX

37. The Receiver can be served at:

11 King Street West, Suite 700,
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
Attention: Jeff Berger

CC Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON
M5K 1K7

Attention: Rebecca L. Kennedy
Attention: Alexander Soutter

38. Any notice if personally served shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 pm on a business day, otherwise the date of delivery shall be deemed to be the on the business day next following such date. Any notice, if sent by facsimile or e-mail, shall deemed to have been validly and effectively given and received on the date of transmission if received prior to 5:00 pm on a business day, otherwise the date shall be deemed to be on the business day next following such date. Notices given by regular mail shall be deemed to have been validly and effectively given on the fifth business day after the date upon which the notice was deposited in the mail for delivery.

MISCELLANEOUS

39. Notwithstanding any other provision of this Agreement, none of the provisions of this Agreement, including a provision stating the parties' intentions, is intended to operate, nor will have the effect of operating, in any way to fetter Town of Ajax Council which authorized the execution of this agreement or any of its successor councils in the exercise of any of councils' discretionary powers, duties or authorities. The Developer hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.
40. Nothing in this Agreement shall be construed so as to make either party a partner of the other nor to have the parties engaged in any joint venture.
41. This Agreement shall be registered by the Town on the Schedule "A" Lands and shall constitute a first registration thereon after the transfer of title to the Developer.
42. It is agreed and acknowledged by the parties that each is satisfied as to the jurisdiction of the other to enter into this Agreement. The parties agrees that it will not challenge the jurisdiction of the other party to enter into this Agreement, nor will they challenge the legality of any provision in this Agreement.
43. The parties covenant and agree that at all times, and from time-to-time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required or more effectively implementing and carrying out the true intent and meaning of this Agreement.
44. Time shall be of the essence in all respect for the purposes of this Agreement.
45. Any tender of documents of money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or a cheque from a solicitor's trust account.
46. This Agreement may not be assigned by either party without the prior written consent of any party and each party may unreasonably withhold their consent to any proposed assignment.
47. This Agreement shall enure to the benefit of and shall be binding upon the parties and upon their permitted assigns and shall enure to the benefit of and be enforceable only by such permitted assigns which have received such assignment in the manner permitted by this Agreement.
48. This Agreement is subject to compliance with the provisions of the *Planning Act*.

49. This Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Agreement.

Schedule A

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule B
Development Plans

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
L-1b – Roof Level 4 Landscape Plan	MBTW	September 22, 2015
L-2 – Ground Level Grading Plan	MBTW	December 16, 2015
L-3a – Ground Level Planting Plan	MBTW	December 16, 2015
L-3b – Roof Level 4 Planting Plan	MBTW	December 16, 2015
L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
3 – Sub-Surface Removal Plan	Morrison Hershfield	December 16, 2015
4 – Storm Drainage Area Plan	Morrison Hershfield	December 16, 2015
5 – Sanitary Drainage Area Plan	Morrison Hershfield	December 16, 2015
6 – General Plan	Morrison Hershfield	December 16, 2015
7 – Grading Plan	Morrison Hershfield	December 16, 2015
8 – Erosion and Sedimentation Control Plan	Morrison Hershfield	November 27, 2015
9 – Temporary Parking Plan Phase 1a	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
10 – Plan and Profile Street “A”	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street “B”	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street “D”	Morrison Hershfield	December 16, 2015
15 – Details	Morrison Hershfield	December 16, 2015
16 – Lighting Layout	Morrison Hershfield	December 16, 2015
17 – Photometric Layout	Morrison Hershfield	December 16, 2015
18 – Electrical Details	Morrison Hershfield	December 16, 2015
19 – Existing Vegetation Plan	Morrison Hershfield/Matthew Hooker	November 27, 2015
20 – Tree List and Details	Morrison Hershfield/Matthew Hooker	November 27, 2015
21 – Road Cross Sections	Morrison Hershfield	December 16, 2015
22 – Utility Coordination Plan	Morrison Hershfield	December 16, 2015
TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5 & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

Schedule C

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule D
Site Plan Agreement

THIS SITE PLAN AGREEMENT made this 29th day of Dec, 2015

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as the "Town")

OF THE FIRST PART,

- and -

2480832 Ontario Inc.

(hereinafter referred to as the "Owner")

OF THE SECOND PART.

WHEREAS:

The Town pursuant to a Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 and amended by the Amending and Assumption Agreement dated June 29, 2015 (the "Development Agreement") has agreed to convey to the Owner the Lands as hereinafter defined;

By application SP2/14, the Owner has applied to the Town under Section 41 of the *Planning Act, R.S.O. 1990, c. P.13*, (the "Act") for site plan approval in respect of its development of the Lands;

The Town requires the Owner to enter into an agreement with it prior to the development, including redevelopment, of the Lands and the erection, construction and installation of buildings, structures, facilities and works thereon as permitted by subsection 41 (7) of the Act and as required by the Development Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of mutual benefits, the Parties hereto agree as follows:

1. The lands and premises affected by this Agreement (hereinafter referred to as the "Lands") are those lands more particularly described in Schedule "A" hereto.
2. No development, including redevelopment, shall be undertaken on the Lands except in accordance with the following plans and drawings and any revisions there to as approved by the Town (the "Plans"):

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
L-1b – Roof Level 4 Landscape Plan	MBTW	September 22, 2015
L-2 – Ground Level Grading Plan	MBTW	December 16, 2015
L-3a – Ground Level Planting Plan	MBTW	December 16, 2015
L-3b – Roof Level 4 Planting Plan	MBTW	December 16, 2015
L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
3 – Sub-Surface Removal Plan	Morrison Hershfield	December 16, 2015
4 – Storm Drainage Area Plan	Morrison Hershfield	December 16, 2015
5 – Sanitary Drainage Area Plan	Morrison Hershfield	December 16, 2015
6 – General Plan	Morrison Hershfield	December 16, 2015
7 – Grading Plan	Morrison Hershfield	December 16, 2015
8 – Erosion and Sedimentation Control Plan	Morrison Hershfield	November 27, 2015
9 – Temporary Parking Plan Phase 1a	Morrison Hershfield	December 16, 2015
10 – Plan and Profile Street 'A'	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street 'B'	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street 'D'	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
15 - Details	Morrison Hershfield	December 16, 2015
16 - Lighting Layout	Morrison Hershfield	December 16, 2015
17 - Photometric Layout	Morrison Hershfield	December 16, 2015
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TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5, & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

3. (1) As a condition to the approval of the said Plans, the Owner agrees to install and maintain to the Town's satisfaction and at the sole risk and expense of the Owner any or all of the facilities or works including the grading, landscaping, fencing, the removal of snow from access ramps and driveways, parking and loading areas and walkways as shown on the Plans (the "Works").
- (i) for the purpose of guaranteeing the installation and maintenance, by the Owner, of the Works required to be installed and maintained pursuant to a condition of approval imposed under Section 2 above, restoration of public lands under subsection (5) below, construction of the Services defined in Section 19 of this Agreement and payment of any amounts payable by the Owner pursuant to this Agreement the Owner shall deliver to the Town prior to the execution of this Agreement, security (the "Performance Guarantee") in the form of an irrevocable Letter of Credit issued by a chartered bank in Canada approved by the Treasurer of the Town, acting reasonably, in an amount as determined by the Town. The Performance Guarantee may be drawn upon by the Town in such amounts and at such times as the Town, in its sole discretion, deems advisable should the Owner fail to install or maintain the Works, fail to install or maintain the Services, fail to restore public lands or fails to pay any amount required to be paid by the Owner pursuant to this Agreement or fail to comply with any obligation of the Owner pursuant to this Agreement provided the Town has provided the Owner with a notice of default and established a time frame in which to rectify the default and the Owner fails to comply with such time frames.;
- (ii) the amount of the Performance Guarantee shall be based on the cost of installation of the Works and Services and may be reduced by the Town at the sole discretion of the Town upon the completion of the Works and Services but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost to complete or rectify any default plus the maintenance required of any Works or Services.
- (iii) if, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner

shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.

- (iv) Schedule "C" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (v) where any Works or Services are not installed or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Works or Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Lands. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person constructing or supplying any of the Works or Services, directly or indirectly, on behalf of the Owner.
- (2) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of **TWENTY THOUSAND DOLLARS (\$20,000.00)** (the "Mud and Right of Way Deposit") to guarantee that:
- (i) the streets shall be kept free from deposits and debris. In the event debris or deposits remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Mud and Right of Way Deposit; and
 - (ii) the Owner further covenants and agrees with the Town to repair any damage to other lands and/or streets caused by the work or construction carried on by the Owner on the Lands, by restoring the lands and streets to the condition existing prior to the damage sustained. Such restoration is to be undertaken by the Owner at its own expense upon notification by the Town to the Owner. If the Owner does not undertake the restoration in a reasonable time frame the Town shall be entitled to restore the lands and streets and deduct the cost from the Mud and Right of Way Deposit.
- The Owner shall immediately reimburse for all costs incurred so that the Mud and Right of Way Deposit is reinstated to the sum of **TEN-THOUSAND DOLLARS (\$10,000.00)**. The Mud and Right of Way Deposit shall be returned to the Owner once the development of the Lands is completed to the satisfaction of the Town. The Mud and Right of Way Deposit may be included in the Performance Guarantee.
- (3) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of **FIVE-THOUSAND DOLLARS (\$5,000.00)** to guarantee that streets shall be kept free from litter and garbage emanating from the Lands during construction (the "Litter Deposit"). In the event litter and garbage remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Litter Deposit. The Owner shall immediately reimburse the Town for all costs incurred so that the Litter Deposit is reinstated to the sum of **FIVE-THOUSAND DOLLARS (\$5,000.00)**. The Litter Deposit may be included in the Performance Guarantee.
- (4) The Owner agrees with the Town:
- (i) to pay the taxes in full on the Lands as required by law from time to time;
 - (ii) to pay the costs of all registrations incurred by the Town relating in any way to this Agreement;
 - (iii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$1,000.00 for digital drawing management fees;

- (iv) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$201,600.00 for cash-in-lieu of parkland as required by the Town's Parkland Dedication Policy, By-law 79-2006, as amended;
 - (v) not applicable to this Agreement as the development is exempt from development charges pursuant to the Development Agreement;
 - (vi) to pay for the costs of the control architect for his review of the elevation Plans in accordance with Section 25 of this Agreement;
 - (vii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$750.00 for benchmark construction purposes;
 - (viii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$3,000.00 for the Town's Litter Management Program;
 - (ix) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$50,910.75 for engineering review, inspection and administration service fees;
 - (x) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$63,715.57 for architectural landscape review and inspection service fees;
 - (xi) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$4,800.00 for the maintenance of the stormwater; and
 - (xii) to pay to the Town prior to the signing of this Agreement by the Town the legal fees incurred by the Town in connection with this Agreement in the amount of \$609.37.
- (5) The Owner covenants and agrees, at its sole cost, to restore any public lands disturbed or damaged as a result of the development of the Lands to the satisfaction of the Town.
 - (6) The Owner covenants and agrees that all garbage and recyclable material shall be stored inside the buildings shown on the Plans and accessible to vehicles for removal.
 - (7) The Owner covenants and agrees to be responsible for all waste collection from the Lands.
 - (8) The Owner covenants and agrees not to erect, locate, relocate or otherwise place any sign or light or light standard on any part of the Lands or on the exterior portion of any building or other structure thereon, unless the light or light standard and the sign location is as approved in the Plans. All signs shall conform to the Town's municipal By-law No. 27-2009 (Sign By-law) as amended. Site illumination must be designed with a zero illumination cut-off at the property line.
 - (9) The Owner covenants and agrees that no mechanical equipment, such as air conditioners or ventilators, or signs, satellite dishes or any other equipment shall protrude from the roof or any other portion of the building(s) unless the design and location thereof, including the screening of such equipment from public view, are as approved in writing by the Town.
 - (10) The Owner covenants and agrees to ensure that the "as-built" site servicing and landscape plans for the Lands are forwarded in digital format, and AutoCAD compatible, to the Town.
 - (11) The Owner covenants and agrees that a construction management plan and a pedestrian management plan shall be submitted to and be approved by the Town prior to the issuance of building permit approval. The construction management plan shall include, but is not limited to, all stages of construction, all proposed staging areas, all proposed construction access points, all material storage



areas, all construction office trailers, all locations of required construction fencing and hoarding, and all parking locations for construction works and trades. The pedestrian management plan shall include, but is not limited to, all safe pedestrian walkways and sidewalks, all pedestrian signage, all accessible plaza parking locations during all stages of construction.

- (12) The Owner covenants and agrees to clean local area streets of mud caused by development on the Lands a minimum of three times per week and a maximum of five times per week, to the satisfaction of the Director of Planning and Development Services or his designate.
- (13) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement. The Owner agrees to submit all tests to the Town and the costs of such tests shall be paid by the Owner within thirty (30) days of the account for same being rendered by the Town.

4. Underground Stormwater Control Structure

- (1) The Owner covenants and agrees to install, maintain and not remove any underground stormwater quality control structure or any stormwater quantity devices. The Owner shall have the underground stormwater quality control structure inspected annually and maintained accordingly. The inspection and maintenance of the underground stormwater quality control structure must be completed by a qualified contractor. The Owner shall keep accurate and up to date records of all inspections and maintenance of the underground stormwater quality control structure. If the Town so requests, the Owner shall deliver to the Manager of Engineering of the Town, within ten (10) days of such request, a record of all inspections and maintenance of the underground stormwater quality control structure. If the Owner does not supply the records of inspection and maintenance the Town may enter upon the Lands, inspect the stormwater quality control structure and carry out, if necessary in the sole discretion of the Town, the maintenance thereof at the Owner's expense. In the event that any costs incurred by the Town are not paid by the Owner within ten (10) days of the deliver of the Town's invoice therefore, the Town shall be entitled, in addition to any other remedy it may have, to add such costs to the tax roll and collect same in the same manner as taxes.
- (2) Upon completion of the landscaping and submission of the certificate of substantial completion for the landscaping associated with the underground stormwater management quality control structure the Owner covenants and agrees to supply to the Town the following:
 - (i) a copy of a five year contract for the maintenance and cleaning of the underground stormwater management quality control structure,
 - (ii) a certificate stating that the underground stormwater quality control structure has been installed in conformance with the approved Plans and that the unit has been inspected, cleaned and all adjustments have been completed.

5. Refuse Storage

The Owner covenants and agrees to accommodate all facilities for refuse storage within the buildings which are part of the Development.

6. Timing of Completion

- (1) Upon approval by the Town of the Plans, the proposed building(s), structure(s), Works and Services shall be erected, constructed, installed and maintained in conformance with the Plans as approved. Unless otherwise agreed, the said work shall be fully completed within thirty (30) months of the date of commencement of erection or construction. For the purposes of establishing the thirty (30) month period, the date of building permit issuance shall be used to determine the commencement date and such determination shall be final and binding on the parties hereto.



- (2) If erection, construction or installation has not commenced in accordance with the provisions of the Development Agreement the approval of the Plans may, at the option of the Town, become null and void in which event the Plans must be resubmitted for approval prior to any erection, construction or installation commencing.

7. Building Permit Issuance

The Owner agrees that the issuance of any building permit in respect of the Lands may not be requested until the Plans have been approved by the Town and the Lands have been conveyed to the Owner by the Town.

8. Building Levels

- (1) The Owner covenants and agrees that all buildings erected on the Lands shall conform to building levels approved by the Town before the building operations are commenced. Building levels and building location shall be checked by an Ontario Land Surveyor and certification of such levels and locations shall be submitted to the Town prior to a sub-floor for such building being constructed.
- (2) At the time of application for building permit, a soil investigation report of the Lands must be provided to the Chief Building Official of the Town to verify the structural adequacy of the proposed foundation.
- (3) Prior to pouring concrete footings for each building or structure to be erected on the Lands a soils field report prepared by a qualified Professional Engineer shall be submitted to the Chief Building Official of the Town verifying adequate bearing capacity and the level of permanent ground water which may affect the soil bearing capacity. In the event the soils field report demonstrates a need for revisions to the foundation design or construction of a de-watering or subdrainage system the Owner covenants and agrees to submit to the Chief Building Official of the Town for his approval, prior to the commencement of construction, design drawings showing such revisions or system.
- (4) Prior to the issuance of a building permit, access to the Lands for any construction vehicles or equipment or emergency vehicles or equipment is required. The access must be a minimum of a granular base road, capable of providing a route for fire vehicles and extending to an existing, maintained public road, to the satisfaction of the Town and the Fire Department of the Town.
- (5) Prior to issuance of building permit, watermains and hydrants, storm and sanitary sewer facilities must be constructed and installed in accordance with this Agreement and a certificate of preliminary acceptance has been accepted.

9. Registration

The Owner covenants and agrees that the Town may register this Agreement against the title to the Lands and that the Town may enforce the provisions of this Agreement against the Owner of the Lands and against any and all subsequent owners of the Lands.

10. Certificates

The Owner covenants and agrees to deliver to the Town a Certificate of Compliance from a Professional Engineer certifying that all Works and Services have been constructed in accordance with the approved Plans and sound engineering practices and that grading has been completed according to approved grading plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Certificate of Substantial Completion from a Landscape Architect in good standing with the O.A.L.A. (Ontario Association of Landscape Architects) certifying that all landscape work has been constructed and materials installed in accordance with the approved Plans and that



sound engineering and horticultural practices have been implemented. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Photometrics Certificate from a certified Electrical Engineering Consultant certifying that all electrical luminaires have been installed in accordance with the approved Plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

11. Breach of Agreement

Notwithstanding any action taken by or remedy available to the Town or to any other governing body or authority any breach of this Agreement may be restrained by action at the instance of a ratepayer of the Town or at the instance of the Town or a local board thereof just as if such breach were a contravention of a By-law of the Town to which Section 440 of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended, applied.

12. Binding Agreement

This Agreement, the Schedules hereto, and everything contained therein, shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns, and Section 446 of the *Municipal Act, 2001, S.O., 2001, c. 25* as amended, shall be applicable to the obligations created herein.

13. Indemnification

The Owner will indemnify the Town from all actions, causes of action, suits, claims and demands whatsoever and all costs incurred in respect thereof by reason of the Owner doing, failing to do or doing incorrectly or negligently anything which by the terms of this Agreement it is required to do. Without limiting the foregoing the Owner agrees to indemnify and hold harmless the Town for all costs, fees, expenses and disbursements incurred by the Town in connection with the preparation for and attendance at a hearing before a Court of Law or tribunal as a result of the *Occupational Health and Safety Act, R.S.O. 1990 c. O.1* and any Order issued thereunder with respect to the development of the Lands.

14. Noise

"Construction" includes erection, alteration, repair of the Works or buildings, painting, grading, excavating, laying of pipe and "construction equipment" means any equipment or device designed and intended for use in construction.

"Noise" means sound originating from construction on the Lands and received on other lands.

No noise shall be emitted or caused to be emitted from the Lands or from construction of the Services on other lands on Sunday and statutory holidays and except between the hours of 7:00 a.m. and 8:00 p.m. on each day Monday to Thursday, between the hours of 7:00 a.m. and 5:00 p.m. on Fridays and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays.

15. Street Numbers

The Owner covenants and agrees to affix the street number(s) for any building or parts of buildings on the Lands to a wall of the building, or other approved locations, which faces a public street so as to ensure clear visibility of the number at all times from the public street. Each number(s) shall be a minimum of ten (10) centimetres in height.

16. Liability Insurance

The Owner covenants and agrees to obtain and maintain public liability and property damage insurance, satisfactory to the Town, to protect the Owner and Town jointly against loss, damage or injury to persons or property caused directly or indirectly by reason of the Owner undertaking the development of the Lands. A certificate of such



insurance shall be filed with the Town prior to the execution of this Agreement, including the Town of Ajax as an additional insured, and such policy shall be effective until final sign off of the consulting engineer or architect and release of all securities by the Town.

Such policy shall be in an amount not less than \$5,000,000.00 and shall not be cancellable unless prior notice has been received by the Town not less than thirty (30) days prior to cancellation date.

17. Debris

The Owner covenants and agrees to remove debris and litter on the property in accordance with the Town's "The Clean and Clear By-law" as amended.

18. Refer to Section 47.

19. Municipal Services

- (1) In this Agreement "Services" shall mean works to be installed by the Owner and to be assumed for ownership by the Town or works to be installed or carried out on municipal property.
- (2) The Owner shall construct, install and carry out in a good and workmanlike manner all the Services as shown on the Plans, including but without limiting the foregoing, grinding and resurfacing, sidewalks, curbs and gutters, driveway aprons, and storm sewers connections. The Plans for Services may be amended from time to time but such amendments shall not take effect unless approved by the Town. All Plans for Services and any other drawings required therefore pursuant to this Agreement shall be prepared in accordance with the Design Criteria and Standard Detail Drawings adopted by the Town and in accordance with the Digital Data and format requirements of the Town.
- (3) The Owner shall carry out or caused to be carried out the installation of the storm sewer connections in the accordance with Town Standards. Upon completion of the said connections the Owner shall deliver to the Town as-built drawings for all storm sewer service connections and rear lot catch basins.
- (4) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement and the cost of such tests shall be paid by the Owner.

20. Private Property Maintenance Period for Works

- (1) The Owner agrees that all Works shall have a maintenance period of twelve (12) months from the date of receipt of the Certificate of Compliance and/or Certificate of Substantial Completion. The Owner must arrange for a final inspection of the Site Works towards the end of the maintenance period.
- (2) The Owner agrees that the Town shall not reduce the Performance Guarantee below 25% of the estimated cost of installation of the Works during the maintenance period.

21. Municipal Property Performance and Maintenance Guarantee

- (1) Before commencing the construction, installation or performance of any of the Services provided for herein or before the Town issues a letter releasing the Plan for registration, whichever first occurs, the Owner shall supply the Town with a 100% performance and maintenance guarantee (hereinafter called "Performance Guarantee"), either in the form of a cash deposit or Unconditional and Irrevocable Letter of Credit approved by the Town Treasurer in an amount as determined in Schedule "A" for the purpose of:
 - (i) guaranteeing the satisfactory construction, installation or performance of the Services;
 - (ii) guaranteeing the payment of any amounts payable to the Town under this Agreement;

- (iii) guaranteeing the payment of any amount, including legal expenses that the Town may be required to pay under or as a result of claims pursuant to the *Construction Lien Act, R.S.O. 1990 c. C30*;
 - (iv) guaranteeing all underground Services, workmanship and materials for a period of two (2) years from the date of certification;
 - (v) guaranteeing all above ground Services, workmanship and materials including all landscaping works and materials for a period of two (2) years from the date of certification set out in Section 22(3); and
 - (vi) guaranteeing all other obligations of the Owner in this Agreement.
- (2) The Performance Guarantee may be reduced by the Town at the sole discretion of the Town but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost of the Services and Lot grading, sodding and driveway paving remaining to be completed, plus 10% of the value of the Services as finally completed. The balance of any Performance Guarantee shall be returned to the Owner, less any deductions for rectification of deficiencies, when the above ground Services have been assumed.
 - (3) If, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.
 - (4) Schedule "A" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (5) Where any Services are not installed in accordance with the Schedule of Construction or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Land as set out in Section 33. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person performing any of the Services, directly or indirectly, on behalf of the Owner.
 - (6) To ensure the completion of all works, the Performance Guarantee shall not be reduced below an amount equal to the cost of completing the works as determined by the Town. If the works are not completed within six months of the first occupancy of the building, seasonal conditions permitting, in addition to any other available remedies, the Town may draw upon the Performance Guarantee to its full value and complete same.

22. Construction Lien Act

The Owner agrees that it will comply with the Construction Lien Act and hold in its possession and in a separate fund, which fund shall be designated a trust fund, the statutory holdback and added amounts required by reason of notice of construction lien claims. Such money will not be disbursed except in compliance with the Construction Lien Act. The Owner will be responsible to and save harmless the Town for any loss suffered by the Town, including legal expenses, by reason of any neglect or refusal by the Owner to comply with the Construction Lien Act and/or this Section. The Town shall be entitled to apply the Performance Guarantee to cover liens and costs that may be claimed against or include the Town in respect of work done or improvements made to lands owned by the Town.

23. Traffic Control - Flagging

Flagging for traffic control for the development of the Lands shall be in conformance with the procedure outlined in the pamphlet entitled "Traffic Control Manual for Roadway Work Operations - Field Edition" issued by the Ministry of Transportation of Ontario. Copies of this pamphlet may be obtained from Ministry of Transportation's District Office.

Each flagman shall, while controlling traffic, wear an approved fluorescent blaze orange or fluorescent red safety vest, an approved fluorescent blaze orange or fluorescent red armband on each arm and an approved fluorescent blaze orange or fluorescent red hat.

24. Supply of Construction Signs

The Owner is responsible for the supply, erection, maintenance and subsequent removal of all temporary traffic control devices, including signs, lights, barricades, delineators, cones, etc., required during the development of the Lands.

Traffic controls shall be provided in general accordance with the latest edition of the "Ontario Traffic Manual Book 7, Temporary Conditions".

The Owner shall provide the Town with a Traffic Control Plan (the "TCP") for review and approval. The TCP must include a procedure for the control and maintenance of traffic. The TCP must be supplied at least seven (7) days prior to commencing work.

25. Maintenance of Road for Local Traffic

The Owner hereby accepts full responsibility to maintain a road for local traffic and reasonable access for residents to their driveway. The Owner shall supply at its expense, all labour, equipment and material to maintain the road in a satisfactory condition including but not limited to the supply and placing of Granular 'A', calcium chloride, bituminous patching material.

26. Architectural Control

The Owner shall, prior to applying for any building permit, comply with the Town's architectural control requirements. The Owner shall pay for or reimburse the Town for the cost of a Control Architect. Such payments shall be made to the Town within thirty (30) days of the Town submitting to the Owner its invoice.

27. Professional Engineers and Other Consultants

(1) The Owner shall employ a Professional Engineer to:

- (i) design all Works and Services other than the landscape Works;
- (ii) prepare and furnish all drawings, plans, reports and certificates as required by the Town, or pursuant to this Agreement;
- (iii) obtain all approvals required from all other governmental authorities or agencies;
- (iv) provide the field layout, the contract administration and site supervision and inspection of the construction of all Works and Services;
- (v) maintain all records of construction and upon completion, advise the Town of all construction changes and final measurements;
- (vi) provide the Town with "as constructed" drawings from time to time upon completion of the construction of the Services in paper and digital format satisfactory to the Town;
- (vii) act as the Owner's representative in all matters pertaining to the construction of the Services;
- (viii) issue "Letter or Letters of Completion";
- (ix) perform such additional functions and services as may be required pursuant to this Agreement; and
- (x) provide the Town with Grading Certification.

(2) The Professional Engineer, or any successor thereto, shall continue to be retained until the completion of the development of the Lands and all certificates have been supplied.



- (3) The Owner shall, at all times and from time to time, at the Owner's expense, furnish all reasonable aid and assistance to the Professional Engineer, the Town and any other consultant, inspector or inspection firm in connection with this Agreement, the Services, the Plans or the Lands, including all necessary testing certification and inspection of material and methods as may be required by the Professional Engineer, the Town, inspector or inspection firm. All tests required shall be carried out in accordance with the specifications of the person requesting such test, and shall be performed at the cost of the Owner. Notwithstanding any inspection that may be carried out by the Town, or any inspector or inspection firm on behalf of the Town, the failure of the Town or the said inspector or inspection firm to condemn or object to any defective work or material shall not constitute a waiver of any specification or the approval or acceptance of any defective work or material, and the Owner shall remain responsible for all and any work done or required to be done in accordance with the terms of this Agreement, including the repair or replacement of any defective work or material, at the Owner's sole cost and expense. In the event that the Town has required any quantitative or qualitative test for any purpose whatsoever as a pre-condition of any further construction, the Owner shall not construct such Services for which the test is required until such test has been received, reviewed and approved by the Town and has issued an order in connection therewith. Such order may specify which work and in what manner it should be done, and may be subject to conditions and may specify that such work is to be completed within a specified time period and the Owner shall comply with all terms of such order.
- (4) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) to design and supervise landscape Works and to issue a "Certificate of Substantial Completion".
- (5) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) or an International Society of Arboriculture (I.S.A.) Certified Arborist to design tree preservation and supervise the installation of tree protection hoarding and tree removal Works.

28. Emergency Vehicle Access

The Owner covenants and agrees that access routes for emergency vehicles shall be provided in accordance with the requirements of the Ontario Building Code and Ajax Fire and Emergency Services. Where roadways provide access to condominium developments, or buildings on private lands, the design and construction of the access route shall meet the requirements of the Ontario Building Code and the Town of Ajax Engineering Standards. Access routes for emergency vehicles shall be maintained to new buildings, construction trailers and material storage areas at all times during construction. Water supply for fire fighting purposes must be kept accessible and operational at all times.

Prior to occupancy of any building, an application to designate the required fire route in accordance with the Town's Traffic By-law 5-2004, as amended, must be submitted and approved by Ajax Fire and Emergency Services. All fire route signs shall be installed, prior to occupancy, to the approval of Ajax Fire and Emergency Services.

29. Not applicable to this Agreement

30. Cost of Service Relocation

Should the relocation or abandonment of existing services and utilities become necessary as a result of any work done on or in conjunction with the Plans, the Owner covenants and agrees to pay the cost of such relocation or abandonment of any existing services and utilities.

31. Tree Preservation

- (1) Prior to the execution of this Agreement by the Town, the Owner shall, deposit with the Town the sum of **Eighteen Thousand Five Hundred Dollars (\$18,500.00)** as outlined in Schedule 'C' attached hereto, to ensure that the health of the persevered trees has been maintained during site works and



construction. This security may be released two (2) years after the completion of construction.

- (2) Trees allocated for preservation shall be fully protected with tree protection hoarding, as per the approved **Existing Vegetation Plan and Tree List and Details**. Tree protection zones shall be established prior to any site works, and shall remain in satisfactory condition, as deemed by the Town, until the completion of construction. No works, including construction, shall take place within tree protection zones.

32. Retaining Wall Installation and Inspection

The Owner covenants and agrees to apply for and obtain a building permit for a retaining wall, if any, prior to construction thereof. The Owner is responsible for the following requirements:

- (1) Obtaining a Consulting Engineer that would be responsible for the design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario. Prior to construction the Consulting Engineer shall review the site soil conditions and the geometric conditions to ensure the designed wall is compatible for the site;
- (2) The Consulting Engineer shall provide to the Town reports of construction of the retaining wall;
- (3) The Consulting Engineer shall supply a Certificate of Compliance for the retaining wall(s), certifying that all constructed retaining wall(s) have been constructed in accordance with the approved Plans and in accordance with good engineering practice.

Definition:

Consulting Engineer shall refer to an individual or firm retained by the Owner to provide design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario.

33. Air Conditioning Units

All required air conditioning units shall be installed in accordance with, By-law 95-2003, as amended, and/or in accordance with the location indicated on the Plans. All air conditioning units (condensers, evaporators, and line-sets) shall be installed and sized appropriately and to the manufactures specifications to ensure that all required air conditioning units function in an efficient manner and do not require future modifications. No air conditioning units shall be permitted at-grade or visible from a public street.

34. Sustainable Building Elements

The Owner covenants and agrees that the development of the Lands shall incorporate all sustainable elements outlined within Schedule 'E' of the Development Agreement which includes but is not limited to, parking standards for electric vehicles, cycling infrastructure in the form of cycle track, bike lockers and racks, pedestrian infrastructure in the form of sidewalks, crosswalks, transit stops, pedestrian lighting, indoor and outdoor waiting areas all being accessible in nature, urban heat island reduction methods being shade trees 8 - 12 metres apart where possible, with a continuous tree trench and/or silva cell system along all property lines, environmentally Conscious Roofing System (ECRS) in the form of a roof-top outdoor amenity space for the buildings occupants, individually metered units, stormwater runoff and retention methods to retain 25 mm of water for a 24 hour period and to remove 80% of total suspended solids, landscape elements to include 50% native species with water efficient characteristics, bird friendly design elements, light pollution limiting fixtures, and proper storage and collection methods for recycling and organic waste.

35. Construction of Streets 'A', 'B', 'C', and 'D' and associated services and lands

Future streets, being Street 'A', Street 'B', Street 'C' and Street 'D' as shown on the Plans shall remain under full ownership of the Town, but the Owner is fully obligated, and at its sole costs, for the construction of these streets, including, but without limiting the foregoing, the relocation of sanitary, stormwater and water services on Commercial Avenue and the conveyance of all or part of the Utility Lands as defined in the Development Agreement to the Town.

All proposed streets (Streets 'A', 'B', 'C' & 'D') are to be constructed to full municipal standards, including all services (sanitary, storm, and water services) as per the Town of Ajax and Region of Durham standard requirements. These streets will also be constructed as per Drawing 9 – Temporary Parking Phasing Plan prepared by Morrison Hershfield (Drawing No. 9, and dated December 16, 2015).

36. Timing of the Removal Parking Field

The Owner acknowledges that the Development Agreement requires the Owner to construct temporary parking prior to the commencement of construction on the Lands. The existing parking field consisting of 217 parking spaces on the Lands shall not be removed or decommissioned until the developer has completed the temporary parking requirements of the Development Agreement including, but without limiting the foregoing, the construction of all services in the Utility Lands and Streets 'A', 'B', 'C' and 'D', all as set out in the Development Agreement..

37. Sales Pavilion - Conditions of Removal

When the Owner no longer requires the temporary sales pavilion (or if the Sales Pavilion is no longer operational) as constructed by the Owner on other lands owned by the Town for the purposes of developing any portion of the Lands the sales pavilion shall be removed within 30 days by the Owner of the Sales Pavilion, unless the Town agrees otherwise.

38. Constructor Approval by Town

In accordance with the Development Agreement the Owner shall obtain the Town's prior written approval of the constructor whom is retained to carry out all works associated with the development of the project.

39. Survey for Lands to be Sold

That the Developer be responsible for and at its sole expense, prepare and register the reference plan survey necessary to complete the transaction of the lands that the development is going to be on. The survey shall also identify all abutting roads abutting the Phase 1A lands as parts on the survey.

40. Utility Lands

All dealings with the Utility Lands shall be in accordance with Development Agreement.

41. Building of the Project

The proposed building will be constructed in its entirety as one building. There will be no phasing of the building, nor will there be one side of the building built at a time. The entire building, including all underground parking structures will be built and a building permit will only be issued for the entire building, with no exceptions.

42. CMP/PMP & Communications Plan

An overall Construction Management Plan/Pedestrian Management Plan will be approved by the Town of Ajax prior to the issuance of any building permit for any component of the project. Also each stage of construction referenced in the approved Construction Management Plan/Pedestrian Management Plan will be reviewed and approved prior to construction occurring and with each stage of construction a Town approved communication will be prepared by the Developer for circulation to all affected properties and parties.

43. Monitoring and Maintenance of Permeable Elements

The Owner will be required to carry out all of the monitoring and maintenance of all permeable elements within the development for a period of 5 years after full installation of the permeable elements. Prior to the Town assuming the permeable elements the owner shall supply a report and certification of full functionality by the Owner's Professional Engineer, subject to the Town's approval.

44. Plan and Construction Coordination

All Plans shall be coordinated so that they depict the same base information. This must be done in order to ensure that at the time of construction all of these overlapping elements are addressed. These matters must be addressed through a preconstruction meeting.

45. Engineering Drawing Approvals Prior to Building Permit Issuance

All engineering drawings must be finalized and approved by the Town of Ajax Engineering Services prior to building permit issuance. This includes, but is not limited to, drawings showing how the interim streets are going to be constructed, how the future permanent streets are going to be constructed (Streets 'A', 'B', 'C', and 'D'), and a utility coordination plan signed off by all required utility providers.

46. Certification of Acceptance

(1) In this Agreement "Functional" means;

- i) the Professional Engineer's Letter of Completion has been delivered to the Town;
- ii) drawings for the General Plan of Services have been submitted to the Town in AutoCAD format acceptable to the Town in accordance with the Design Criteria; and
- iii) close circuit television (CCTV) inspection videos of the storm sewer system have been delivered to the Town.

(2) "Certificates of Preliminary Acceptance of Services" indicating the start of the maintenance period for underground Services shall be issued by the Town as follows:

- i) underground Services are Functional and all deficiencies corrected to the satisfaction of the Town;
- ii) base curb and base asphalt are complete;
- iii) as-built drawings for all underground Services including service connections have been delivered to the Town; and
- iv) a statutory declaration by the Owner that all accounts for underground Services have been paid has been delivered to the Town.

(3) "Certificate of Preliminary Acceptance of Services" indicating the start of maintenance period for aboveground Services shall be issued by the Town as follows:

- (i) completion of all aboveground Services including landscaping and boulevard planting required by this Agreement;
- (ii) if required by the Town the street and walkway lighting has been completed and is operational;
- (iii) the Professional Engineer's Letter of Completion referred to in Section 26;
- (iv) a Statutory Declaration of the Owner that all accounts have been paid has been delivered to the Town;
- (v) expiry of any Construction Lien Act (Ontario) holdback period;



- (vi) the Owner has complied with all of the provisions of this Agreement; and
 - (vii) Preliminary Lot Grading Certification has been delivered to the Town.
- (4) The Town shall, within sixty (60) days from the receipt of the Professional Engineer's Letter of Completion, either advise in writing the Professional Engineer that such work has been completed to its satisfaction or has not been completed to its satisfaction as the case may be and if the Town does not within the said sixty (60) day period so advise the Professional Engineer, it is assumed the work has been accepted unless the Town is delayed in inspecting the work and such delay is not the fault of the Town in which case the sixty (60) day period may be extended by the Town equal to the period of delay.
- (5) "Certificate of Final Acceptance" indicating the end of the maintenance period for underground Services shall be issued by the Town subject to the following:
- (i) issuance of a Certificate of Preliminary Acceptance of aboveground Services; and
 - (ii) an inspection by the Town of the Services to be covered by such Certificate of Final Acceptance indicating that all such Services have been maintained and all deficiencies and defects in such Services have been corrected by the Owner to the satisfaction of the Town.
- (6) "Certificate of Final Acceptance" indicating the end of the maintenance period for aboveground Services shall be issued by the Town subject to the following:
- (i) a complete set of "as constructed" Drawings satisfactory to the Town including lot grading elevations and boulevard tree planting locations submitted on mylar drafting film acceptable to the Town in accordance with the Design Criteria, but not until the Services are acceptable; and
 - (iii) the Owner has cleaned out, the oil and grit separator and inspected the quality control structure and outlet control devices and performed all of its obligations under the terms of this Agreement at which time the Town will assume ownership of the Services and the maintenance thereof.

47. Construction

- (1) The Owner shall not commence construction of any Services unless:
- (i) a Certificate of Insurance has been delivered in accordance with Section 16 and the Performance Guarantee has been provided in accordance with Section 3;
 - (ii) the Plans for the Services have been approved by the Town;
 - (iii) the Owner has given five (5) full business days written notice to the Town of its intention to commence construction; and
 - (iv) the Owner has submitted to the Town a detailed construction schedule (hereinafter called the "Schedule of Construction") at least 45 days prior to commencement of construction indicating the various stages of construction, references to the location of each stage, the anticipated date of commencement of construction and the anticipated completion date of each stage of construction relating to the construction of the Services and the Schedule of Construction has been approved by the Town. In the event that the Owner should fail to comply with the provisions of this paragraph, then the Town may at any time after such default prepare its own schedule of construction and upon sending a copy of such schedule to the Owner, it shall become binding and effective on the Owner in the same manner and to the same extent as if such schedule of construction had been prepared by the Owner and approved by the Town. The Schedule of Construction may be revised with the approval of the Town upon not less than thirty (30) days notice to the Town prior to the date on the Schedule of Construction to be revised.
- (2) The Owner shall construct the Services in accordance with the Schedule of Construction. Failure to fully complete all Services in accordance with the Schedule of



Construction shall be deemed to be a default of the Owner pursuant to the terms of this Agreement, and the Town shall be entitled to avail itself of all remedies contained herein with respect to such default. Upon such default and in addition to any other remedy the Town may have, the Town may require that the Owner cease and desist from doing any further work on the Lands, and the Owner hereby agrees to stop work if it receives notice to do so. The aforesaid agreement to stop work refers to any and all construction of any nature or kind whatsoever in connection with the Lands, including the construction of houses or other buildings or structures on the Lands. If the Owner is unable to fulfil the Schedule of Construction by labour disputes, fire or by a cause of any kind beyond its control then the Schedule of Construction shall be amended with the approval of the Town.

- (6) The construction of Services shall be deemed completed only upon the issuance of a Certificate of Preliminary Acceptance by the Town.
- (7) If the Owner covers or permits to be covered work that has been designated for special tests, inspections or approvals by the Town before such special tests, inspections or approvals have been made, given or completed, the Owner shall, if so directed by the Town, uncover such work, have the inspection or test satisfactorily completed and make good such work at the Owner's expense. The Town may order any part or parts of the Services to be specially examined should it believe that such work is not in accordance with the requirements of this Agreement. If, upon examination, such work is in the opinion of the Town found not in accordance with the requirements of this Agreement, the Owner shall correct such work and regardless of any finding as aforesaid the Owner shall pay all expenses in connection with the provisions of this clause.

48. Incomplete or Faulty Work

- (1) If in the opinion of the Town the Owner fails to install the Services, or, having commenced to install the Services, fails or neglects to proceed to complete the Services in accordance with the Schedule of Construction, or, in the event that the Services are not being installed according to the requirements of this Agreement, or if the Owner abandons the work, in addition to any other remedy the Town may have and upon the Town giving seven days' written notice to the Owner or its Professional Engineer, the Town may, without further notice, enter upon the Lands if necessary and proceed to supply all materials and to do all necessary works in connection with the installation of the Services including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, and to charge the cost thereof, together with an engineering fee of 15% of the cost of such materials and works, to the Owner who shall forthwith pay the same upon demand by the Town, such entry by the Town shall be as agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance or assumption of the Services by the Town. The Town, in addition to all other remedies it may have, may apply for an order from a Court of competent jurisdiction ordering the Owner to cease construction of any building on the Lands until such Services are completely installed in accordance with the requirements of the Town.
- (2) When, after the Owner has commenced construction of the Services, but before the Services have been finally accepted by the Town, any of the Services provided by the Owner do not function properly and, in the opinion of the Town, repairs are necessary to be made to prevent damage or hardship to any persons or any property, the Town shall notify the Owner or the Professional Engineer of the repairs which are required to be made. In the event the condition as aforesaid is an emergency, or immediate repair is required, then the Town without prior notice may take such action and do all such acts and things as are considered necessary and advisable in the place of the Owner, and the Owner shall reimburse the Town for any and all expenses incurred, whether directly or indirectly by the Town, in connection with such action.
- (3) The Owner further covenants and agrees with the Town that it will repair any damage that may be caused to any of the Services, including grading and landscaping, by any person, resulting from the construction of any buildings on the Lands or resulting from the construction of any of the Services or other matters which the Owner is obligated to perform under this Agreement. It is further understood and agreed that if damages should occur to any of the Services it shall be assumed that such damages were caused by the above-mentioned construction operations and the onus shall therefore be upon the Owner to prove otherwise.



49. Roadways

- (i) The Owner shall maintain all streets constructed or reconstructed by the Owner suitable for vehicular traffic after the installation of Granular 'A' material and until the work thereon has been finally accepted by the Town.
- (ii) The granular base, when possible, shall be laid just prior to the time that curbs and gutters are constructed. Any granular base material which has, in the opinion of the Town, become contaminated with deleterious material or is otherwise determined to be unacceptable, shall be removed and shall not become part of the final road base.
- (iii) The granular stone base shall be inspected and approved by the Professional Engineer before the base course of asphalt is laid in accordance with the Town's material testing requirements.
- (iv) The Owner agrees to maintain such streets free from construction deposits and debris after the first lift of asphalt has been laid.
- (v) The final lift of asphalt paving shall not be placed until underground service trenches have been subjected to a full winter for consolidation purposes and until the Owner has tested all such streets in accordance with a testing method approved by the Town.

50. Concrete Sidewalks

All sidewalks shall be constructed in locations as shown on the Plans.

51. Walkways and Boulevards

- (i) The Owner shall carry out or cause to be carried out, at its expense, boulevard tree planting in accordance with the Town's policy on boulevard planting, pruning and tree removal as amended from time to time and subject to the approval of the Town. Boulevard planting is to be illustrated on "STREET TREE PLANTING PLANS" describing species, quantities and schematic locations for street trees. Such plans are to be based upon the utility co-ordination drawings prepared for the development and shall form part of the engineering drawings described by Schedule "H" of this Agreement. Utility co-ordination plans are to be prepared in anticipation of the requirement for street trees. The tree planting shall be completed within six (6) months of the completion of grading and sodding of the boulevard.
- (ii) The Owner agrees to grade, topsoil, seed and provide interim drainage on all park blocks (as per Section H. Parklands and Open Space, Town of Ajax Design Criteria and Standard Drawings) in conjunction with the Drawings.
- (iii) In the event the Owner agrees to develop parks beyond the requirements of subparagraph (iii), parks and walkways, including lighting, shall be constructed in accordance with the approved Engineering Drawings. The said drawings shall show the proposed treatment of parks and all dedicated lands together with school sites and shall be prepared in accordance with drawings approved by the Town.
- (iv) Prior to the acceptance of the works in the parks and boulevards the Owner shall deliver to the Town as-built drawings showing all works and plantings constructed or planted thereon.
- (v) The Town reserves the right to revise or request a revision to any drawing necessary for the better utilization of the parks or boulevards.
- (vi) The Owner agrees to insert a notice in all agreements of purchase and sale for any dwelling unit in the Plan and in the sales office as follows:

"Any parks and open spaces shown within this plan of subdivision may or may not include future facilities for active and/or passive recreational use. This decision shall be at the sole discretion of the Town of Ajax."



52. Storm Sewers

- (i) A complete system of storm sewers and appurtenances shall be installed by the Owner to service the Lands and other lands covered t in accordance with the Plans.
- (ii) Storm sewers shall be connected and drained to outlets approved by the Town.
- (iii) The Owner shall flush and clean all the storm sewers prior to acceptance by the Town.
- (v) All storm sewers regardless of size are to be inspected by Closed Circuit Television and the Owner shall submit reports and tapes to the Town prior the issuance of a Certificate of Preliminary Acceptance of Services.

53. Street Lighting

The Owner covenants and agrees to design, supply and install at its own expense, street lighting, including poles, standards, lamps, wires and switches and supplemental equipment; and poles, standards and lamps to be at all locations shown in the Plans such work to be done to the approval of the Town and in accordance with the specifications. Note: LED lighting is required for this subdivision as per the new lighting standards in the Town Design Criteria and Standards dated January, 2014.

54. Hydro Services

The Owner covenants and agrees with the Town:

- (i) To enter into a separate agreement with Veridian Connections for the supply of electrical distribution services within the Plan;
- (ii) To provide evidence of entering into the said agreement with Veridian Connections prior to the release, by the Town, of the Plan for registration.
- (iii) To design, supply and install at their own expense an underground electrical distribution service using above ground, low profile transformers and junction boxes to service all lots and blocks within the Plan, according to drawings and specifications approved by Veridian.

55. Development Agreement

The Owner covenants and agrees to comply with the obligations of the Development Agreement with respect to the development of the Lands and the construction of the Services and the obligations of the Owner in this Agreement are in addition to the obligations of the Owner in the Development Agreement.

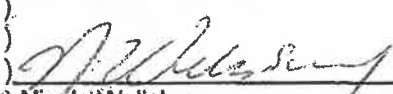


IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective corporate seals, duly attested by their proper authorized officers.

SIGNED, SEALED & DELIVERED


) THE CORPORATION OF THE TOWN OF AJAX

) 
Steve Parish, Mayor

) 
Nicole Wellsbury,
Manager of Legislative Services/Deputy Clerk

) I/We have the authority to bind the Corporation

) 2480832 Ontario Inc.

) 
Per: _____
Name: Thomas Lin
Title: President & CEO

) Per:

) Name:

) Title:

) I/We have the authority to bind the Corporation

SCHEDULE "A"

Legal Description

All and singular that certain parcel or tract of land described as Part 1, 40R-28209, Town of Ajax,
Regional Municipality of Durham. Part of PIN # 2645-60086 (LT),

LT

SCHEDULE "B"

SECURITY CALCULATIONS FORM

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
LANDSCAPING:				
Part A - On Site Work				
Permeable Precast Concrete Unit Paving - Vehicular	1,810	m ²	\$65.00	\$117,650.00
Precast Concrete Unit Paving - Pedestrian	825	m ²	\$75.00	\$61,875.00
Permeable Precast Concrete Unit Paving - Pedestrian	2,015	m ²	\$85.00	\$171,275.00
Poured Concrete Planter Curb	82	l.m.	\$60.00	\$4,900.00
Precast Concrete Planter - narrow	1	each	\$1,500.00	\$1,500.00
Bike Rack	19	each	\$300.00	\$5,700.00
Table and Chair Seating	5	each	\$1,500.00	\$7,500.00
Tactile Warning Strip	2	each	\$175.00	
Deciduous Tree	2	each	\$450.00	\$900.00
Shrubs	32	each	\$35.00	\$1,120.00
Perennials	628	each	\$15.00	\$9,420.00
Part B - Amenity Terrace				
Precast Concrete Unit Paving - Amenity Terrace	770	m ²	\$75.00	\$57,750.00
Private Terrace Paving	57	m ²	\$50.00	\$2,850.00
Precast Concrete Roof Slabs	54	m ²	\$50.00	\$2,700.00
Granular Paving	25	m ²	\$30.00	\$750.00
Precast Concrete Planter Wall	320	l.m.	\$150.00	\$48,000.00
Shade Structure	6	each	\$2,500.00	\$15,000.00
BBQ	4	each	\$600.00	\$2,400.00
Prefabricated Planter	14	each	\$150.00	\$2,100.00
Light Pole	12	each	\$1,250.00	\$15,000.00
Landscape Bollard	58	each	\$250.00	\$14,500.00
Bench	4	each	\$1,250.00	\$5,000.00
Sofa	4	each	\$2,000.00	\$8,000.00
Chair	8	each	\$900.00	\$7,200.00
Coffee Table	4	each	\$200.00	\$800.00
Small Game Table	6	each	\$250.00	\$1,500.00
Large Game Table	8	each	\$400.00	\$3,200.00
Cyber Lounge Seating	16	each	\$900.00	\$14,400.00



ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Dining Table – Small	8	each	\$400.00	\$3,200.00
Dining Table – Large	4	each	\$1,000.00	\$4,000.00
Dining Chair	56	each	\$250.00	\$14,000.00
Large Shrub	128	each	\$100.00	\$12,800.00
Shrubs	584	each	\$35.00	\$20,440.00
Perennials	1428	each	\$15.00	\$21,420.00
Live-Roof/Green-Roof Pre-vegetated Tray	156	m ²	\$20.00	\$3,120.00
Part C – Streetscape Work				
Permeable Precast Concrete - Vehicular	1,488	m ²	\$85.00	\$126,480.00
Precast Concrete Unit Paving - Pedestrian	1,145	m ²	\$85.00	\$97,325.00
Precast Concrete Unit Paving	940	m ²	\$75.00	\$70,500.00
Poured Concrete Paving – Pedestrian	355	m ²	\$60.00	\$21,300.00
Asphalt Cycle Track Path	230	m ²	\$50.00	\$11,500.00
Driveway Crossings	2	each	\$2,000.00	\$4,000.00
Precast Concrete Planter – Large	3	each	\$5,000.00	\$15,000.00
Precast Concrete Planter – Small	4	each	\$2,700.00	\$10,800.00
Precast Concrete Planter - Low	2	each	\$1,400.00	\$2,800.00
Bike Rack	18	each	\$300.00	\$5,400.00
Bench	10	each	\$1,250.00	\$12,500.00
Litter Receptacle	10	each	\$800.00	\$8,000.00
Light Pole	16	each	\$1,250.00	\$20,000.00
Continuous Soil Trench	280	m ²	\$150.00	\$42,000.00
Metal Tree Grate	12	each	\$900.00	\$10,800.00
Tactile Warning Strips	24	each	\$175.00	\$4,200.00
Deciduous Tree	27	each	\$450.00	\$12,150.00
Shrubs	172	each	\$35.00	\$6,020.00
Perennials	1048	each	\$15.00	\$15,720.00
Sub-Total				\$ 1,158,465.00
ENGINEERING:				
Foundation Certificate(s)	1	per block	\$5,000.00	\$5,000.00
Grading Certificate	1	each	\$5,000.00	\$5,000.00
Site Servicing Certificate/Stormwater Maintenance Contract	1	each	\$5,000.00	\$5,000.00
Photometrics Certificate		each	\$5,000.00	\$5,000.00
Entrance(s)	4	each	\$3,000.00	\$12,000.00
Street Lights	20	each	\$4,000.00	\$80,000.00

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Underground Services (Water, Storm and Sanitary)	**	**	100% of total cost	\$419,850.00
Asphalt Paving, Concrete Curbing, Raised Intersections, and Permeable Pavers on all Roads (Harwood, Street A, B, C & D)	**	**	100% of total cost	\$578,500.00
Mud/Right of Way Damage Deposit	1	each	\$20,000.00	\$20,000.00
Garbage Facility	1	each	\$5,000.00	\$5,000.00
Litter Deposit	1	each	\$5,000.00	\$5,000.00
Sub-Total				\$1,131,350.00
TOTAL SECURITIES REQUIRED				\$2,289,815.00

Prior to Town Staff completing a site inspection to reduce/release a letter of credit, the required Certificate of Compliance and Certificate of Substantial Completion must be submitted by a Professional Engineer and Landscape Architect respectively certifying that all works have been constructed in accordance with the approved plans.



SCHEDULE "C"

Summary of financial payments and guarantees to the Town of Ajax by the Owner

PAYMENT	METHOD OF PAYMENT	AMOUNT	DUE DATE
Performance Guarantee	Irrevocable Letter of Credit	\$2,289,815.00	Prior to Execution of Agreement
Digital Drawing Management Fee	Bank Draft or Certified Cheque	\$ 1,000.00	Prior to Execution of Agreement
Cash-in-lieu of Parkland	Bank Draft or Certified Cheque	5% Residential \$57,600.00 2% Commercial \$144,000.00 Total \$201,600.00	Prior to Execution of Agreement
Tax Arrears	Cash	Nil	Prior to Execution of Agreement
Registrations	Cash	By Invoice	Upon Invoice by Town
Development Charges	Cash	As Per By-law	Prior to Issuance of Each Building Permit
Benchmark	Bank Draft or Certified Cheque	\$750.00	Prior to Execution of Agreement
Architectural Control	Cash	By Invoice	Upon Invoice by Town
Legal Fees	Bank Draft or Certified Cheque	\$609.37	Prior to Execution of Agreement
Litter Management Program	Bank Draft or Certified Cheque	\$3,000.00	Prior to Execution of Agreement
Tree Compensation Payment	Bank Draft or Certified Cheque	\$18,500.00	Prior to Execution of Agreement
Mud and Right-of-Way Deposit	Bank Draft or Certified Cheque	\$20,000.00	Prior to Execution of Agreement
Architectural Landscape Review and Inspection Service Fees	Bank Draft or Certified Cheque	\$63,715.57	Prior to Execution of Agreement
Engineering Review, Inspection and Administration Service Fees	Bank Draft or Certified Cheque	\$50,910.75	Prior to Execution of Agreement
Stormwater Maintenance Fee	Bank Draft or Certified Cheque	\$4,800.00	Prior to Execution of Agreement
Liability Insurance	Insurance Certificate	\$5,000,000.00	Prior to Execution of Agreement



APPENDIX C

July 15/13

PRIVILEGED AND CONFIDENTIAL

WINDCORP GRAND HARWOOD PLACE LTD.

and

TOWN OF AJAX

**DEVELOPMENT AGREEMENT AND
AGREEMENT OF PURCHASE AND SALE**

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PRIVILEGED AND CONFIDENTIAL

DEVELOPMENT AGREEMENT AND
AGREEMENT OF PURCHASE AND SALE

BETWEEN:

WINDCORP GRAND HARWOOD PLACE LTD.
(the "Developer")

and

TOWN OF AJAX
("Ajax" or the "Town")

RECITALS:

- A. The Town wishes to revitalize its downtown area by encouraging private sector investment.
- B. The Town passed a Community Improvement Plan pursuant to section 28 of the Planning Act, R. S. O. 1990, c. P. 13, as amended (the "Planning Act") identifying a plan for the improvement for certain lands within the geographic Town of Ajax that includes the downtown area (the "Community Improvement Area"). The location and parameters of the Community Improvement Plan are depicted on Schedule "A".
- C. The Town owns certain lands within the Community Improvement Area that the Town determined were critical to the downtown revitalization effort, which lands are more particularly described at Schedule "B-1" and are depicted on Schedule "B-2" (the "Phase 1A Lands" and the "Phase 1B Lands"). For greater clarity, the Town only owns a portion of the Phase 1B Lands (the "Town Phase 1B Lands") and the remaining Phase 1B Lands are privately-owned (the "Private Phase 1B Lands") as depicted on Schedule "B-2".
- D. In accordance with the vision contained in the Community Improvement Plan, the Town's Official Plan and the Development Plans, as hereinafter defined, the Developer wishes to develop the Phase 1A Lands to include a high density mixed-use development that incorporates residential apartment buildings with ground floor retail and commercial uses, stacked townhouses and live/work units. The Developer's development of the Phase 1A Lands will require the acquisition of the Utility Lands as described on Schedule "B-1" and depicted on Schedule "B-2".
- E. The Developer and the Town acknowledge that the development of the Phase 1A Lands and the Phase 1B lands are integrated and integral to one another.
- F. The Developer and the Town wish to enter into this Agreement for the purchase of the Phase 1A Lands by the Developer from the Town and the acquisition of the Utility Lands by the Developer and the development by the Developer of the Phase 1A Lands and the Utility Lands.
- G. The development of the Phase 1A Lands by the Developer in the manner that will satisfy the Town's objectives will require partial relief from payment of the Town's portion of realty taxes attributable to the Phase 1A Lands (the "Rehabilitation Tax Rebate").
- H. The Developer and the Town are entering into this Agreement to confirm:

- (a) The terms upon which the Developer will acquire the Phase 1A Lands, the Utility Lands and to develop the Phase 1A Lands and the Utility Lands;
- (b) The financial incentives to be provided by the Town;
- (c) The basis upon which the Town may be required to expropriate the Utility Lands and the security to be provided by the Developer if such expropriation is required; and
- (d) The Town confirms that the Proposed Development, as defined herein, is permitted according to the applicable Zoning By-law of the Town of Ajax and the Official Plan for the Regional Municipality of Durham and the Town of Ajax.

IN CONSIDERATION of the mutual covenants contained in this Agreement, the parties hereto agree to and with each other as follows:

SECTION 1 DEFINITIONS

- 1.1 "Above-grade Building Permit" means a Building Permit for that part or parts of a structure that is to be constructed above-grade and shall not include any Building Permits for excavation, shoring and/or foundations.
- 1.2 "Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement including the attached Schedules, as amended from time to time, and "Article", "Section", "Subsection", "Paragraph", "Subparagraph" and "Schedule" followed by a number or letter refer to the specified article, section, subsection, paragraph, subparagraph or schedule, as the case may be, of this Agreement.
- 1.3 "Ajax Plaza" means that portion of the existing development on the Phase 1B Lands abutting Phase 1B Road 1 as depicted on Schedule "B-2".
- 1.4 "Applicable Laws" means, in respect of any person, property, transaction or event, all applicable federal, provincial and municipal laws, including Environmental Laws, statutes, regulations, rules, by-laws, policies and guidelines, all orders and permits, and all applicable common laws or equitable principles whether now or hereafter in force and effect.
- 1.5 "Apartment Unit" means a self-contained unit within an apartment-style structure that is either one of several units in a multi-unit residential apartment building or a unit within a building registered pursuant to the Condominium Act.
- 1.6 "Applications" means applications pursuant to the *Planning Act* and/or the *Condominium Act*.
- 1.7 "Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.
- 1.8 "*Building Code Act*" means the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, superseded or replaced from time to time.
- 1.9 "Building Permit" means a permit issued by the Town pursuant to the *Building Code Act*, to construct a building, foundation or structure on the Lands and includes a demolition permit, an excavation and shoring permit.
- 1.10 "Business Day" means any day other than a Saturday, Sunday a statutory holiday in the Province of Ontario or any day on which the Town's offices are closed for business. For greater clarity, "Family Day" shall be deemed not to be a Business Day.
- 1.11 "Closing" means the completion of this Agreement.

- 1.12 "Closing Date" means the day falling on the ninetieth (90th) day after the conditions more particularly described in Sections 11.1 and 11.3 have been satisfied or waived or, in the event such day is not a Business Day, the following Business Day.
- 1.13 "Condominium Act" means the *Condominium Act*, 1998, S.O. 1998, c. C.19, as amended, superseded or replaced from time to time.
- 1.14 "Consent" means a consent issued by the Land Division Committee for the Region of Durham to transfer a part of the Lands pursuant to section 53 of the *Planning Act*.
- 1.15 "Council" means Council of the Town.
- 1.16 "Damages" means any losses, liabilities, damages or out-of-pocket expenses (including legal fees and expenses on a full indemnity basis without reduction for tariff rates or similar reductions) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a governmental entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.
- 1.17 "Deposit" has the meaning ascribed in Subsection 7.11(a) herein.
- 1.18 "Developer" means Windcorp Grand Harwood Place Ltd.
- 1.19 "Development Charges Act" means the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended, superseded or replaced from time to time.
- 1.20 "Development Charges" means those charges under the Town's development charges by-law passed from time to time, pursuant to the *Development Charges Act*.
- 1.21 "Development Plans" has the meaning set out in Subsection 3.1.
- 1.22 "Downtown CIP" means the Downtown Community Improvement Plan passed by Council, pursuant to subsection 28(2) of the *Planning Act*, as By-law 44 - 2005, and as further amended from time to time.
- 1.23 "Eligible Assembly Costs" has the meaning set out in Subsection 7.6.
- 1.24 "Environmental Laws" means all applicable Laws of Governmental Entities and all other statutory requirements relating to public or occupational health and safety or the protection of the environment and all Authorizations issued pursuant to such Laws or statutory requirements.
- 1.25 "Execution Date" means the date of execution of this Agreement by both parties.
- 1.26 "Existing Environmental Report" has the meaning set out in Subsection 9.1(a)(i).
- 1.27 "Existing Tenants" means for the purposes of this Agreement, the commercial tenancies within the Ajax Plaza, as of the Execution Date.
- 1.28 "Expropriations Act" means the *Expropriations Act* R.S.O. 1990 c. E.26 as amended, superseded or replaced from time to time.
- 1.29 "Force Majeure Event" means a *bona fide* delay in the performance of any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, material or labour shortage not at the fault of the Developer, acts of public enemy, war, terrorism, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God.
- 1.30 "Future Application" means any complete application filed in accordance with the *Planning Act* which conforms to the provisions of the Town of Ajax Official Plan.
- 1.31 "Governmental Entity" means (i) federal, provincial, municipal, local or other governmental or public department commission, board, bureau, agency, commissioner, tribunal or instrumentality, (ii) any subdivision or authority of any of the above, and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

- 1.32 "Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Laws, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes thereof or polychlorinated biphenyls and asbestos or asbestos-containing materials.
- 1.33 "HST" means the Harmonized Sales Tax.
- 1.34 "Lands" means the lands shown as Phase 1A, Phase 1B and the future Phase 2 Lands and Phase 3 Lands as depicted on Schedule "B-2".
- 1.35 "Laws" means any and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity and (iii) to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity.
- 1.36 "Minor Variance" means a minor variance granted by the Committee of Adjustment for the Town pursuant to section 45 of the *Planning Act*.
- 1.37 "Permitted Encumbrances" means those encumbrances set out in Schedule "C".
- 1.38 "Person" means a natural person, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.
- 1.39 "Phase 1A Lands" means the lands depicted in Schedule "B-2".
- 1.40 "Phase 1B Lands" means the lands depicted on Schedule "B-2".
- 1.41 "Phase 2 Lands" means the lands depicted on Schedule "B-2".
- 1.42 "Phase 3 Lands" means the lands depicted on Schedule "B-2".
- 1.43 "*Planning Act*" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended.
- 1.44 "Private Phase 1B Lands" means the lands on Phase 1B not owned by the Town and depicted on Schedule "B-2".
- 1.45 "Project Building(s)" means a building comprising a component of the Proposed Development.
- 1.46 "Proposed Development" means the proposed development of the Phase 1A Lands as contemplated by the Development Plans.
- 1.47 "Purchase Price" has the meaning set out in Subsection 7.5 hereto.
- 1.48 "Purchaser" means the Developer.
- 1.49 "Region" means the Regional Municipality of Durham.
- 1.50 "Rehabilitation Tax Rebate Program" means the program of the same name as more particularly described in section 2.2.5 of the Downtown CIP By-law.
- 1.51 "Requisition Date" means the thirtieth (30th) day prior to the Closing Date.
- 1.52 "Site Plan Application" means a complete application as defined in the Town's Official Plan pursuant to section 41 of the *Planning Act*.
- 1.53 "Site Plan Approval" means an approval required under Subsection 11.3(a) pursuant to section 41 of the *Planning Act* and / or pursuant to any requirements reasonably imposed by the Town for the Proposed Development.

- 1.54 "Town Development Conditions" has the meaning ascribed in Subsection 3.3.
- 1.55 "Town Phase 1B Lands" has the meaning ascribed in Section 13.2.
- 1.56 "Town's DC By-law" means Town Development Charge By-law No. 83-2008.
- 1.57 "Utility Lands" means those lands as described on Schedule "B-1" and depicted on Schedule "B-2".
- 1.58 "Value Reassessment Date" means the date on which a Project Building is fit for occupancy pursuant to the *Building Code Act*.
- 1.59 "Vendor" means the Town of Ajax.
- 1.60 "VTB" has the meaning ascribed thereto in Section 7.11(b).
- 1.61 "VTB Mortgagor" has the meaning ascribed thereto in Section 7.11(b).
- 1.62 "Zoning By-law" means the Town's zoning by-law applicable to the Proposed Development, as may be amended from time to time.

SECTION 2 INTENT AND GENERAL OBLIGATIONS

2.1 Financial Incentives.

The financial incentives to be provided by the Town to the Developer for the development of the Phase 1A Lands, as more particularly set out in this Agreement, include:

- (a) a partial municipal tax rebate for the Town's portion of property taxes;
- (b) the rebate of all fees paid to the Town in respect of any Applications;
- (c) an exemption of all Development Charges pursuant to the Town's DC By-law;
- (d) a rebate of all fees in respect of the issuance of any Building Permits; and
- (e) parkland dedication charges at lowest rates provided in the Downtown CIP.

In each case in respect of the Phase 1A Lands.

2.2 Parking Requirement Reduction.

In addition to a reduction in the above-captioned items, the Town acknowledges that the Downtown CIP provides the opportunity for the Developer to make an application for a reduction in the parking requirements as otherwise required by the Zoning By-law.

2.3 Required Improvements.

- (a) Development of the Phase 1A Lands will require the acquisition of the Utility Lands that are more particularly described in this Agreement. These acquisitions are required in order for the Developer to develop the Phase 1A Lands. It is understood and agreed by the Developer and Ajax that the Developer's acquisition of the Utility Lands are a condition precedent of the incentives under the Downtown CIP and under this Agreement and the purchase by the Developer of the Phase 1A Lands.
- (b) The Town will support the development of the Phase 1A Lands through financial incentives to the Developer pursuant to incentive programs offered by the Region under the Regional Revitalization Plan.

SECTION 3 PROPOSED DEVELOPMENT

3.1 Development to be Substantially in Accordance with Plans.

While acknowledging that, at this time, it is a conceptual design, the Town and the Developer agree that the Developer shall develop the Phase 1A Lands, and if applicable the Phase 1B Lands, substantially in accordance with the plans annexed hereto as Schedule "D" (the "Development Plans"). The Town acknowledges that the Developer is relying upon the Town's warranty and representation regarding the zoning permissions applicable to the Phase 1A Lands in agreeing to enter into this Agreement.

3.2 Development Plans Subject to Change.

The parties hereto acknowledge and agree that, subject to the Vendor's conditions in Subsection 11.3, the Developer may alter the Development Plans, provided such alterations are not material alterations. Where the Developer proposes to materially alter the Development Plans, the parties will act reasonably and use their respective best efforts to revise the Development Plans in a manner satisfactory to both parties. It is understood and agreed that it shall be a material alteration to propose development on the Phase 1A Lands that would result in less than 10 storeys, less than 2,300 square meters of total office and/or less than 2,800 square meters of retail gross floor area.

3.3 The Town Development Conditions.

The following conditions are the conditions that must be satisfied in respect of the development of the Phase 1A Lands (the "Town Development Conditions"):

- (a) The design and construction of all Project Buildings shall incorporate the sustainable building technologies and practices more particularly outlined in Schedule "E" (the "Sustainable Elements") that shall be included as conditions of Site Plan Approval and as a condition of any Site Plan Agreement.
- (b) The at-grade portions of the Project Buildings to be constructed facing Harwood Avenue and Road 1 as depicted on Schedule "B-2" shall be constructed for use as grade-related commercial and/or retail premises (the "Grade-related Commercial Premises").
- (c) The ownership of public highway identified as Road 1 as depicted on Schedule "B-2" shall be retained by the Town.

3.4 Timing of Commencement of Construction.

- (a) Following its acquisition of the Phase 1A Lands, the Developer agrees to proceed expeditiously with the development of the Project Buildings to be located thereon and, subject to receiving all regulatory approvals, construction of the development on the Phase 1A Lands shall commence no later than three (3) months from the Closing Date, weather permitting. The Developer shall not be required to construct the stacked townhouse live/work units on the Phase 1A Lands until the Phase 1B Lands are developed.
- (b) It is understood and agreed that construction of the services in the Utility Lands may be carried out at the same time as construction of the development on the Phase 1A Lands provided that temporary parking arrangements in accordance with Schedule "G" including temporary parking on the Utility Lands are in place before the existing parking on the Phase 1A Lands is removed. For greater clarity, the existing parking on the Phase 1A Lands shall not be removed until the Developer has (1) acquired the Utility Lands and demolished all existing buildings on the Utility Lands, (2) construction has commenced to install all services in the Utility Lands and (3) provided temporary parking in accordance with Schedule "G" hereto. It is understood that the use of the temporary parking spaces on the Utility Lands and Road 1 lands may not be available during limited periods of the installation of the services to facilitate the construction activities related to the installation of the services in the Utility Lands and Road 1

*Had it not
changed plans
would have
had to build
in November
cause they
closed in
August.*

Lands. Notwithstanding any of the foregoing, the Developer may remove existing parking spaces on the Phase 1A Lands for the purposes of the erection of a temporary sales office and to facilitate the construction of the services in Road 1 as shown on Schedule "B-2".

3.5 Site Plan Application

The Developer shall submit a Site Plan Application to the Town for the Proposed Development by January 15, 2014. The Town shall act diligently to process and approve the Site Plan Application for the Proposed Development with the anticipated approval being obtained within twelve (12) months of submission by the Developer. The Developer agrees to act diligently to process and respond to comments by the Town on the Site Plan Application.

3.6 Servicing.

The Developer shall be responsible for the construction and/or reconstruction of sanitary sewers, water mains, and storm sewers on the Phase 1A Lands and (if applicable) the Phase 1B Lands, the location and other specifications for which shall be more precisely determined through a Site Plan Application.

3.7 Stopping Up of Phase 1A Lands.

Within ninety (90) days of the Execution Date, the Town shall take the necessary steps to stop up and close the Phase 1A Lands as part of the Harwood Avenue road allowance.

3.8 Temporary Sales Office.

Upon request by the Developer (provided that the Phase 1A Lands have been closed as part of the Harwood Avenue road allowance, as referred to in Subsection 3.7 above), the Town shall, subject to any required Site Plan Approval, promptly issue a licence to permit the Developer to erect a temporary sales office on the Phase 1A Lands for the purposes of marketing the Proposed Development.

When the Developer no longer requires the temporary sales office for the purposes of developing any portion of the Lands, the Town has the option to request that the Developer donate the temporary sales office to the Town provided that the Town must relocate the temporary sales office from the Phase 1A Lands, at its own cost, within thirty (30) days of the Developer notifying the Town that the temporary sales office can be removed. In the event that the Town elects to acquire the temporary sales office, the Town shall provide a charitable tax receipt to the Developer for the value of the temporary sales office.

3.9 Temporary Parking.

The Developer shall provide temporary parking arrangements, at the sole cost of the Developer, as set out in Schedule "G" prior to the commencement of construction of the Proposed Development.

3.10 Official Plan Designation and Zoning.

The Town shall not initiate or grant any amendment to the in-force Official Plan or Zoning By-law or pass an interim control by-law which would have the effect of prohibiting the Proposed Development on the Phase 1A Lands.

3.11 Minor Variances.

In the event that a minor variance(s) are required to permit the Proposed Development on the Phase 1A Lands, the Town shall assist the Developer in any application for such variance(s).

3.12 Constructor.

The Developer will obtain the Town's prior written approval to the constructor(s) that it retains to carry out the Proposed Development or any material portion thereof, not to be unreasonably withheld.

SECTION 4 DOWNTOWN CIP INCENTIVES

4.1 Downtown CIP Incentives are a package.

- (a) The Town and the Developer acknowledge and agree that the incentives more particularly described in this Section 4 form a package of incentives (collectively, the "Downtown CIP Incentives") that are to be granted to the Developer in conjunction with the Developer's development and construction of the Proposed Development.
- (b) The Town and the Developer further acknowledge and agree that the benefit accruing to the Developer as a consequence of the Downtown CIP Incentives has been considered, in addition to other normally assessed factors, in arriving at the Purchase Price for the Phase 1A Lands.

4.2 Rehabilitation Tax Rebate Program.

- (a) The Town confirms that this Agreement satisfies the provisions of section 2.2.5 (h) of the current Downtown CIP By-law requiring the Town and the Developer to enter into a "Redevelopment Agreement".
- (b) The Town agrees the incentive to be provided to the Developer pursuant to the Rehabilitation Tax Rebate Program (a "Rehabilitation Tax Rebate") in respect of the Phase 1A Lands shall be eighty percent (80%) of the incremental difference in the Town's component of the property taxes between:
 - (i) property taxes exigible in respect of that part or parts of the Phase 1A Lands as of the Execution Date; and
 - (ii) property taxes exigible on the same part or parts of the Phase 1A Lands on the Value Reassessment Date.
- (c) The Developer hereby covenants and agrees that, after the Value Reassessment Date for any particular Project Building, it shall co-operate with the Municipal Property Assessment Corporation ("MPAC") to facilitate an assessment of the value of a part or parts of the Phase 1A Lands on which a Project Building has been constructed and that part of the Phase 1A Lands associated with such Project Building that may not be fit for occupancy (a "Post-construction Assessment") for the purposes of determining the value of the lands comprising said Project Building as of the Value Reassessment Date.
- (d) For the purpose of the determination of the commencement of Rehabilitation Tax Rebates, the parties hereto agree that there shall be a new date of "project completion" (as that term is used in the Downtown CIP By-law) for each Project Building. For greater clarity, each Project Building shall receive an independent Rehabilitation Tax Rebate commencing upon the first calendar year after the Value Reassessment Date for each Project Building.
- (e) Provided the property taxes for a given Project Building and its associated portion of the Phase 1A Lands as determined above are not in arrears, the Town shall commence paying the Developer the Rehabilitation Tax Rebates at the commencement of the next tax year following the Value Reassessment Date for the applicable Project Building.
- (f) The Rehabilitation Tax Rebate for each Project Building shall expire ten (10) years after the Value Reassessment Date for each Project Building.
- (g) The rebate under the Rehabilitation Tax Rebate Program to be provided by the Town to the Developer pursuant to this section shall be paid by the Town to the Developer or as it may direct provided that the Town shall not be required to make multiple payments at any one time and provided that any rebate will not enure to any residential condominium unit owners.

4.3 Planning and Development Fees Grant & Development Charge Exemption / Grant Programs.

Pursuant to the Planning and Development Fees Grant Program component of the Downtown CIP, and, if required, upon the amendment of the CIP eligibility requirements to include the Proposed Development, the Town covenants and agrees that:

- (a) it shall provide a rebate to the Developer equal to the amount of all fees charged in respect of any Applications in respect of the Lands or in respect of any permits or licenses for signage and/or demolition in respect of the redevelopment of the Lands;
- (b) it shall exempt all Development Charges otherwise payable to the Town in respect of the development and/or construction of any component of the Proposed Development; and
- (c) in respect of any fee charged pursuant to the *Building Code Act* for a Building Permit to permit the construction of any structure at the Phase 1A Lands, the Town shall, provide a 100% rebate to the Developer for issuance of such Building Permit in accordance with the Downtown CIP.
- (d) The grants, waivers and/or rebates to be provided by the Town to the Developer pursuant to this section shall be paid by the Town to the registered owner of that part of the Phase 1A Lands subject to the applicable *Planning Act* application and/or Building Permit application at such time as:
 - (1) in the case of an Application, when the Application receives final approval; and
 - (2) in the case of a Building Permit application, when the Chief Building Official for the Town, or their designate, completes an inspection of the structure for which the *Planning Act* or Building Permit application was filed and such structure is fit for occupancy in accordance with the *Building Code Act*

provided that any grants, waivers and/or rebates will not enure to any residential condominium unit owners.

- (e) The payment by the Town to the Developer of any rebate or the waiver of any fee shall be conditional upon the Developer having paid or, to the extent provided hereunder, provided security for, all costs associated with the expropriation by the Town of the Utility Lands if such expropriation is required.

4.4 Fees, Levies or Charges Paid by Letter of Credit.

- (a) The Town acknowledges and agrees that wherever a fee, levy or charge, including without limitation, any fees applicable to Applications or applications for a Building Permit (a "**Rebateable Payment**"), is to be paid to the Town in respect of any matter covered by the Planning and Development Fees Grant and Development Charges Exemption/Grant Programs as provided in Subsection 4.3 and such fee, levy or charge may be subject to a rebate on a future occasion, such payment may be made in the form of an irrevocable letter of credit in favour of the Town (a "**Rebateable LC**").
- (b) The Town agrees that where the Developer pays a Rebateable Payment by delivery of a Rebateable LC, at such time as the rebateable portion of the Rebateable Payment would have otherwise accrued to the Developer the Town shall, at the option of the Developer, either:
 - (i) return the Rebateable LC to the Developer within seven (7) days;
 - (ii) cause a reduction in a Rebateable LC to the extent the Rebateable LC exceeds the amount for which security is required (the "**Excess LC Amount**"); or

- (iii) apply the Excess LC Amount to any other Rebateable Payments to be made by the Developer.
- (c) The Town shall be entitled to draw upon the Rebateable LC in the event and to the extent that the Developer does not qualify for any rebate or exemption under the Downtown CIP.

4.5 Reduced Parkland Dedication Requirements Program.

Pursuant to the Reduced Parkland Dedication Requirements Program, the Town will accept a reduced requirement for cash in lieu of parkland based on the ratio of 5% of the land area for residential development or 2% of the land area for non-residential development. The cash-in-lieu shall be payable prior to the issuance of a Building Permit and shall be calculated based on a market value of \$1,200,000.00 per acre without any adjustment as described in Subsections 7.3 or 7.6.

SECTION 5 REGIONAL, PROVINCIAL AND FEDERAL INCENTIVES

5.1 Best Efforts by Town.

The Town shall use best efforts to assist the Developer, including the preparation and/or supporting of any required applications (as applicable), to obtain incentives from the Region, Province of Ontario and federal government in conjunction with the Proposed Development, including but not limited to:

- (a) tax incentive financing;
- (b) reduction in education property taxes;
- (c) incentives under the Durham Regional Revitalization Program; and
- (d) any other incentives that may be available.

SECTION 6 PURCHASE AND SALE & CLOSING

6.1 Purchase and Sale.

The Developer agrees to purchase from the Town, and the Town hereby agrees to sell to the Developer, the Phase 1A Lands.

6.2 Closing.

The Closing shall occur on the Closing Date or such other date as the parties may agree in writing.

6.3 Completion.

This Agreement shall be completed on the Closing Date at which time possession of the Phase 1A Lands shall be given to the Developer or its nominee.

6.4 Risk.

Subject to any licensing agreement with the Developer for the temporary sales office, the Phase 1A Lands shall be at the risk of the Town until the Closing Date.

6.5 Survey.

The Developer shall be responsible, at its sole cost, for the preparation and registration of the reference plan of survey necessary to complete the herein transaction. The survey shall be submitted to the Town for its approval prior to its registration. The survey shall identify the roads abutting the Phase 1A Lands as parts on the survey.

SECTION 7 PURCHASE ARRANGEMENTS

7.1 Purchased Lands.

To advance its objectives with respect to community improvement and economic development, Ajax will sell the Phase 1A Lands to the Developer. The Phase 1A Lands have an approximate area of 2.35 acres and shall be confirmed by a certificate of a qualified surveyor.

7.2 Market Value.

The market value for purposes of establishing the Purchase Price for the Phase 1A Lands is one million and two hundred thousand dollars (\$1,200,000.00) per acre based on the Phase 1A Lands in their current state, unserviced, prior to assembly and without reference to any improvements currently in place, but assuming the Phase 1A Lands are vacant, with servicing available to the perimeter of the Phase 1A Lands and available for their highest and best use.

7.3 Revised Market Value as a Result of Required Remediation.

To the extent that the soils or groundwater of the Phase 1A Lands and/or the Utility Lands require any remediation work, either before or after the Closing Date, in order to carry out the Developer's obligations hereunder and to develop the Project Buildings, as a result of any Hazardous Materials on the Phase 1A Lands and/or the Utility Lands:

- (a) the market value of the Phase 1A Lands for the purposes of establishing the Purchase Price will be adjusted accordingly and the Purchase Price will be adjusted to the extent that the market value of the Phase 1A Lands is altered;
- (b) if the Town and the Developer cannot agree on a revised market value for the Phase 1A Lands, then each Party shall obtain its own independent appraisal of the Phase 1A Lands. In the event that the two appraisals provide different market values for the Phase 1A Lands and the Town's appraiser and the Developer's appraiser cannot agree on revised market value, then the Town's appraiser and the Developer's appraiser shall agree to obtain a third independent appraisal. Out of the three appraisals, the median of the two appraisals that are closest in value will be deemed to be the revised market value of the Phase 1A Lands, and the Purchase Price will be altered accordingly;
- (c) in the event that the determination that the Phase 1A Lands and/or Utility Lands require remediation work is made subsequent to the Closing Date, the parties agree that the adjustments to the market value and Purchase Price for the Phase 1A Lands will take place post-Closing and to the extent that the Purchase Price is adjusted downwards, the Town will repay the difference to the Developer as to 50%, by way of a repayment to the Developer, and as to 50%, by reducing the indebtedness secured by the VTB. This provision will survive the Closing; and
- (d) the Developer shall, prior to carrying out any remediation work, promptly notify the Town of any required remediation work and the manner in which the remediation work is intended to be carried out as a result of any Hazardous Materials on the Phase 1A Lands and/or the Utility Lands.

7.4 Commercial Leasing Programme.

In developing its leasing programme for the commercial space to be included in the Project Buildings located on the Phase 1A Lands, the Developer agrees that it will:

- (a) give all Existing Tenants in the Ajax Plaza an opportunity to lease space within such Project Buildings;

- (b) Provided that nothing in (a) above will oblige the Developer to enter into leases with commercial tenants whose businesses would not be consistent with the tenant mix that the Developer hopes to achieve at the Proposed Development or for rental rates that are below then current market rates for comparable commercial space.

7.5 Purchase Price.

The Purchase Price for the Phase 1A Lands (the "Purchase Price") shall be the market value of the Phase 1A Lands, as may be adjusted pursuant to Subsection 7.3, less the lesser of the amount of the Developer's Eligible Assembly Costs (as hereinafter defined) or the market value of the Phase 1A Lands. For greater clarity, the Eligible Assembly Costs will not reduce the Purchase Price to below zero.

7.6 Eligible Assembly Costs.

The Developer's Eligible Assembly Costs include:

- (a) The purchase price (whether paid by the Town or the Developer) as set out in agreements for the acquisition of the Utility Lands and the Private Phase 1B Lands, if applicable (the "Private Purchase Agreements") as well as any fees or payments incurred as consideration for entering into the Private Purchase Agreements;
- (b) all expropriation costs (including costs and compensation) relating to the expropriation of the Utility Lands and, if applicable, the Phase 1B Lands;
- (c) The reasonable fees incurred to hire land acquisition agents to purchase the Utility Lands and the Private Phase 1B Lands (if applicable);
- (d) The costs with respect to entering into and completing the Private Purchase Agreements;
- (e) The actual land transfer tax incurred in completing the Private Purchase Agreements;
- (f) The actual demolition and related remediation costs of existing buildings and other improvements on the Utility Lands and the Phase 1B Lands (if applicable); and
- (g) The cost of relocating sanitary, stormwater and water services on Commercial Avenue but limited to the frontage of the Phase 1B Lands.

7.7 Calculation of Eligible Assembly Costs.

- (a) In the event that, within two (2) years after the Closing Date, the Purchaser has not acquired the Private Phase 1B Lands, either by private purchase or by expropriation, and the Town and the Developer have not entered into the agreement described on Section 13.2(b), then Eligible Assembly Costs shall not include the items contained in Subsections 7.6 (a), (b), (c), (d), (e) and (f) but shall include item (g);
- (b) In the event the Developer develops the Phase 1B Lands, the Eligible Assembly Costs shall not include the items set out in Subsection 7.6(g).
- (c) It is possible that the total amount of Eligible Assembly Costs will change upwards or downwards after Closing, either because of the operation of Subsection 7.7(a) above, or because some of the items to be included in Eligible Assembly Costs are not known or quantified until after Closing.

The parties agree to calculate the final Eligible Assembly Costs by not later than twenty five (25) months after the Closing Date, and amend the Purchase Price accordingly. To the extent the Purchase Price is adjusted downward, the Town will, within thirty (30) days, pay the difference

to the Developer as to 50% by way of cash repayment to the Developer and as to 50% by reducing the indebtedness secured by the VTB.

7.8 Acquisition of Utility Lands and Phase 1B Lands

The Developer will be responsible for acquisition of the Utility Lands and the Phase 1B Lands (if applicable). Subject to Subsection 7.7(a), the acquisition of the Phase 1B Lands shall not be a condition of this Agreement. The incentives to be provided under the Downtown CIP, together with the Purchase Price of the Phase 1A Lands subject to any applicable Eligible Assembly Costs, shall represent the Town's financial contribution to the Proposed Development.

7.9 Responsibility for the Acquisition of Lands for Proposed Development.

The Developer will pay the Purchase Price for the acquisition of the Phase 1A Lands. Under no circumstances shall the Town be responsible for the payment of private land acquisition costs to permit the Proposed Development, other than through the provision of development incentives provided under the Downtown CIP and the Eligible Assembly Costs being deducted from the Purchase Price.

7.10 Additional Assistance from Town.

Prior to Closing, the Town will assist the Developer with respect to the following matters:

- (a) Coordinating development approvals for the Site Plan with the Region and GO Transit;
- (b) Assisting in public consultation and public information sessions with stakeholders, including the private owners in the Ajax Plaza;
- (c) Any issues related to land ownership, land boundaries and easements.

7.11 Payment of Purchase Price.

The Purchase Price shall be payable as follows:

- (a) within forty-five (45) days of the Execution Date, the sum of \$150,000.00 (the "Deposit") to the Town's solicitor's, Polak McKay and Hawkshaw in trust as a deposit to be held pending completion or other termination of this Agreement and to be credited against the Purchase Price at Closing, or repaid to the Developer with interest and without deduction if this Agreement is terminated and Closing does not occur. The Deposit shall be invested in thirty (30) day term deposits from time to time and the interest earned thereon shall be paid to the Developer as soon as reasonably possible following the Closing or other termination of this Agreement; and
- (b) on the Closing Date, the Developer (or the "VTB Mortgagor" for the purposes of this Subsection 7.11) shall execute, deliver to the Vendor and register on title to the Phase 1A Lands a mortgage of the Phase 1A Lands (the "VTB") including the following terms:
 - i. Principal: 50% of Purchase Price
 - ii. Interest: 4% per annum to be paid on maturity (calculated semi-annually, not in advance)
 - iii. Balance Due: In three (3) years.
 - iv. Prepayment: The VTB Mortgagor, its successors and assigns, may prepay the whole or any part or parts of the principal sum secured by the VTB at any time or times without notice or penalty.
 - v. Tripartite Agreement and Waterfall: Upon the Developer obtaining construction financing, the Town shall enter into a tripartite agreement with the Developer and the construction lender, which

Payments agreement, inter alia, will set out the order of repayment with respect to the proceeds from unit sales in the Proposed Development.

SECTION 8

TOWN'S RIGHT TO REPURCHASE & DEVELOPER'S RIGHT TO ADJUSTMENT

8.1 Definitions.

(a) "Town Repurchase Event" means:

- (i) Developer confirming to the Town that it intends on proceeding with the development of Phase 1A in a manner that does not conform to or that is materially different from the Development Plans, and the Developer and the Town cannot agree on revisions to the Development Plans; and/or
- (ii) provided the Developer is not awaiting comments or confirmation of approval on any Application from the Town, or any building permit or other permit from the Town or the Region or Province, the Developer failing to take reasonable steps to proceed with the construction of the Phase 1A Lands and/or the Utility Lands within three (3) months from the Closing Date, weather permitting.

8.2 Town's Right to Repurchase.

In the event of a Town Repurchase Event, the Town shall have the right to repurchase all (but not less than all) of the Phase 1A Lands, the Utility Lands and, if applicable, the Phase 1B Lands (collectively, the "Repurchased Lands") subject to the following terms and conditions (the "Town's Right to Repurchase"):

- (a) The purchase price for the Repurchased Lands shall be the greater of:
 - (i) the Purchase Price paid by the Developer to the Town for the Phase 1A Lands, plus the purchase price paid for (or if applicable, the expropriation cost of) the Utility Lands and, if applicable, the Phase 1B Lands; plus
 - (ii) the Developer's hard and soft out-of pocket expenses attributable to any infrastructure it has designed and/or constructed whose benefit is attributable, in whole or in part, to the Phase 1A Lands, the Utility Lands and, if applicable, the Phase 1B lands.
- (b) Prior to exercising its rights pursuant this Subsection 8.2, the Town shall deliver written notice to the Developer (the "Repurchase Notice") confirming:
 - (i) the Town's intention to exercise the Town's Right to Repurchase;
 - (ii) whether the Town's Right to Repurchase arises under Subsection 8.1(a)(i) or 8.1(a)(ii);
 - (iii) a summary of the facts giving rise to the Town Repurchase Event.
- (c) Upon receipt of the Repurchase Notice, the Developer shall have ninety (90) days to abort the Town Repurchase Event (the "Curing Period") by:
 - (i) in the case of a Town Repurchase Event described in Subsection 8.1(a)(i), confirming that the Developer will proceed with the development of the Phase 1A Lands in a manner that conforms to the Development Plans or in a manner that does not conform to the Development Plans but which the Town approves nonetheless; or
 - (ii) in the case of a Town Repurchase Event described in Subsection 8.1(a)(ii), takes steps to commence construction on the Phase 1A Lands.

- (d) The closing date of the repurchase of the Phase 1A Lands and purchase of the Utility Lands and, if applicable, the Phase 1B Lands shall be the day that is sixty (60) days from the date the Town delivers the Repurchase Notice to the Developer at which time the Developer shall transfer the Phase 1A Lands to the Town free and clear of all encumbrances, other than encumbrances in place at the time of Closing or otherwise approved by the Town.

SECTION 9 INVESTIGATION OF PROPERTY

9.1 Materials to be Produced by Town.

- (a) No later than fifteen (15) days after the Execution Date (the "Delivery Date"), the Town shall deliver and/or make available to the Developer the following materials (the "Delivery Materials"):
 - (i) all soil and environmental inspections, audits, reports, tests, studies and assessments made with respect to the Phase 1A Lands in its possession or control (the "Existing Environmental Reports");
 - (ii) all other reports, for example traffic studies, with respect to the Phase 1A Lands;
 - (iii) any other documents or materials relating to the Phase 1A Lands that the Developer may reasonably request in writing and that are in the possession or control of the Town.
- (b) If this Agreement is terminated, all Delivery Materials will be returned to the Town.

9.2 Access to Property.

- (a) From the Execution Date until the Closing Date, the Developer and its agents, advisors, consultants, employees and lenders will have access to the Phase 1A Lands during normal business hours, unless otherwise authorized by the Town, upon reasonable prior written notice to the Town for the purpose of inspecting the Phase 1A Lands including performing physical and structural inspections, soil tests and environmental audits. Such access shall not substantially interfere with the parking areas of the Phase 1A Lands and the area of access shall be subject to the prior approval of the Town acting reasonably. The Developer shall repair any of the Phase 1A Lands following such inspection to the conditions existing prior to such inspections.
- (b) The Town may accompany the Developer and its agents, consultants, employees and lenders on any inspections and during any tests and audits.
- (c) The Developer is not liable for any Damages incurred by Town arising from Developer's discovery of adverse facts or conditions with respect to the Phase 1A Lands, which facts or conditions were not otherwise caused by Developer's activities on the Phase 1A Lands, or any pre-existing condition on the Phase 1A Lands.

SECTION 10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of the Vendor.

The Vendor represents and warrants as follows to the Purchaser as of the date hereof and as of the date of Closing and acknowledges that the Purchaser is relying upon the representations and warranties in connection with its purchase of the Phase 1A Lands:

- (a) The Vendor has the authority to enter into this Agreement and complete the transaction contemplated hereunder.
- (b) The Vendor has complied with all applicable Town by-laws and policies in respect of its entering into this Agreement and the completion of the transaction contemplated hereunder, including without limitation, the satisfaction of any requirements of any sole-sourcing and divestiture by-laws or policies.
- (c) The Durham in-force Official Plan, the Town's in-force Official Plan and the Zoning By-law permit the Proposed Development on the Phase 1A Lands to include the following:
 - (i) as many as 350 residential Apartment Units;
 - (ii) a maximum height of 10 storeys, which is the minimum height to be constructed by the Developer;
 - (iii) as many as 48 stacked townhouse live/work units;
 - (iv) total of 5,100 square metres of office (2,300 square metres) and retail (2,800 square metres) floor space, consisting of two (2) storeys of office space and ground floor retail; and
 - (vi) the uses described in Schedule "F" hereto.
- (d) The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- (e) Except for the Purchaser under this Agreement, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from the Vendor of any of the Phase 1A Lands.
- (f) The Vendor is the sole registered owner of the Phase 1A Lands with good and marketable and insurable title to the Property, free and clear of all encumbrances, except for Permitted Encumbrances.
- (g) All accounts that are due and owing for work or services performed or materials placed or furnished upon or in respect of the construction, completion, repair, renovation or maintenance of the Phase 1A Lands have been fully paid, subject to statutory holdbacks the amount of which holdbacks will be credited in favour of the Purchaser on the statement of adjustments at Closing.
- (h) The Vendor is not bound by any agreement to enter into any, tenancy agreements, leases, subleases, agreements to lease or sublease, offers to lease or sublease, renewals of leases or subleases, storage agreements, parking agreements and other agreements, rights or licences allowing any Person to use, possess or occupy any portion of the Phase 1A Lands or any part of it.
- (i) There are no agreements, contracts, licences, undertakings, engagements or commitments of any nature (other than registered encumbrances) relating to the construction, ownership, development, operation, maintenance, repair, management, cleaning, security, fire protection, servicing or any other aspect of the Phase 1A Lands.
- (j) There are no actions, suits, arbitrations, alternative dispute resolution processes, or administrative or other proceedings by or before any governmental entity or other Person, pending, or, to the knowledge of the Vendor, threatened against or affecting the Phase 1A Lands, which would be reasonably expected to interfere

with the Vendor's ability to carry out the transactions contemplated hereby, and the Vendor does not know of any valid basis for any such action, suit, arbitration process or proceeding.

(k) The Vendor is a registrant for the purposes of the Tax imposed under Part IX of the *Excise Tax Act* (Canada).

(l) **Environmental Matters.**

- i. To the best of the Vendor's knowledge, without having completed any independent study or inquiry, neither the Phase 1A Lands nor any properties adjacent to the Phase 1A Lands are contaminated except to the extent disclosed in any Existing Environmental Reports disclosed to the Purchaser.
- ii. There are no Existing Environmental Reports relating to environmental matters affecting the Phase 1A Lands which are in the possession or under the control of the Vendor.
- iii. The Purchaser will have no obligation to assume and will not by reason of completion of the transaction contemplated by this Agreement assume or become liable for any obligations in respect of any employees, and the Vendor shall indemnify and hold harmless the Purchaser from and against any and all such liabilities and obligations.

10.2 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants as follows to the Vendor and acknowledges that the Vendor is relying on such representations and warranties in connection with its sale of the Phase 1A Lands:

- (a) The Purchaser is, or will before Closing, be registered for the purposes of Part IX of the *Excise Tax Act* (Canada) in accordance with the requirements of Subdivision (d) of Division V thereof and it will continue to be so registered at the Closing Date, and the Phase 1A Lands are being purchased by the Purchaser as principal for its own account and is not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another person.

**SECTION 11
CONDITIONS OF CLOSING**

11.1 Purchaser Conditions.

The Developer's obligation to carry out the transaction contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified (the "Purchaser's Conditions"):

- (a) **Title to the Property.** On the Closing Date, the Town's title to the Phase 1A Lands shall be a good and marketable title in fee simple, free and clear of all mortgages, liens, charges, encumbrances, restrictions, leases and any other claims and interests whatsoever save and except for the Permitted Encumbrances.
- (b) **Geotechnical, Soil and other Investigations.** By one hundred and eighty (180) days after the Execution Date, the Developer shall be satisfied, in its sole discretion, as to the state of the Phase 1A Lands, including without limitation, its geotechnical, soil and environmental state.
- (c) **Official Plan and Zoning.** On the Closing Date, the Developer shall be satisfied, in its sole discretion, that the Town's Official Plan, Region's Official and zoning applicable to the Phase 1A Lands has not been amended from that applicable to the Phase 1A Lands on the Execution Date save and except any amendment required by the Developer to permit the Development Plans.

- (d) Economic Feasibility. By the first anniversary of the Execution Date, the Developer is satisfied in its sole discretion with the economic feasibility of the development of the Phase 1A Lands in accordance with the Development Plans. The Developer shall have the right to extend the date for satisfaction of this condition on two (2) occasions, each such extension not to exceed six (6) months, and provided that the Developer gives not less than thirty (30) days' notice to the Town of each such extension.

Economic feasibility is to be evaluated by the Developer based on a number of factors including, without limitation, a minimum unit sales target of eighty five percent (85%), the cost of construction, financial return/profit, the cost and availability of financing, and activity on adjacent properties within the Lands.

If the condition contained in this Subsection 11.1(d) is not satisfied and this Agreement is terminated as a result, upon request by the Town, the Developer will provide to the Town a report, on a confidential basis, indicating the reasoning behind the Developer's decision. This report will be submitted on a without prejudice basis, and because it will contain commercially sensitive information, it will not be made available pursuant to freedom of information requests.

- (e) Performance of Terms, Covenants and Conditions. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Town on or before the Closing Date shall have been complied with or performed in all material respects on or before the Closing Date.

11.2 Satisfaction or Waiver of Purchaser Conditions.

The conditions in Subsection 11.1 above are for the sole benefit of the Developer and may be waived by the Developer at any time. If the Developer's conditions set forth in Subsection 11.1 are not satisfied or waived in writing by the Developer by the dates specified, the Agreement shall be terminated, all obligations of the parties to each other shall be at an end and the Deposit with accrued interest shall be returned to the Developer, without prejudice to any remedies available to the Developer at law for breach of covenant.

11.3 Vendor Conditions.

- (a) The Town has granted Site Plan Approval in respect of the Proposed Development and that the parties have entered into a site plan agreement satisfactory to both the Town and the Developer. The Town shall be reasonable in its negotiation of the site plan agreement. It is understood and agreed that the site plan agreement shall include the obligations of the Developer, at its sole costs, for the construction of the Road 1 (as depicted on Schedule "B-2"), the relocation of sanitary, stormwater and water services on Commercial Avenue and the conveyance of all or part of the Utility Lands to the Town.
- (b) The Developer has acquired or the Town has expropriated the Utility Lands on or before the Closing Date.

11.4 Satisfaction or Waiver of Vendor Conditions.

The conditions in Subsection 11.3 are for the sole benefit of the Town and may be waived by Town at any time. If the Town's Conditions set forth in Subsection 11.3 are not satisfied or waived in writing by the Town by the dates specified, the Agreement shall be terminated, all obligations of the parties to each other shall be at an end and the Deposit with accrued interest shall be returned to the Developer.

11.5 Title Examination.

Title is to be examined by the Developer at the Developer's expense.

11.6 Requisitions.

- (a) the Developer shall be allowed until the date which is sixty (60) days prior to the

Closing Date to investigate the title to the Phase 1A Lands at its own expense and title to the Phase 1A Lands shall be good and marketable in fee simple subject to Permitted Encumbrances and free from liens, charges and mortgages (including local improvements, any prior outstanding development charges and capital contribution) and if within that time, the Developer shall furnish the Town in writing with any objections to the title which the Town shall be unable to remove, remedy or satisfy and which the Developer will not waive, this Agreement (notwithstanding any intermediate acts or negotiations with respect to such objections) shall be null and void and the Deposit shall be returned without deduction and with accrued interest.

- (b) Save as to any valid objections so made within such time, and save with respect to any requisitions going to the root of title and/or materially limiting the Developer's ability to construct the Proposed Development, the Developer shall be conclusively deemed to have accepted the title of the Town to the Phase 1A Lands.

11.7 Utility Lands Acquisition.

- (a) The Developer shall be responsible, at its sole cost but subject to the Eligible Assembly Costs, for the acquisition of the Utility Lands and demolition of the buildings located on the Utility Lands.
- (b) In the event the Developer is unable to reasonably acquire the Utility Lands privately, the Town agrees to proceed with the process of expropriating such part of Utility Lands provided that:
 - (i) the Developer has made a request to the Town to proceed with the process of expropriation by not later than the date which is six (6) months before the expected Closing Date;
 - (ii) the Developer has delivered to the Town security, in an amount satisfactory to the Town, acting reasonably, to satisfy all financial obligations the Town may incur as a result of such expropriation, including but without limiting the foregoing, land compensation and injurious affection claims;
 - (iii) the Developer has satisfied or waived the Purchaser's Conditions contained in Subsection 11.1(b) and (d); and
 - (iv) the Vendor's condition in Section 11.3 (a) has been satisfied.
- (c) Following determination of all costs payable by the Town for the expropriation of any part of the Utility Lands, the Town agrees to convey to the Developer any portion of the Utility Lands expropriated by the Town and not required for municipal purposes.

SECTION 12 CLOSING ARRANGEMENTS

12.1 Closing Arrangements.

This Agreement shall be completed on the Closing Date.

12.2 Documents of the Town.

The Town shall deliver to the Developer's solicitors on the Closing Date the following documents fully executed by the Town, where applicable, or such other parties as may be specified:

- (a) Transfer: A registerable Transfer transferring the Phase 1 A Lands in fee simple to the Developer;

- (b) Direction re Funds: A direction identifying the party to whom the balance of the Purchase Price to be paid on closing;
- (c) Certificate of the Town: A certificate of the Town certifying that it is not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (d) Undertaking to Readjust: An undertaking to readjust those items typically contained on the statement of adjustments;
- (e) Bring-down Certificate: A certificate executed by the Town confirming that the warranties and representations given by the Town pursuant to this Agreement have not changed and remain valid;
- (f) Such other deeds, conveyances resolutions and other documents as the Developer or its solicitors may reasonably require in order to implement the intent of this Agreement.

12.3 Documents of the Developer.

The Developer shall deliver to the Town's solicitors on the Closing Date the following documents, fully executed by the Developer, where applicable, or such other parties as may be specified:

- (a) Purchase Price. The Purchase Price subject to the adjustments but less the amount to be secured by the VTB Mortgage by certified cheque;
- (b) Direction re Title: A direction identifying the name of the party to whom the Phase 1A Lands is to be conveyed;
- (c) HST Declaration and Indemnity. A statutory declaration or certificate of an officer of the Developer confirming its registration number for HST purposes;
- (d) Undertaking to Readjust: An undertaking to readjust those items typically contained on the statement of adjustments;
- (e) Bring-down Certificate: A certificate executed by the Developer confirming that the warranties and representations given by the Developer pursuant to this Agreement have not changed and remain valid; and
- (f) the VTB Mortgage.

12.4 Taxes and Fees.

- (a) General: The Developer shall be responsible for goods and services tax and for sales tax and for registration fees and property transfer tax payable in connection with the transactions contemplated herein. Each party shall pay its own legal fees with respect to this transaction.
- (b) HST.: The Developer and the Town acknowledge that, as of the date of this Agreement, harmonized sales tax ("HST") is exigible on this transaction and is not included in the Purchase Price. As HST is exigible on this transaction, the Developer covenants and agrees that it shall: provide to the Town the instrument referred to in Subsection 12.3(c) above and indemnify the Town from and against all HST, penalties, costs and interest payable by or assessed against the Town in relation to the purchase of the Phase 1A Lands by the Developer, in which case the Town shall not require payment to it of HST.

12.5 Electronic Registration.

- (a) The Town and the Developer covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") to govern the electronic submission of the transfer/deed for the Phase 1A Lands and the VTB to the applicable Land Registry Office. The DRA shall outline or establish the procedures and timing for completing all registrations electronically and

provide for all closing documents and closing funds to be held in escrow pending the submission of the transfer/deed and the VTB to the Land Registry Office and its acceptance by virtue of being assigned a registration number. The DRA shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on Closing, the Closing Date shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Registry Office applicable to the Property.

- (b) Any notice, approval, waiver, agreement, instrument or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Developer's Solicitors on behalf of the Developer and by the Town's Solicitors on behalf of the Town and any tender of closing documents and the balance of the Purchase Price may be made upon the Town's Solicitors and the Developer's Solicitors, as the case may be. The Town and the Developer acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete this transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed, the VTB and any other Closing Document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such documents to the other party's solicitor for registration.

SECTION 13 PHASE 1B LANDS

13.1 Best Efforts to Acquire Private Phase 1B Lands.

- (a) During the period starting on the date that is six (6) months after the Execution Date and ending on the third anniversary of the Execution Date or the date this Agreement is terminated, whichever is first to occur, the Developer will use its reasonable commercial efforts to acquire the Private Phase 1B Lands privately, and shall report to the Town periodically on the status and results of its efforts. For greater clarity, there is no absolute obligation on the Developer to acquire any of the Phase 1B Lands.

Reasonable commercial efforts means that: (1) as parcels in the Private Phase 1B Lands become available for sale, the Developer will make offers to acquire those parcels conditional on the acquisition of all of the Private Phase 1B Lands and subject to the purchase price of those parcels being acceptable to the Developer, acting reasonably; and (2) the Developer will obtain an appraisal of the market value for each parcel in the Private Phase 1B Lands that it has been unable to acquire and will provide evidence to the Town, including a copy of the appraisal, that it has made reasonable commercial efforts to acquire such parcel at the appraised market value.

- (b) In the event that the Developer is unable to reasonably acquire the Private Phase 1B Lands privately, and if the Developer so requests of the Town, and provided that the Town and the Developer have entered into the agreement as set out in Section 13.2 (b), the Town agrees to proceed with the process of expropriating the Private Phase 1B Lands and convey the Private Phase 1B Lands to the Developer, all at the cost of the Developer, subject to appropriate security being delivered by the Developer to the Town in an amount satisfactory to the Town, acting reasonably, to satisfy all financial obligations the Town may incur as a result of such expropriation.

13.2 Acquisition of Town Phase 1B Lands.

- (a) Provided that the Developer acquires the Private Phase 1B Lands privately or the Town expropriates the Private Phase 1B Lands, the Town shall sell the portion of the Phase 1B Lands owned by the Town (the "Town Phase 1B Lands") to the Developer upon request by the Developer, in accordance with the terms of the agreement to be entered into between the Developer and the Town as set out in Subsection 13.2(b), provided that the Developer develops the Phase 1B Lands substantially in accordance with the conceptual plans annexed hereto as Schedule "D".
- (b) The Town and the Developer will enter into good faith negotiations with respect to the acquisition and development of the Town Phase 1B Lands which will be the same in form and content as this Agreement, *mutatis mutandis*, with the applicable sections of this Agreement being Sections 1, 2.1, 2.2, 3.1-3.2, 3.3(a), 3.5, 3.8, 3.10-3.12, 4, 5, 6, 7.1-7.6, 7.10-7.12, 8, 9, 10, 11.1-11.7, 12, 14, 15, 16 and 17, or as the parties may further agree to. The agreement described in this subsection (b) shall be entered into within one year of the Execution Date failing which, unless otherwise mutually agreed by the parties, the obligations of the parties in this Agreement with respect to the Phase 1B Lands, except Subsection 7.7(a), shall be at an end. For greater clarity, the agreement for the acquisition and development of the Town Phase 1B Lands is to be conditional on the Developer acquiring the Private Phase 1B Lands.

SECTION 14

PHASE 2 LANDS AND PHASE 3 LANDS

14.1 Right of First Offer.

Before the Town may offer for sale any part of the Phase 2 Lands and/or the Phase 3 Lands, owned by the Town (the "Town Phase 2 and Phase 3 Lands") to any third party, the Town shall first offer for sale the Town Phase 2 and Phase 3 Lands to the Developer subject to the following terms and conditions:

- (a) The Developer will have ninety (90) days following the date that the Town presents the Developer with such offer to decide whether it wishes to enter into negotiations for the acquisition of the Town Phase 2 and Phase 3 Lands intended to be sold by the Town;
- (b) If the Developer wishes to enter into negotiations with the Town for the acquisition of the Town Phase 2 and Phase 3 Lands intended to be sold by the Town, the Developer shall deliver to the Town written notice thereof. Promptly after receipt of such notice, the Town and Developer shall commence good faith negotiations for a period not to exceed one hundred and twenty (120) days after the date that the Developer gives the requisite notice to the Town, and the Town will advise the Developer of the minimum price which the Town is prepared to accept for the Land in question;
- (c) If the Developer elects not to enter into negotiations for the acquisition of the Town Phase 2 and Phase 3 Lands intended to be sold by the Town or if the Developer and Town do not enter into a written agreement for the acquisition of such lands within one hundred and twenty (120) days after the Town's receipt of the notice in (b) above, then the herein right is at an end and the Town is free to enter into an agreement with a third party; and
- (d) In the event that the Developer delivers written notice to the Town that it elects to forgo all rights under this Agreement to pursue the acquisition of the Town Phase 2 and Phase 3 Lands the Town shall not be obligated to follow the procedure described in this Section 14.

14.2 Obligation of the Town.

The obligation of the Town set out in Subsection 14.1 shall not apply if the Town determines that the Developer has constructed any portion of the Proposed Development in a manner that is not substantially in accordance with the Development Plans and Site Plans.

14.3 Notification.

In the event that the Town makes the determination described in Section 14.2, the Town shall notify the Developer immediately and the Town shall advise the Developer in writing as to the basis for such determination.

SECTION 15 SHARED SERVICES

15.1 Shared Services.

It is understood and agreed that the construction of certain services by the Developer for the development of the Phase 1A Lands, including roads, sidewalks, pedestrian routes, streetscape treatment and services may benefit the other parts of the Lands (collectively, the "Shared Services"). It is further understood and agreed that the Shared Services are not included in the Town's DC By-law.

15.2 Reimbursement of Front End Costs

- (a) In the event that a party other than the Developer develops the Phase 1B Lands, Phase 2 Lands and/or Phase 3 Lands, or any portion thereof, the Town shall require as a condition of any application to the Town for development that such party reimburse the Developer for the front end costs that the Developer has incurred in servicing the Phase 1A Lands (and if applicable, the Phase 1B Lands), to the extent those Shared Services also benefitted the Phase 1B Lands, Phase 2 Lands and/or Phase 3 Lands, as applicable.
- (b) In the event the Town determines to sell any portion of the Town Phase 1B Lands, Phase 2 Lands and/or the Phase 3 Lands which are owned by the Town, it will include in the sale price an amount equal to the Shared Services benefitting the Town Phase 1B Lands, Town-owned portion of the Phase 2 Lands and Phase 3 Lands, which sum the Town shall pay to the Developer upon receipt, in reimbursement of the Developer's front end costs.
- (c) To the extent that Subsection 15.2(a) is applicable, the Parties will agree, before the date when the Developer waives its conditions under this Agreement as per Subsection 11.1, upon the proportion of the Developer's front end costs of the Shared Services which benefit the Phase 1B Lands (if applicable), Phase 2 Lands and/or Phase 3 Lands.
- (d) In the event any such condition is appealed to a Court or administrative tribunal (such as the Ontario Municipal Board), the Developer shall be permitted to take carriage of such appeal and, if it does so, will be solely responsible for all costs associated therewith.

SECTION 16 ARBITRATION

16.1 Disputes to be Resolved by Arbitration.

If the parties cannot, after negotiating in good faith, agree upon the resolution of any dispute arising from the interpretation of a provision of this Agreement, then the parties agree that such dispute will be resolved by binding arbitration pursuant to the *Arbitration Act*, 1991, S.O. 1991, c. 17, as may be amended from time to time (the "*Arbitration Act*").

16.2 Commencement of Arbitration.

- (a) In the event a dispute arises between the parties and one or both parties believe that the dispute is unlikely to be resolved through negotiation, in accordance with the provisions of this Agreement, that party shall deliver a notice of arbitration (the "Arbitration Notice") to the other party stating the intention to proceed to arbitration.
- (b) The arbitration shall commence within twenty (20) Business Days of delivery of the Arbitration Notice.
- (c) Upon receipt of the Arbitration Notice, the parties have seven (7) Business Days to agree upon a single arbitrator. In the event that the parties cannot agree upon a single arbitrator, each party shall, within three (3) Business Days thereafter, name an arbitrator. The two arbitrators chosen shall then select a third arbitrator who shall serve as the sole arbitrator.
- (d) The selected arbitrator shall establish all procedural requirements of the arbitration pursuant to the *Arbitration Act* as well as the determination of costs that may be payable by one party to the other.
- (e) In selecting an arbitrator, the parties acknowledge and agree that any the arbitration shall commence within twenty (20) Business Days of delivery of the Arbitration Notice and any arbitrator nominated shall be available within such dates.

16.3 Decision of Arbitration Panel.

The parties acknowledge and agree that the decision of the arbitrator shall be final.

16.4 Expenses of Arbitration.

The parties acknowledge and agree that the expenses of any arbitration shall be borne by the parties in accordance with the decision of the arbitrator.

SECTION 17 MISCELLANEOUS

17.1 Intention of Parties.

Notwithstanding any other provisions of the Agreement, provided that prior to execution the Town passes a by-law authorizing execution of this Agreement, the parties hereto agree with each other that none of the provisions of the Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the Council which authorized the execution of the Agreement or any of its successors in the exercise of any of such Council's discretionary powers. Notwithstanding the foregoing, the parties hereto acknowledge that the Developer maintains and may exercise all rights and remedies available at law or equity against the Town in the event of non-fulfillment, non-observance or non-performance of any condition, obligation or covenant under this Agreement, in whole or in part, by the Town.

17.2 No Challenge to Jurisdiction.

It is agreed and acknowledged by the parties hereto that each is satisfied as to the jurisdiction of the other to enter into the Agreement. The Parties therefore agree that they will not challenge the jurisdiction of themselves or the other Party to enter into the Agreement, nor will they challenge the legality of any provision in the Agreement and, likewise, the parties shall not question the jurisdiction of the Town to enter into the Agreement nor question the legality of any provision contained herein. The Parties hereto, their successors, assigns and lessees are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.

17.3 Further Assurances.

The parties hereto covenant and agree that at all times, and from time to time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of the Agreement.

17.4 Time of the Essence.

Time shall be of the essence in all respects for the purposes of this Agreement.

17.5 Tender.

Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque or bank draft.

17.6 Relationship of the Parties.

Nothing in this Agreement shall be construed so as to make either party a partner of the other.

17.7 Force Majeure.

Notwithstanding anything in the Agreement to the contrary, if the Developer is bona fide delayed in or prevented from performing any obligation arising under the Agreement by reason of a Force Majeure Event not caused by its own default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause and its effects exists. Moreover, the Developer will be entitled, without being in breach of the Agreement, to carry out such obligation within a reasonable time period after the cessation of such cause.

17.8 Notices.

- (a) **Addresses for Notice:** Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "Notice") shall be in writing and shall be given by delivery or written electronic communication which results in a written or printed notice being given to the applicable address set forth below:

in the case of the Town addressed to it at:

Town of Ajax
65 Harwood Avenue South
Ajax, ON L1S 2H9

Attention: Town Clerk
Telephone: (905) 683-8207

with a copy to:

Polak, McKay & Hawkshaw
467 Westney Road South, Unit 16
Ajax, ON L1S 6V8

Attention: Ron Hawkshaw
Telephone: (905) 428-2063

and in the case of the Developer addressed to it at:

Windcorp Grand Harwood Place Ltd.
3601 Highway #7, Suite 400
Markham, ON L3R 0M3

Attention: Laura Starr
Telephone: (905) 943-2981

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West 199 Bay Street
Toronto, ON M5L 1B9

Attention: Dana Porter
Telephone: (416) 869-5533

- (b) **Receipt of Notice:** Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 p.m. (Eastern Standard Time) on a Business Day, otherwise the date of delivery shall be deemed to be on the Business Day next following such date. Any notice, if sent by fax communication, shall be deemed to have been validly and effectively given and received on the date of transmission if received prior to 5:00 p.m. (Toronto time) on a Business Day, otherwise the date of delivery shall be deemed to be on the Business Day next following such date. Notices given by electronic mail alone will not be effective.
- (c) **Change of Address for Notice:** By giving to the other party at least ten (10) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 17.8.

17.9 Schedule.

The schedules attached hereto are incorporated into this Agreement by reference and are deemed to be a part hereof. The schedules attached hereto are as follows:

Schedule "A"	Location And Parameters Of Community Improvement Plan
Schedule "B-1"	Description Of Lands
Schedule "B-2"	Sketch Of Lands
Schedule "C"	Permitted Encumbrances
Schedule "D"	Phase 1A and 1B Development Plans
Schedule "E"	Sustainable Elements
Schedule "F"	Permitted Uses
Schedule "G"	Temporary Parking Arrangements

17.10 Lawyers as Agents.

Notices, approvals, waivers and other documents permitted, required or contemplated by this Agreement may be given or delivered by the parties or by their respective solicitors on their behalf.

17.11 Assignment.

The Developer may, upon prior notice to the Town given no later than seven (7) Business Days prior to the Closing Date, assign all of its right, title and interest in and to this Agreement to a related entity or under the control of the Developer provided that:

- (a) such assignee covenants and agrees with the Town to assume and be bound hereby;
- (b) the Developer shall be and remain liable hereunder until Closing, after which time, only the assignee shall have any obligations hereunder.

The Parties acknowledge that the agreement for the development of the Phase 1B Lands, as per Subsection 13.2(b), may be entered into by a different entity (other than the Developer) with the Town.

17.12 Title Direction.

The Developer may direct title to the Phase 1A Lands be taken in the name of one or more entities related to or under the control of the Developer.

17.13 Non-Merger.

Except as herein otherwise provided, none of the covenants, provisions, representations and warranties of this Agreement shall merge in the deed or transfer of the Property or any other document delivered on the Closing Date and the provisions of this Agreement shall survive the Closing Date.

17.14 Enurement.

This Agreement shall enure to the benefit of and shall be binding upon the parties, shall be binding upon their respective successors and permitted assigns and shall enure to the benefit of and be enforceable only by such successors and permitted assigns that have succeeded or which have received such assignment in the manner permitted by this Agreement.

17.15 Compliance with *Planning Act*.

This Agreement is subject to compliance with the provision of the *Planning Act*, and this Agreement shall be effective to create an interest in lands only if such provisions are complied with prior to the Closing Date.

17.16 Counterparts.

This Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Agreement.

[Signature Pages to Follow]

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE TOWN OF AJAX

Per: [Signature]
Name: Walter Wellington
Title: Deputy Clerk

Per: [Signature]
Name: Steve Parish
Title: Mayor

I/We have authority to bind the Town.

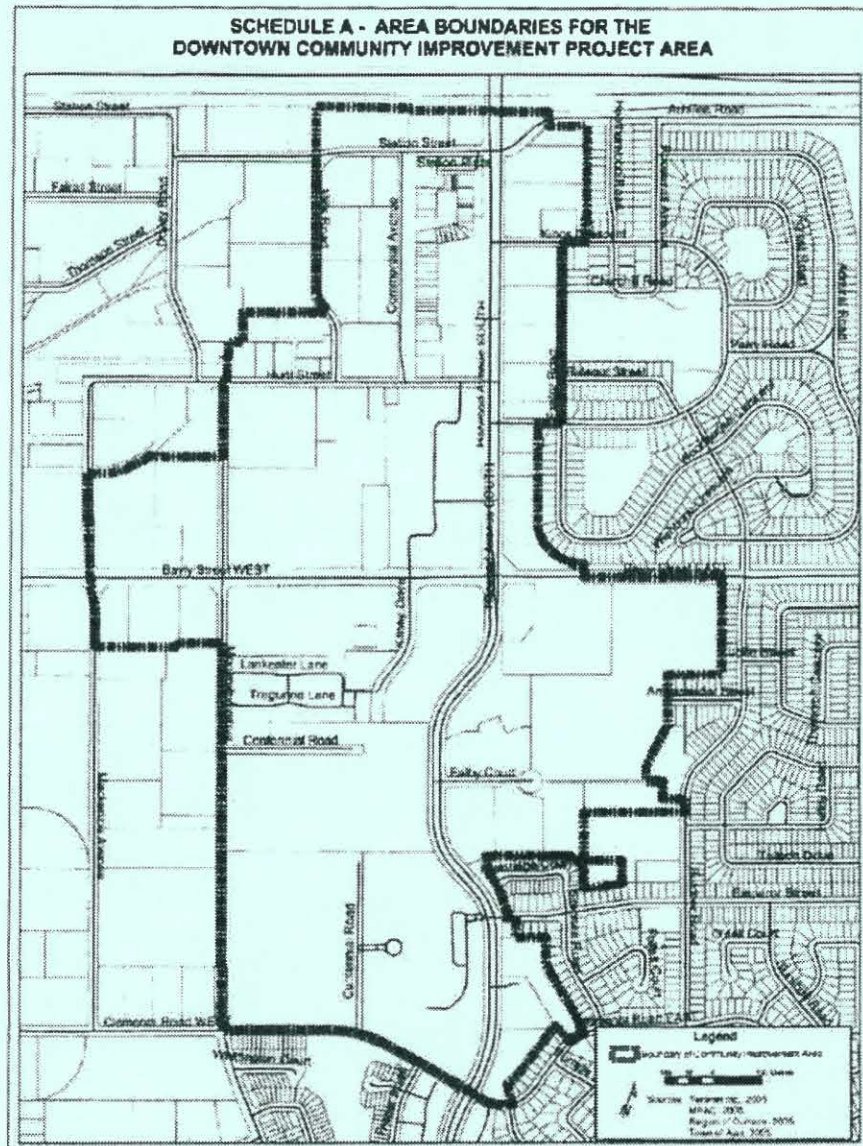
WINDCORP GRAND HARWOOD PLACE LTD.

Per: [Signature]
Name: Jarvis
Title: PRESIDENT

Per: _____
Name: _____
Title: _____

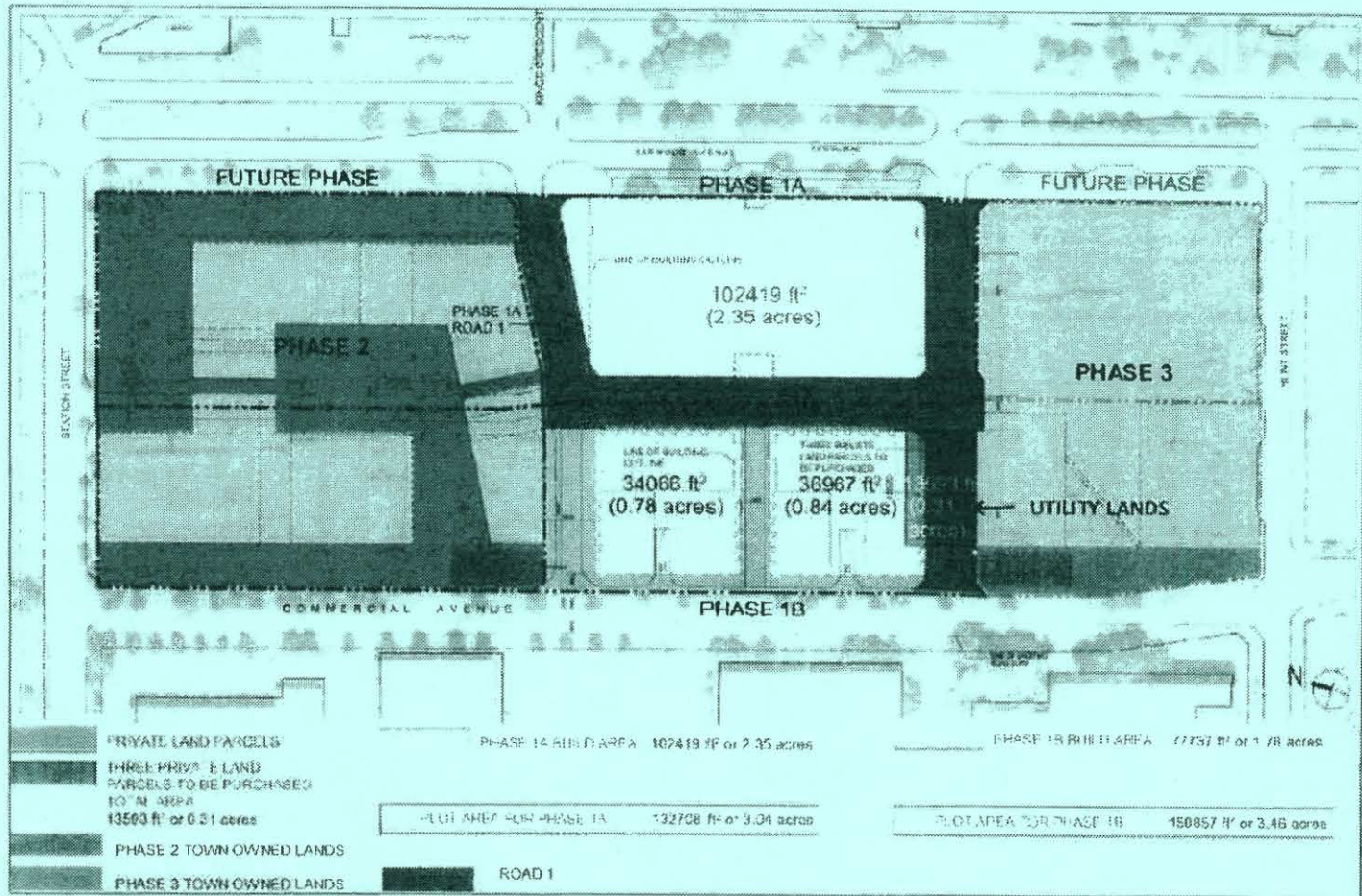
I/We have authority to bind the Corporation.

SCHEDULE "A"
LOCATION AND PARAMETERS OF COMMUNITY IMPROVEMENT PLAN



SCHEDULE "B-1"
DESCRIPTION OF LANDS

Part of Municipal Parking Area as shown on Plan 488 being part of Part 49 Plan 40R-23110
Town of Ajax as to be determined by the preparation of a reference plan of survey.



SCHEDULE "B-2"
SKETCH OF LANDS

SCHEDULE "C"
PERMITTED ENCUMBRANCES

1. Storm sewer,

SCHEDULE "D"
PHASE 1A AND PHASE 1B DEVELOPMENT PLANS

DRAWING	ARCHITECT	PROJECT NO.	DATE
PROPERTY ACQUISITION PLAN, PHASES 1A AND 1B	ZEIDLER	204T165	09/12/12
DEVELOPMENT PROGRAMME OVERLAID (PHASE 1A) ON THE AERIAL PHOTOGRAPH	ZEIDLER	204T165	10/23/12
DEVELOPMENT PROGRAMME OVERLAID ON THE AERIAL PHOTOGRAPH	ZEIDLER	204T165	10/23/12
SITE PLAN_SCALE 1:1000	ZEIDLER	204T165	10/23/12
GROUND FLOOR PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
PHASE 1A_UNDERGROUND PARKING PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
PHASE 1B_UNDERGROUND PARKING PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
PODIUM FLOOR PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
TYPICAL RESIDENTIAL FLOOR PLAN_SCALE 1:500	ZEIDLER	204T165	10/23/12
SECTION AA_SCALE 1:500	ZEIDLER	204T165	10/23/12
SECTION BB_SCALE 1:500	ZEIDLER	204T165	10/23/12
RENDERING VIEWS	ZEIDLER	204T165	10/19/12
RENDERING 1	ZEIDLER	204T165	10/19/12
RENDERING 2	ZEIDLER	204T165	10/19/12
RENDERING 3	ZEIDLER	204T165	10/19/12

SCHEDULE "E"
SUSTAINABLE ELEMENTS

1. Parking Standards

- (a) For residential portions of the Proposed Development, if a Project Building will be providing for more than the minimum number of parking spaces required pursuant to the Zoning By-law, any additional parking spaces must provide roughed-in conduits to allow future electrical outlets for plug-in electrical vehicles.

2. Cycling Infrastructure

- (b) The development shall incorporate on-site bicycle parking on the basis of the following:
 - (i) For residential portions of the Proposed Development a minimum number of bicycle parking spaces allocated for residents and for visitors shall be provided based on an assessment of the bicycle parking needs of future residents with a view to encouraging the use of this mode of transportation; and
 - (ii) For commercial/office portions of the Proposed Development, a minimum of 0.2 spaces per 100 m² gross floor area; and
- (c) Bicycle parking spaces for residents of the Residential portions of the Proposed Development shall be situated in a weather-protected, secure area with controlled access, or secure individual enclosures.

3. Pedestrian Infrastructure

- (d) Project Buildings shall be designed and constructed to connect to adjacent off-site pedestrian paths, surface transit stops and parking areas (car and bicycle);
- (e) On-site sidewalks, crosswalks and walkways shall be designed and constructed to be continuous, universally accessible, barrier free and clearly designated.
- (f) Outdoor waiting areas shall be designed and constructed to offer protection from the weather;
- (g) Pedestrian-specific lighting shall be directed on to sidewalks, pathways, entrances and outdoor waiting areas;
- (h) The main entrance to Project Buildings shall have a pedestrian connection to a reconstructed surface transit stop for Durham Transit and GO Transit vehicles, to be constructed by the Developer.

4. Urban Heat Island Reduction

- (i) Large growing shade trees shall be planted at the equivalent of 6-8 metre intervals starting from the property line:
 - (i) Along all frontages adjacent to public highways;
 - (ii) Along all frontages adjacent to public open space; and,
 - (iii) Along all public walkways and driveways.

5. Environmentally Conscious Roofing Systems ("ECRS")

- (j) ECRS may include "white roofs", "organic/green roofs", sustainable power elements (i.e. solar cells or windmill) or other roof technologies that provide

environmentally sustainable elements to a building for purposes including but not limited to storm water management and/or prevention of heat island and/or the generation of sustainable energy.

- (k) Project Buildings shall take incorporate ECRS where feasible; provided that the portion of a roof available for ECRS will be reduced where such area is used:

- (iv) as an outdoor amenity area for use of said Project Building's occupants;
- (v) as part of a heating, ventilation and air conditioning system; and
- (vi) to provide elevator overruns.

6. Minimum Energy Performance

- (l) All residential units shall be individually metred.

7. Stormwater Retention and Runoff

- (m) In order to minimize stormwater leaving the Property, the Project Buildings shall be designed and constructed to retain 25 mm from a 24 hour rainfall event for rainwater reuse, on-site infiltration and/or evapotranspiration:
 - (i) In order to manage and clean stormwater that leaves the Property, the Project Buildings shall be designed and constructed to remove 80% of total suspended solids on an annual loading basis from all runoff leaving the Property based on post-development level of imperviousness; and
 - (ii) Minimize the amount of E. Coli entering the storm sewer system.

8. Landscape Elements

- (n) Water efficient plant material shall be used for at least 50% of the soft landscaped area;
 - (i) A minimum of 50% of the vegetation species used in landscaping shall be native to the area in which the Property is located.

9. Bird Friendly Design

- (o) A Project Buildings shall be designed and constructed to ensure that design features minimize the risk of migratory bird collisions through appropriate glass treatments; and
 - (i) Ground level ventilation grates shall have a porosity of less than 2 cm x 2 cm.

10. Light Pollution

- (p) Exterior light fixtures shall be installed that are shielded to prevent glare and/or light trespass onto neighbouring properties.
 - (i) No up-lighting shall be provided from exterior light fixtures unless otherwise permitted for public art or displays.

11. Storage and Collection of Recycling and Organic Waste

- (q) A dedicated area shall be provided within the Project Buildings for the collection and storage of recycling and organic waste.

- (i) Project Buildings shall provide a recycling room within each Project Building with an area of size adequate and commensurate with the number of units within any such Project Building.

12. Construction Waste Management

- (r) The development shall recycle at least 75% of non-hazardous construction debris.

SCHEDULE "F"
PERMITTED USES

Permitted Uses - DCA/MU Downtown Central Area - Mixed Use Zone

- Accessory Outdoor Patio
- Art Gallery
- Banquet Facility
- Commercial Fitness centre
- Commercial School
- Community Centre
- Convenience Store
- Crisis Care Facility
- Day Care Facility
- Dry Cleaning Depot
- Dry Cleaning Establishment
- Financial Institution
- Funeral Home
- Hotel
- Laundromat, Self Serve
- Library
- Medical Clinic¹
- Motel
- Motor Vehicle Rental Depot
- Motor Vehicle Sales Establishment²
- Museum
- Office
- Parking Lot as a Principal Use
- Personal Service Shop
- Place of Assembly
- Place of Entertainment
- Place of Worship
- Restaurant
- Retail Store³
- Service or Repair Shop
- Sports Arena
- Veterinary Clinic
- Dwelling, Street Townhouse⁴
- Dwelling, Live-Work Units⁵
- Dwelling, Maisonette
- Dwelling, Multiple Attached⁶
- Dwelling, Back-to-Back Townhouse
- Dwelling, Back-to-Back Stacked Townhouse
- Dwelling, Apartment
- Senior Citizens' Apartment
- Nursing Home
- Home Based Business

¹ Provided that in a residential mixed-use building, the main entrance to the medical clinic is separate and apart from the main entrance to the residential portion of the building, with no shared lobby, foyer, or common entry area.

² Excluding accessory service/repair facilities and outdoor storage or display of vehicles.

³ Individual retail uses having a gross leasable floor area in excess of 4,645 m², located in a multi-unit commercial building erected after July 14, 2003, in a residential mixed-use building, or in a free-standing building, shall not be permitted. However, none of the provisions of this By-law shall apply to prevent the expansion of any individual retail store up to a maximum gross leasable floor area of 9,300 m² provided that the retail store existed prior to July 14, 2003 as part of a shopping centre and that has a total gross leasable floor area of the particular retail store, in all instances, is not more than half the total ground floor area of the overall building.

⁴ Dwellings having frontage on Bayly Street, Commercial Avenue, Falby Court, Harwood Avenue South, Kings Crescent, Kitney Drive, Mackenzie Avenue, Monarch Avenue and/or any east-west link between Kitney Drive and Harwood Avenue, shall be designed as live-work units, with directed pedestrian access (not vehicular) to these roads.

⁵ See Footnote 4.

⁶ See Footnote 4.

Temporary Parking Arrangement: South Building Phase 1A
Sales Phase Pre-Construction

June 18 2013 rev5

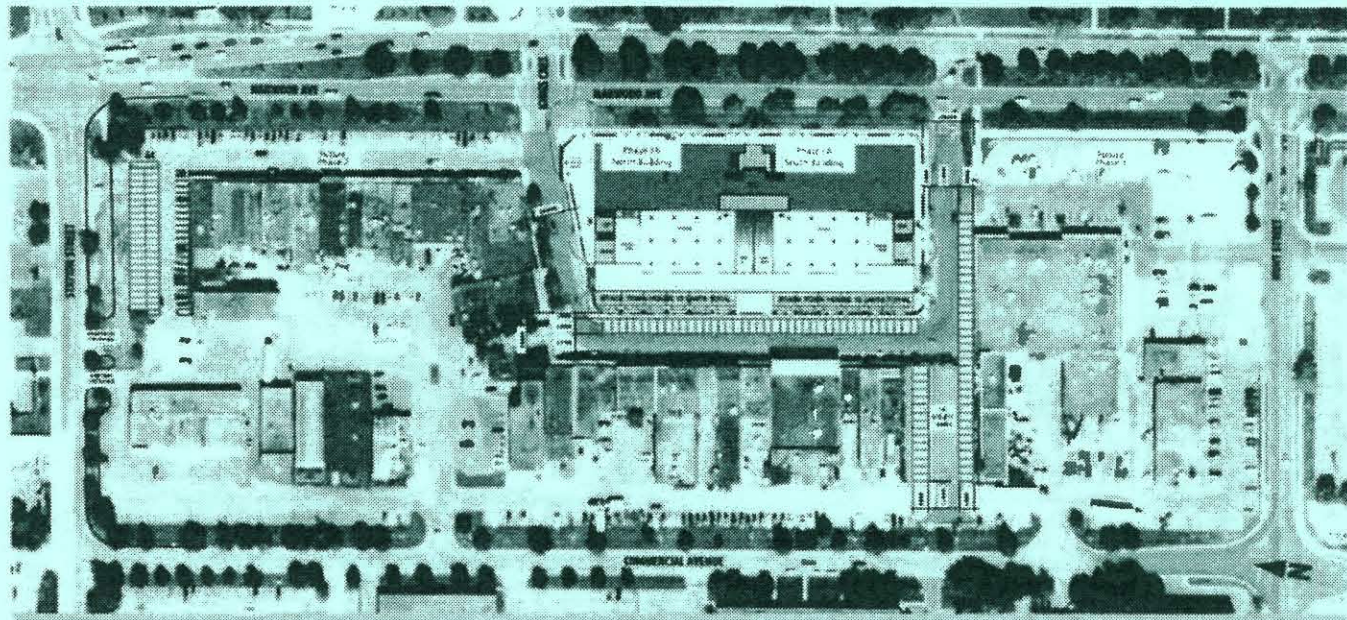


SCHEDULE "G"
TEMPORARY PARKING ARRANGEMENTS



Temporary Parking Arrangement: North and South Buildings Phase 1A During Construction

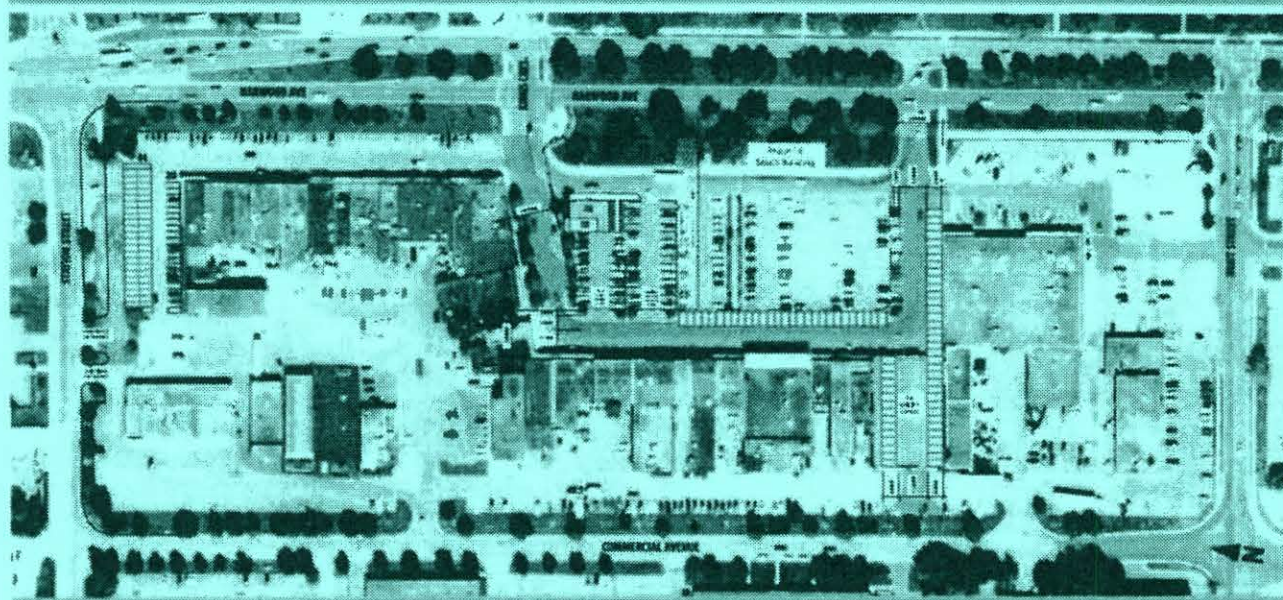
June 18 2013 rev5



DOWNTOWN AJAX



June 18 2013 rev5



DOWNTOWN! AKA



AMENDING AGREEMENT made this 22nd day of Sept, 2014.

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as "Ajax" or the "Town")

OF THE FIRST PART,

- and -

WINDCORP GRAND HARWOOD PLACE LTD.

(hereinafter referred to as the "Developer")

OF THE SECOND PART.

WHEREAS the Owner and the Town entered into a Development Agreement and an Agreement of Purchase and Sale, dated July 15, 2013 (the "Agreement") with respect to, among other matters, the purchase by the Developer of certain lands owned by the Town;

AND WHEREAS the parties hereto have agreed to amend the Agreement.

NOW THEREFORE this Agreement witnesseth that in consideration of mutual benefits, the Parties hereto agree as follows:

1. Section 3.5 of the Agreement is amended by deleting the words "within twelve (12) months of submission by the Developer" and inserting the following "by April 15, 2015".
2. Section 3.7 of the Agreement is amended by deleting the words "Within ninety (90) days of the Execution Date" and inserting the following "Sixty days prior to the Closing Date".
3. Section 3.8 of the Agreement is amended by deleting the words "(provided that the Phase 1A Lands have been closed as part of the Harwood Avenue road allowance, as referred to in Subsection 3.7 above)".
4. Time shall be of the essence of this agreement and each of its provisions.
5. Except as specifically amended hereby the parties hereto do in all respects ratify and confirm the provisions of the Agreement.
6. This agreement shall be binding upon and enure to the benefit of each of the parties and their respective successors and assigns.
7. This agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this agreement.

[Signature page to follow.]

IN WITNESS WHEREOF the parties have signed this agreement by the hands of their respective officers duly authorized in that behalf as of the date set out above.

THE CORPORATION OF THE TOWN OF AJAX

Per: 

Name: Steve Parish
Title: Mayor

Per: 

Name: Nicole Wellsbury
Title: Deputy Clerk

We have authority to bind the Corporation.

WINDCORP GRAND HARWOOD PLACE LTD.

Per: 

Name: Laura Starr
Title: President

I have the authority to bind the Corporation.

AMENDING AND ASSUMPTION AGREEMENT made this ^{29th} day of June, 2015.

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as "Ajax" or the "Town")

OF THE FIRST PART,

- and -

WINDCORP GRAND HARWOOD PLACE LTD.

(hereinafter referred to as the "Developer")

OF THE SECOND PART,

- and -

LEMINE REAL ESTATE CONSULTING INC.

(hereinafter referred to as the "Assignee")

OF THE THIRD PART.

WHEREAS the Developer and the Town entered into a Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 with respect among other matters the purchase by the Developer of certain lands owned by the Town and defined in such agreement as the Agreement;

AND WHEREAS the Developer and the Town entered into an Amending Agreement dated September 22, 2014 for the purposes of amending the Original Agreement (the "First Amending Agreement");

AND WHEREAS Site Plan Approval has been issued for the Proposed Development subject to the Developer entering into a site plan agreement with the Town (the "Site Plan Agreement");

AND WHEREAS the Developer has waived the Purchaser's Conditions as defined in the Agreement save and except the Purchaser's Conditions set out in Section 11.1 (a) (c) and (d) of the Agreement;

AND WHEREAS the Developer and the Town entered into a License of Land and Temporary Sales Pavilion Agreement dated September 2014 (the "Sales Pavilion Agreement") in connection with the construction by the Developer for the Sales Pavilion as herein defined;

AND WHEREAS by an agreement dated June 23, 2015 the Developer has assigned the benefit of the Agreement and the Sales Pavilion Agreement to the Assignee;

AND WHEREAS the Town, in accordance with the Agreement and the Sales Pavilion Agreement has been requested to approve the assignment of the Agreement and the Sales Pavilion Agreement to the Assignee;

AND WHEREAS in consideration of the Town approving the assignment of the Agreement and the Sales Pavilion Agreement to the Assignee the parties hereto have agreed to further amend the Agreement as herein set out (the "Second Amending Agreement").

NOW THEREFORE this Second Amending Agreement witnesseth that in consideration of mutual benefits the Parties hereto agree as follows:

1. Subsection 1.18 of the Agreement is amended by deleting "Windcorp Grand Harwood Place Ltd." and substituting therefore "Lemine Real Estate Consulting Inc.",

2. Subsection 1.53 of the Agreement is deleted and the following substituted therefore:

"Site Plan Approval" means the approval granted by the Town for the site plan and associated drawings dated April 7, 2015 under Subsection 11.3 (a) pursuant to Section 41 of the Planning Act.

3. Subsection 1.57 of the Agreement is amended by deleting the words "described on Schedule "B-1 and" and subsection 1.39 of the Agreement is amended by adding the words "and described in Schedule "B-1".

4. Section 1 Definitions of the Agreement is amended by adding the following thereto:

"1.51.1 "Sales Pavilion" means the sales pavilion to be constructed by the Developer in accordance with the Sales Pavilion Agreement on lands owned by the Town for the purposes of selling units within the Proposed Development".

5. Subsection 3.4 (a) of the Agreement is deleted and the following substituted therefore:

"Following its acquisition of the Phase 1A Lands, the Developer agrees to proceed expeditiously with the development of the Project Buildings to be located thereon. In this regard the Developer covenants and agrees to commence construction of the building in the Proposed Development no later than twelve (12) months from the date of the satisfaction or waiver of the Purchaser's Conditions set out in Section 11.1 (d) of the Agreement as amended. The Developer shall be required to construct the stacked townhouse live/work units in conjunction with the construction of the building in the Proposed Development".

6. Subsection 3.4 (b) of the Agreement is amended by adding the words "as more particularly described in the Site Plan Approval" following the words "Utility Lands" in line 4 of the said subsection.

7. Subsection 3.9 of the Agreement is amended by inserting the words "as more particularly described in the Site Plan Approval" after the words "in Schedule "G".

8. Subsection 3.8 "Temporary Sales Office" of the Agreement is amended by deleting the second paragraph of the subsection 3.8 and by deleting the words "the Phase 1A Lands" in the first paragraph of subsection 3.8 and substituting therefore the words "the Site as defined in the Sales Pavilion Agreement".

9. Subsection 6.5 is deleted from the Agreement.

10. Subsection 6.1 of the Agreement is amended by adding the words "being the lands described as Part 1 on Plan 40R-28209".

11. Subsection 7.1 of the Agreement is amended to delete the words "an approximate area of 2.35 acres" and substitute therefore the words "an area of 0.98 hectares".

12. Subsection 7.6 of the Agreement is amended by deleting all reference to the Phase 1B Lands in subparagraphs (a), (b), (c) and (f) such that it is understood and agreed that Eligible Assembly Costs shall not include any cost whatsoever associated with the Private Phase 1B Lands or the Town Phase 1B Lands except as set out in subparagraph (g) of subsection 7.6.

13. Subsection 7.7 of the Agreement is amended by deleting the words "as to 50% by way of cash repayment to the Developer and as to 50% by reducing the indebtedness secured by VTB" and substituting therefore the words "by first reducing the indebtedness secured by the VTB and thereafter, if any part of the difference remains, by way of cash repayment to the Developer".

14. Subsection 7.8 of the Agreement is amended by deleting all reference to the Phase 1B Lands therein.

15. Subsection 8.1 (a) (i) of the Agreement is amended by deleting the words "Development Plans" and substituting therefore the words "Site Plan Approval".

16. Subsection 8.1 (a) (ii) of the Agreement is amended by deleting the words "within three (3) months from the Closing Date" and substituting therefore "in accordance with Subsection 3.4 (a) of this Agreement".

17. Subsection 11.1 (d) of the Agreement is amended by deleting the words "By the first anniversary of the Execution Date" and substituting therefore "By July 15, 2016". Subsection 11.1 (d) of the Agreement is further amended by deleting "The Developer shall have the right to extend the date for the satisfaction of this condition on two occasions, each such extension not to exceed six (6) months, and provided that the Developer gives not less than thirty (30) days' notice to the Town of each such extension".

18. Subsection 11.3 (a) of the Agreement is amended by adding the following thereto:

"The Site Plan Agreement shall be entered into no later than December 31, 2015. It is understood and agreed that the Site Plan Agreement shall include provisions for the delivery of security to the Town in the form of a letter of credit issued by a Schedule 1 Canadian Bank securing, among other matters, the installation of the internal and external road works, sanitary and storm sewer works, watermains and connections, engineering approvals and landscape works".

19. Subsection 11.3 (b) of the Agreement is amended by deleting the words "the Closing Date" and substituting therefore the words "December 31, 2015" and by adding the words "or commenced expropriation of, in accordance with subsection 11.7," after the word "expropriated". Subsection 11.3 (b) is further amended by adding the following thereto;

"In the event this Agreement is terminated for any reason and the Developer has acquired the Utility Lands the Town shall have the option, but not the obligation, to purchase the Utility Lands from the Developer at the price paid by the Developer for the Utility Lands. The Developer shall, no later than the tenth (10th) day after the date this Agreement is terminated, deliver to the Town a copy of each agreement of purchase and sale entered into by the Developer for the purchase of the Utility Lands. Within thirty (30) days following the delivery of all the agreements of purchase and sale the Town shall advise the Developer, in writing, of its intention to purchase all but not less than all of the Utility Lands from the Developer failing which the right of the Town to purchase the Utility Lands as herein set out shall be at an end. In the event the Town exercises its

right to purchase the Utility Lands as herein set out the purchase shall be completed in accordance with subsection 8.2 (d) of the Agreement.

20. Subsection 11.3 is further amended by adding the following thereto:

"(c) The Developer shall no later than July 15, 2015 deliver to the Town the securities required to be delivered pursuant to the Sales Pavilion Agreement. It is acknowledged that it is the intent of the Developer to commence construction of the Sales Pavilion no later than August 1, 2015 and complete construction of the Sales Pavilion no later than November 30, 2015. Notwithstanding the Developer's intent as herein set out, it is a condition of this subsection 11.3 (b) that the construction of the Sales Pavilion shall commence no later than January 2, 2016 and the completion of the construction shall be no later than April 15, 2016, subject to weather conditions. In addition the Developer shall, no later than July 8, 2015 complete the installation of the curbing, paving and required site works required for the construction and use of the Sales Pavilion in accordance with the Sales Pavilion Agreement."

21. Subsection 11.6 of the Agreement is amended by deleting the words "the date which is sixty (60) days prior to the Closing Date" and substituting therefore the words "December 31, 2015."

22. Subsection 11.7 (b) (i) is amended by deleting the words "the date which is six months before the expected Closing Date" and substituting therefore "September 1, 2015".

23. Section 13 of the Agreement is deleted in its entirety.

24. Section 14 of the Agreement is amended as follows:

"The title of the Section shall now read "PHASE 1B LANDS, PHASE 2 LANDS AND PHASE 3 LANDS".

Section 14 of the Agreement is further amended by including the Phase 1B Lands owned by the Town in the Right of First Offer in favour of the Developer such that the definition of "Town Phase 2 and Phase 3 Lands" shall now read "Town Phase 1B, Phase 2 and Phase 3 Lands".

Subsection 14.1 of the Agreement is further amended by deleting the words "ninety (90), one hundred and twenty (120) and one hundred and twenty (120) in subparagraphs (a), (b) and (c) and substituting therefore the words "thirty (30), ninety (90) and ninety (90)" respectively.

Subsection 14.1 of the Agreement is further amended by adding subsection 14.1 (c) as follows thereto:

"(c) In addition to the Right of First Offer set out in this subsection 14.1, upon commencement of construction of the building for the Proposed Development the Town and the Developer, if the Developer elects, in writing, within thirty (30) days of the commencement of such construction, will enter into good faith negotiations with respect to the acquisition and development of the Town Phase 1B, Phase 2 and Phase 3 Lands which will be in the same form and content as this Agreement, mutatis mutandis, or as the parties may further agree to. It is understood and agreed that, prior to commencement of negotiations and as a condition of the Town to negotiate an agreement for the acquisition of the Town Phase 1B, Phase 2 and Phase 3 Lands, the Developer shall submit to the Town, for its approval, a concept plan for the proposed development of the Phase 1B, Phase 2 and Phase 3 Lands. The agreement described in this subsection (c) shall be entered into within ninety (90) days of the receipt of the notice by the Town of the Developer's election to enter into such negotiations. In the event the Developer does not elect to enter into negotiations within the time set out in this

subsection (e) or the agreement has not been entered into by the date set out in this subsection (e) the obligations of the Town to enter into any negotiations and the Town's obligations to give the Developer any right of first offer set out in this subsection 14.1 shall be at an end. For purposes of clarity it is understood and agreed that the Phase 1B Lands shall be developed with the Phase 2 Lands or the Phase 3 Lands and the Town's obligation to negotiate for the sale of the Town's Phase 1B, Phase 2 and Phase 3 Lands as set out in this subsection 14.1 (e) shall be subject to a concept plan that provides for the development of the Phase 1B Lands concurrently with the Phase 2 Lands or the Phase 3 Lands unless the Town agrees otherwise."

Subsection 14.1 (c) of the Agreement is amended by adding the words "and the right of election in favour of the Developer set out in subsection 14.1 (e)" after the words "then the herein right" in line five of subsection (c).

25. Subsection 17.8 of the Agreement is hereby amended by adding thereto the following:

"in the case of the Assignee addressed to it at:

5000 Yonge Street
Unit 1806
Toronto, Ontario
M2N 7E9

Attention: Executive Director
Telephone: (416) 224-8898

With a copy to:

Bogart Robertson and Chu LLP
20 Adelaide Street East
Suite 303
Toronto, Ontario
M5C 2T6

Attention: Brian Chu
Telephone: (416) 601-1991

26. Schedule "B-1" of the Agreement is amended by deleting the words "DESCRIPTION OF LAND" and substituting therefore the words "DESCRIPTION OF THE PHASE 1A LANDS". Schedule "B-1" is further amended by deleting the words "as to be determined by the preparation of a reference plan of survey" and substituting therefore the words "now being Part 1 Plan 40R28209". Subsection 17.9 is amended by changing Schedule "B-1" Description of Lands to Schedule "B-1" Description of Phase 1A Lands.

27. Time shall be of the essence of this Agreement and each of its provisions.

28. The Assignee hereby covenants with the Town to be bound by the terms and conditions of the Agreement as amended and the Sales Pavilion Agreement.

29. The Town hereby consents to the assignment of the Agreement and the Sales Pavilion Agreement to the Assignee. This Second Amending Agreement shall only take effect on the assignment of the Agreement to the Assignee.

30. Unless otherwise defined in this Second Amending Agreement, the capitalized terms and definitions in the Agreement shall apply to this Second Amending Agreement and the capitalized terms defined in this Second Amending Agreement shall apply to and have the same meaning in the Agreement.

31. Except as specifically amended hereby the parties hereto do in all respects ratify and confirm the provisions of the Agreement.
32. This Agreement shall be binding upon and enure to the benefit of each of the parties.
33. This Agreement may be executed and delivered in several counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same Second Amending Agreement.

IN WITNESS WHEREOF the parties have signed this Agreement by the hands of their respective officers duly authorized in that behalf as of the date set out above.

THE CORPORATION OF THE TOWN OF AJAX

Per: 

Name: Steve Parish COLLEEN JORDAN
Title: Mayor (Acting)

Per: 

Name: Nicole Wellsbury
Title: Deputy Clerk

We have authority to bind the Corporation.

WINDCORP GRAND HARWOOD PLACE LTD.

Per: 

Name: Laura Starr
Title: President

I have the authority to bind the Corporation.

LEMINE REAL ESTATE CONSULTING INC.

Per: 

Name: Thomas Liu
Title: Executive Director

I have the authority to bind the Corporation.



July 15, 2016

BY EMAIL: ronald.hawkshaw@pmhlawoffice.com

Ronald John Hawkshaw
Barrister & Solicitor
Polak McKay & Hawkshaw, LLP
467 Westney Road South, Unit 16
Ajax, Ontario L1S 6V8

Dear Mr. Hawkshaw,

**RE: WAIVER AND AMENDMENT
LEMINE REAL ESTATE CONSULTING INC. ("LEMINE") AND THE TOWN
OF AJAX ("AJAX")**

As per LeMine's discussion with Ajax on July 11, 2016, and Ajax's subsequent email dated July 12, 2016 requesting LeMine's agreement with certain provisions, as more particularly set out below, please be advised that LeMine agrees with and accepts the following:

a. *Based on the assurances given to the Developer by the General Governance Committee members on July 11, 2016 with respect to permitting the Developer to submit an amended Site Plan and an amendment to the Site Plan Agreement for the addition of two storeys, changes to the west elevation (approximately 170 units) and additional underground parking to the Project Building, the Developer hereby waives condition 11.1 (d) as amended by the Amending and Assumption Agreement dated June 29, 2015.*

b. *The Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 as amended is hereby further amended by the addition of Subsection 11.1 (f) as follows:*

"By October 31, 2016 the Town has granted approval of an amended Site Plan and an amendment to the Site Plan Agreement dated December 29, 2015 that permits the addition of two storeys, changes to the west elevation (approximately 170 units) and additional underground parking to the Project Building. The Developer agrees to submit to the Town a revised Site Plan showing the addition of the two storeys, changes to the west elevation and one additional level of underground parking to the Project Building on or before September 15, 2016. It is understood and agreed that nothing herein obligates the Town to grant such approval. In the event the Town has granted the approval as herein set out this condition shall be deemed to have been satisfied."



I trust you will find the foregoing satisfactory. I ask you to kindly indicate your acceptance of the provisions as set out above, by signing and dating below and returning the same to my attention.

Please contact me for any further information.

Thank you in advance.

Yours Very Truly

Gurpreet (Rocky) Badwal
General Counsel

CC: Gary Muller (email); Geoff Romanowski (email)

ACCEPTANCE

By signing below, we, the Town of Ajax, hereby accept the provisions set out above this _____ day of July, 2016.

TOWN OF AJAX

Per:

Name:

RONALD J. HAWKSHAW

Title:

Town Solicitor

APPENDIX D

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and 9654445
CANADA INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF*
JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

FIRST REPORT OF THE RECEIVER
May 14, 2021

I. INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”), without security, of certain lands and premises owned by the Respondents identified in Schedule “A” hereto and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”). A copy of the Appointment Order is attached as Appendix “1”.

2. Capitalized terms used in this First Report and not defined herein are as defined in the Appointment Order.
3. The purpose of this report (the “**First Report**”) is to:
 - (a) inform the Court of the status of the Property, including various health and safety issues identified by the Receiver and certain activities undertaken to date by the Receiver;
 - (b) update the Court regarding the Notice of Appeal of the Appointment Order served by the Respondents; and
 - (c) seek an order from the Court: **(i)** confirming the Receiver’s authority to, or alternatively varying the Appointment Order to expressly authorize the Receiver to, notwithstanding any appeal, take such steps as the Receiver considers necessary, in its sole and absolute discretion, to preserve and protect the Property, with such steps to be paid pursuant to the Receiver’s Borrowings Charge; and **(ii)** approving this First Report and the activities of the Receiver set out herein.

II. TERMS OF REFERENCE

4. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver 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 pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

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

III. BACKGROUND

The Respondents own the Property. The Applicant holds a second ranking mortgage, behind a charge registered in favour of the Corporation of the Town of Ajax, registered on title to the land identified as PIN:26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX- 184/188 HARWOOD. The Applicant holds first ranking mortgages over the balance of the Property.

6. Due the Respondents' default of their obligations under the Applicant's mortgage, the Applicant brought an application seeking the appointment of a receiver over the Property. The application was heard by Justice Cavanagh on February 11, 2021 (the "**Hearing Date**"). The application was supported by the Town of Ajax, but opposed by the Respondents. As noted above, the Appointment Order was made on April 15, 2021. The Endorsement of Justice Cavanagh was issued that day.

IV. ACTIVITIES OF THE RECEIVER

7. The Appointment Order, among other things, authorizes the Receiver to:
 - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and

- (b) receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the placement of such insurance coverage as may be necessary or desirable.
- 8. As at the Hearing Date, the Receiver understood the Property to be vacant land.
- 9. On April 16, 2021, following its appointment, the Receiver attended at the Property with the intention of photographing and securing the Property, and obtaining temporary liability insurance coverage pending a review of any existing insurance policies in respect of the Property.
- 10. Upon its attendance at the Property, the Receiver discovered that the Property was not vacant land, but consists of a parking lot and at least seven commercial units (the “**Units**”, some divided into sub-units and occupied by multiple tenants) in a strip mall located across the street from the Ajax City Hall. Some of the Units are tenanted, and some are vacant. The parking lot appears to be in use for all of the units in the strip mall.
- 11. The Receiver re-attended at the Property on April 23, 2021, and met with Traci Hughes (“**Hughes**”), who identified herself as the tenant of one of the Units. Hughes advised the Receiver that,
 - (a) she has been acting as an informal property manager on behalf of the Respondents for approximately 2.5 years pursuant to an oral agreement with Jessica Yang, a representative of the Respondents;

- (b) she collects rent from certain businesses who are tenants or occupants of the Property, on behalf of the Respondents, and uses the funds collected to pay for maintenance costs relating to the Property;
 - (c) she has been involved in the maintenance and repair of the Property, and has managed other operational tasks relating to the Property, such as payment of utilities;
 - (d) she claims to have paid significant amounts towards the maintenance and/or repair of the Property from her personal funds, for which she has not been compensated by the Respondents. Hughes advises she is no longer willing to manage the Property without compensation, particularly given the amount she claims to be owed, and the various legal proceedings initiated against the Respondents and/or the Property.
12. The Receiver attended at each of the Units and observed that they appear to have been neglected and not maintained in a commercially reasonable manner. Among other things, the Receiver observed that,
- (a) units located on the following PINs (the “**Vacant Units**”), are vacant and appear to be infested by mould:
 - (i) 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847;
 - (ii) 26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX; and
 - (iii) 26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN

EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS;

- (b) the Vacant Units are dilapidated and show signs of damage, including that ceiling panels, windows and doors are broken, and copper wiring used in the electrical systems servicing such units has been removed; and
 - (c) the Vacant Units are not properly secured, and show signs of having been attended by unknown persons for the purpose of seeking shelter or to vandalize the units. The Receiver is advised by Hughes that there is a homeless shelter located at 170 Harwood Avenue South, Ajax, and it is possible that homeless persons have attended at the Vacant Units to vandalize and/or seek shelter there.
13. Per the Receiver's discussions with Hughes and representatives of the Town of Ajax, as a result of the Respondents' inability and/or unwillingness to fund the care and maintenance of the Property,
- (a) on several occasions, utility service has been disconnected at the Property due to non-payment of accounts resulting in various issues, including the occupants of the Units not having heat during wintertime;
 - (b) regular maintenance of the HVAC equipment at the Property has not been continued; and
 - (c) property taxes have not been paid since at least 2017 and the amount owing is at least \$700,000.

No Insurance in Place Regarding the Property

14. Upon its appointment, the Receiver arranged for temporary general liability coverage for the Property's parking lot based on the information contained in the application materials, which led the Receiver to believe that the parking lot was the only property subject to the receivership.
15. On April 20, 2021, counsel to the Receiver, Thornton Grout Finnigan LLP ("**TGF**"), wrote to counsel to the Respondents ("**Blaney**") and requested that the Respondents produce copies of any applicable property or liability insurance policies so that the Receiver could assess the level of insurance and attend to obtaining additional insurance coverage, if necessary. On April 21, 2021, Blaney responded and advised that on the basis that the Property was vacant their understanding was that there was no insurance in place, but that inquiries would be made of the Respondents. A copy of the email chain including TGF and Blaney's April 20-21, 2021, emails is attached as Appendix "2".
16. On April 21, 2021, TGF wrote to Blaney and repeated its request for applicable policies of insurance, as well as any information with respect to any tenancy of the Property and any rental arrangements. Blaney responded and advised that, to the best of the Respondents' knowledge, there was no insurance in place, but that they would confirm. No further confirmation was received from Blaney.
17. Between April 21-26, 2021, the Receiver sought out quotes for property and liability insurance suitable for the Property, but did not obtain such a policy during that time.

Appeal of the Appointment Order

18. On April 26, 2021, the Respondents served a Notice of Appeal in respect of the Appointment Order, a copy of which is attached as Appendix “3”.
19. On April 28, 2021, TGF wrote to Blaney and confirmed that until such time as the Respondents obtain leave to appeal the Appointment Order, the Receiver intends to proceed with its mandate, particularly given the concerns outlined above. A copy of TGF’s April 28th letter is attached as Appendix “4”.
20. On April 28, 2021, Blaney responded and asserted the position that:
 - (a) “[t]he law remains that where an appeal is filed and asserts the appeal is as a right under the applicable subsections of section 193 of the BIA, there is a stay until the Court of Appeal says otherwise in accordance with section 195”;
 - (b) the Receiver has “no mandate at this time”; and
 - (c) “in the event that RSM takes any further steps in this matter, it will be doing so on its own personal behalf and will be personally liable.”A copy of Blaney’s April 28th letter is attached is attached as Appendix “5”.
21. On May 4, 2021, TGF wrote again to Blaney, confirmed the Receiver’s view that the Appointment Order was not stayed by the Respondents’ appeal, and advised of the Receiver’s intention to bring a motion to address the urgent issues affecting the Property. A copy of TGF’s May 4th letter is attached as Appendix “6”.
22. On May 5, 2021, TGF and Blaney exchanged further emails. A copy of the email chain containing this exchange is attached is attached as Appendix “7”.

Other Activities

23. Since its appointment, the Receiver has also,
- (a) taken possession of the Property;
 - (b) registered a copy of the Appointment Order against title to the Property;
 - (c) established a website for these Receivership proceedings:

<http://www.rsmcanada.com/harwood-avenue-ajax>;
 - (d) requested and obtained information from certain secured creditors and other stakeholders relating to the Property; and
 - (e) issued the notices required pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 to known creditors of the Property.

V. THE RECEIVER MUST BE AUTHORIZED TO TAKE CONSERVATORY STEPS

24. It is evident from the Receiver's attendances at the Property that the Property is not being adequately managed. The Vacant Units appear to be infested with mould and appear to be frequented by persons who vandalize and/or seek shelter in them. The Receiver is concerned for the health and safety of such persons given that there is no formal property management arrangement in place for the Property (and in any event Hughes has confirmed she will no longer continue her informal property management).
25. The absence of insurance in respect of the Property is concerning, particularly given the health and safety issues described above, some of the Property consists of a parking lot, and other parts of the Property are used by active businesses that serve the general public. In view of the state of disrepair of the Property, and based on the Receiver's enquiries,

certain repairs and maintenance matters may have to be addressed, and funded before the Receiver is able to obtain insurance coverage.

26. The delay in addressing the above issues may risk:
- (a) injury or damage to individuals and/or businesses occupying the Property, whether in the Units or the Property's parking lot, with potential liability for such injury or damage not being covered by an adequate policy of insurance; and
 - (b) the deterioration in the value of the Property to the detriment of the Respondents' creditors.

VI. CONCLUSIONS AND RECOMMENDATIONS

27. The Receiver believes that, notwithstanding any appeal and pending the resolution of the appeal of the Appointment Order, in order to protect the Property and to address the above issues, the Receiver must be expressly authorized to take steps necessary to (i) protect, preserve and manage the Property, (ii) address various health and safety issues at the Property, and (iii) arrange for funding to pay for ongoing costs relating to the management of the Property, including any required repairs and maintenance.

28. Based on the foregoing, the Receiver respectfully requests that the Court make an Order substantially in the form as set out in the motion record in which this First Report is contained.

All of which is respectfully submitted to this Court as of this 14th day of May, 2021.

RSM Canada Limited, in its capacity as Court-appointed Receiver of the Property listed on Schedule "A" hereto, and not in its personal or corporate capacity

Per:

A handwritten signature in black ink, appearing to read 'B. A. Tannenbaum', with a long horizontal flourish extending to the right.

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Schedule "A"

PIN:26459-0050(LT) -PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN: 26459-0046(LT)- LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN: 26459-0045(LT)- LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN: 26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX- 184/188 HARWOOD

PIN: 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN: 26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN: 26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

APPENDIX G

Listing Agreement - Commercial

Seller Representation Agreement

Authority to Offer for Sale

This Listing is Exclusive

EXCLUSIVE

(Seller's Initials)

BETWEEN: AVISON YOUNG COMMERCIAL REAL ESTATE SERVICES, LP (the "Listing Brokerage")

SELLER: RSM CANADA LIMITED, in its capacity as Court-appointed Receiver (and as further described in Schedule "A") (the "Seller")

In consideration of the Listing Brokerage listing the real property **for sale** known as **see Schedule "A"**
(the "Property" or collectively the "Properties")

the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

commencing at 12:01 a.m. on the day of **June**, 20**23**,

until 11:59 p.m. on the **30th** day of **November**, 20**23** (the "Listing Period"),

{ Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), **if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.** }

(Seller's Initials)

to offer the Property **for sale** at a price of:

upon an unpriced basis unless other directed by the Seller

..... Dollars (\$CDN)
and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.

(Seller's Initials)

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"):

"Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission

of % of the sale price of the Property or **See Schedule "A"**

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period, as may be acceptable to the Seller.

INITIALS OF LISTING BROKERAGE:

INITIALS OF SELLER(S):

Listing Agreement - Commercial

Seller Representation Agreement

Authority to Offer for Sale

This is a Multiple Listing Service® Agreement



BETWEEN:

BROKERAGE:

AVISON YOUNG COMMERCIAL REAL ESTATE SERVICES, LP (the "Listing Brokerage")

SELLER: RSM CANADA LIMITED, in its capacity as Court-appointed Receiver (and as further described in Schedule "A") (the "Seller")

In consideration of the Listing Brokerage listing the real property **for sale** known as **See Schedule "A"**

(the "Property" or collectively the "Properties")

the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

commencing at 12:01 a.m. on the day of **July**, 20**23**,

until 11:59 p.m. on the **30th** day of **November**, 20**23** (the "Listing Period"),

{ Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), **if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.** }



to offer the Property **for sale** at a price of:

upon an unpriced basis unless other directed by the Seller

..... Dollars (\$CDN)

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.



1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"):

"Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission

See Schedule "A"

of % of the sale price of the Property or

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period, as may be acceptable to the Seller.

INITIALS OF LISTING BROKERAGE:



INITIALS OF SELLER(S):



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The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of % of the sale price of the Property or **See Schedule "A"** out of the commission the Seller pays the Listing Brokerage. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on

the Seller's behalf within **120** days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement. The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property. Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission. In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, awarded, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated) and to pay the balance of the deposit to the Seller. All amounts set out as commission are to be paid plus applicable taxes on such commission.

- 3. REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage acting as an agent for more than one seller without any claim by the Seller of conflict of interest. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage. The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.

MULTIPLE REPRESENTATION: The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practical opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understand and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

INITIALS OF LISTING BROKERAGE:

INITIALS OF SELLER(S):



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- 4. REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller's accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.
- 5. MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act.
- 6. WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
- 7. INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement and, if attached, the accompanying data form. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.
- 8. ENVIRONMENTAL INDEMNIFICATION:** The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury as a result of the Property being affected by any contaminants or environmental problems.
- 9. FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.
- 10. FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
- 11. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.
- 12. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may: during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and

INITIALS OF LISTING BROKERAGE:

INITIALS OF SELLER(S):



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selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

(Does)

(Does Not)

13. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

14. CONFLICT OR DISCREPANCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.

15. ELECTRONIC COMMUNICATION: This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

16. ELECTRONIC SIGNATURES: If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time.

17. SCHEDULE(S) A and data form attached hereto form(s) part of this Agreement.

THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.

.....
(Authorized to bind the Listing Brokerage)

.....
(Date)

.....
(Name of Person Signing)

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

RSM CANADA LIMITED, in its capacity as Court-appointed Receiver, and not in any personal capacity

.....
(Name of Seller)

.....
(Signature of Seller/Authorized Signing Officer)

.....
(Seal)

.....
(Date)

.....
(Tel. No.)

.....
(Signature of Seller/Authorized Signing Officer)

.....
(Seal)

.....
(Date)

.....
(Tel. No.)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

.....
(Spouse)

.....
(Seal)

.....
(Date)

.....
(Tel. No.)

DECLARATION OF INSURANCE

The Salesperson/Broker/Broker of Record

Kelly Avison

Ben Sykes

.....
(Name of Salesperson/Broker/Broker of Record)

hereby declares that he/she is insured as required by REBBA.

.....
(Signature(s) of Salesperson/Broker/Broker of Record)

ACKNOWLEDGEMENT


The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the day of, 20

.....
(Signature of Seller)

.....
(Date)

.....
(Signature of Seller)

.....
(Date)

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APPENDIX H

RSM Canada Limited
Court Appointed Receiver of 134, 148, 152, 184/188, 214,
224 and 226 Harwood Avenue South, Ajax
Interim Statement of Receipts and Disbursements
For the period April 15, 2021 to April 15, 2023

Receipts	
Advance from secured creditor	\$ 500,000
Rental Income	95,828
HST Collected	12,457
Interest	3,434
Total receipts	\$ <u>611,719</u>
Disbursements	
Repairs and Maintenance	\$ 67,884
Property Management Fees	45,723
Insurance	24,000
Administrative Disbursement	15,000
Waste Removal and Disposal	15,268
Appraisal Fees	7,750
Utilities Paid - Gas	11,098
Utilities Paid - Water	11,692
Environmental Site Assessment	5,000
Miscellaneous	4,319
Legal Fees and Disbursement	87,455
Receiver's Fees & Costs	194,660
HST Paid	59,102
PST Paid	1,760
Total disbursements	\$ <u>550,711</u>
Excess of Receipts Over Disbursements	\$ <u><u>61,008</u></u>

E&OE

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

2615333 ONTARIO INC.

- and -

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC. *et al*

Applicant

Respondents

Court File No.: CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**SECOND REPORT OF THE RECEIVER
May 2, 2023**

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Rebecca L. Kennedy (LSO# 61146S)
Tel: (416) 304-0603
Email: rkennedy@tgf.ca

Alexander Soutter (LSO# 72403T)
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for the Court-appointed Receiver

TAB 3

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

THE HONOURABLE)	THURSDAY, THE 1 ST
)	
JUSTICE KIMMEL)	DAY OF JUNE, 2023

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and
9654445 CANADA INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER
(Approving Sale Procedure and Ancillary Matters)**

THIS MOTION made by RSM Canada Limited, in its capacity as receiver (in such capacity, the “**Receiver**”), without security, of certain lands and premises owned by the Respondents, identified in Schedule “A” hereto, and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”), for an order approving a Sale Procedure in respect of the Property, authorizing the Receiver to enter into an agreement with Avison-Young Commercial Real Estate Services, LP for the purpose of listing the Property for sale (the “**Listing Agreement**”), approving the Receiver’s First Report dated May 14, 2021 (the “**First Report**”) and Second Report dated May 2, 2023 (the “**Second Report**”) and the Receiver’s activities, decisions and conduct set out therein, amending the Order of Justice Cavanagh dated April 15, 2021 (the “**Appointment Order**”) to increase the Receiver’s Borrowings Charge limit

set out in paragraph 20 of the Appointment Order, sealing Confidential Appendices “1” and “2” to the Second Report, and approving the Interim R&D (as defined in the Second Report), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report, the Second Report, and on hearing the submissions of counsel for the Receiver and such other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of ► sworn ►, 2023, filed,

SALE PROCEDURE

1. **THIS COURT ORDERS** that the Sale Procedure attached hereto as Schedule “B” is approved, and the Receiver is authorized and directed to carry out the Sale Procedure in accordance with its terms and this Order, and to take such steps as are reasonably necessary or desirable to carry out and give full effect to the Sale Procedure.
2. **THIS COURT ORDERS** that the Receiver is authorized to enter into an agreement with Avison Young Commercial Real Estate Services, LP for the purpose of listing the Property for sale.
3. **THIS COURT ORDERS** that the Receiver and its respective representatives and advisors shall have no corporate or personal liability whatsoever to any person, in connection with conducting the Sale Procedure, or for any act or omission related to the Sale Procedure, save and except for any gross negligence or wilful misconduct on their part, as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or the Appointment Order.
4. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required in furtherance of the Sale Procedure. 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 potential purchase described in the Sale Procedure, and if the

prospective purchaser or bidder does not make a Bid by the Bid Deadline, if their Bid is not selected as a Qualified Bid, or if after being selected as a Qualified Bidder such Bidder is not selected as the Successful Bid or a Back-up Bid (as such capitalized terms are defined in the Sale Procedure), such person shall return all such information to the Receiver, or in the alternative, destroy all such information.

RECEIVER'S BORROWINGS CHARGE

5. **THIS COURT ORDERS** that paragraph 20 of the Appointment Order is hereby amended and restated as follows:

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

SEALING

6. **THIS COURT ORDERS** that Confidential Appendices “1” and “2” to the Second Report shall be sealed, kept confidential and not form part of the public record, until further Order of the Court.

APPROVAL OF RECEIVER’S ACTIVITIES AND INTERIM R&D

7. **THIS COURT ORDERS** that the First Report and the Second Report, and the Receiver’s activities, decisions and conduct set out therein are hereby ratified and approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

8. **THIS COURT ORDERS** that the Interim R&D (as defined in the Second Report) is hereby approved.

GENERAL

9. **THIS COURT ORDERS** that the Receiver is at liberty to apply to the Court for advice and directions with respect to this Order and/or the Sale Procedure.
10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver 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 may be necessary or desirable to give effect to this Order and to assist the Receiver in carrying out the terms of this Order.
11. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without further need for entry and filing.
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Schedule "A"

PIN26459-0050 (LT) - PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN26459-0046 (LT) - LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN26459-0045 (LT) - LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN26456-0108 (LT) - PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX 184/188 HARWOOD

PIN26459-0037 (LT) - LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN26459-0036 (LT) - TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN26459-0035 (LT) - PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

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Schedule “B”

Sale Procedure

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of the lands and premises set out on **Schedule “A”** attached hereto (collectively, the “**Harwood Properties**”) owned by the Debtors (as defined herein) and of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Harwood Properties, including all proceeds thereof.

On June 1, 2023, the Court made an order (the “**Sale Procedure Order**”) among other things, approving this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Harwood Properties.

Accordingly, the following Sale Procedure shall govern the sale process relating to the solicitation by the Receiver of one or more Bids for the Harwood Properties.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Procedure**” means an acknowledgement of the Sale Procedure in the form attached as **Schedule “B”** hereto;

“**Agreement of Purchase and Sale**” shall be the form of agreement uploaded to the Confidential Data Room;

“**Back-up Bid**” means the next highest and/or best Qualified Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“**Back-up Bidder**” means the Bidder that submits the Back-up Bid;

“**Bid**” means a bid submitted by a Bidder pursuant to Section 2 hereof;

“**Bid Deadline**” means 3 p.m. (Toronto time) on August 24, 2023;

“**Bidder**” means a party that submits a Bid in accordance with Section 2;

“Confidential Data Room” means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the Harwood Properties;

“Confidential Information” means the confidential information in the Confidential Data Room;

“Confidential Information Memorandum” means the confidential information memorandum prepared by the Listing Agent providing certain confidential information in respect of or related to the Harwood Properties;

“Confidentiality Agreement” means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

“Debtors” means, collectively, 9617680 Canada Inc., 9654372 Canada Inc., Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc. and 9654445 Canada Inc.;

“Encumbrances” has the meaning given to such term in the Agreement of Purchase and Sale;

“Good Faith Deposit” means a cash deposit in an amount equal to 10% of the purchase price as set out in the Agreement of Purchase and Sale;

“Interested Party” means a party participating in this Sale Procedure;

“Listing Agent” shall mean Avison-Young Commercial Real Estate (Ontario) Inc.;

“Notice Parties” means the Receiver, its counsel and the Listing Agent;

“Participant Requirements” has the meaning set out in Section 3 hereof;

“Potential Bidder” means an Interested Parties that satisfies the Participant Requirements;

“Qualified Bid” means a Bid that satisfies the conditions set out in Section 6 hereof as determined by the Receiver;

“Qualified Bidder” means a Bidder submitting a Qualified Bid;

“Sale Hearing” means the hearing of a motion by the Receiver for an Order approving the sale of the Harwood Properties to the Successful Bidder, together with such other relief as the Receiver may deem appropriate to seek;

“Successful Bid” means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including the Expense Reimbursement, if applicable, and those factors affecting the speed and certainty of consummating the proposed sale; and

“Successful Bidder” means the Bidder that submits the Successful Bid.

1. Assets for Sale

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to some or all of the Harwood Properties.

An en bloc sale of the Harwood Properties is preferred.

2. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be given the Confidential Information Memorandum and access to the Confidential Information.

All offers to purchase the assets for sale in this Sale Procedure must be submitted to the Notice Parties by email, at the same time, in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Bid Deadline, failing which they will not constitute a Bid and shall be disqualified.

3. Participant Requirements

To participate in the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the **“Participant Requirements”**).

4. Access to Due Diligence Materials

Only Potential Bidders will be eligible to receive the Confidential Information Memorandum and access to the Confidential Data Room.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Bid Deadline. Neither the Receiver nor the Listing Agent, nor their agents, shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Harwood Properties, or any of them.

5. Information from Interested Parties

Each Potential Bidder shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Potential Bidder is not a Qualified Bidder.

6. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

- a) *Written Submission of Agreement of Purchase and Sale.* The Bidder must submit a clean and redline version of the Agreement of Purchase and Sale that must constitute a written and binding commitment to close on a transaction for the purchase some or all of the Harwood Properties, or such subset of the Harwood Properties as permitted by the Agreement of Purchase and Sale, on the terms and conditions set forth therein;
- b) *Irrevocable.* A Bid must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- c) *Conditions.* A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Bid may not, in aggregate, be more burdensome in the sole and exclusive opinion of the Receiver;
- d) *Financing Sources.* A Bid must be accompanied by: (i) written evidence of a commitment for financing or other evidence of the Bidder's ability to close on the Agreement of Purchase and Sale satisfactory to the Receiver; (ii) appropriate contact information for such financing sources; and (iii) names of all principals of the Purchaser together with names of all development partners whether corporate or personal in sufficient detail to allow the Receiver to make a determination as to the Purchaser's ability to complete the transaction in accordance with the terms of the Agreement of Purchase and Sale;
- e) *Development Agreement.* Each Bid must be accompanied by a clean and

redline copy of the Development Agreement is appended hereto as **Schedule “C”**; and

- f) *Good-Faith Deposit*. Each Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the Deposit under the Agreement of Purchase and Sale.

The Receiver shall be entitled to seek additional information and clarifications from Bidders in respect of their Bids at any time.

7. Designation as Qualified Bidder

Following the Bid Deadline, the Receiver shall determine which Bidders are Qualified Bidders. The Receiver shall notify each Bidder of its determination as to whether the Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline.

If no Qualified Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated.

8. Determination of Successful Bid

If one or more Qualified Bids is received by the Bid Deadline, the Receiver may: (i) conduct an auction amongst the Qualified Bidders, on terms to be determined by the Receiver and communicated to the Qualified Bidders; and/or (ii) negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.

As noted above, an *en bloc* sale of the Harwood Properties is preferred. If, however, a Qualified Bid is received for the Development Lands and Utility Lands, and another Qualified Bid is received for the Commercial Lands, and the Receiver determines such Qualified Bids should be treated together as the Successful Bid or the Back-up Bid, the Receiver may then select both such Qualified Bids to be, jointly, the Successful Bid or Back-up Bid, as applicable.

As part of any negotiation with one or more Qualified Bidders, the Receiver may select one or more Qualified Bidders to negotiate with the Town of Ajax for the purpose of arriving at a form of Development Agreement that is acceptable to the Town of Ajax, the Qualified Bidder and the Receiver, and which the Town of Ajax and the Qualified Bidder confirm in writing to the Receiver that they would enter into if the Qualified Bidder were selected as the Successful Bidder.

For greater certainty, a Qualified Bidder will not be selected as the Successful Bidder or Back-up Bidder, if any, if the Receiver has not received that above confirmation from such Qualified Bidder and the Town of Ajax.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall, as soon as reasonably practicable, seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein. The Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established pursuant to the Appointment Order.

9. Acceptance of Successful Bid

Subject to the terms of the Agreement of Purchase and Sale, the Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

10. “As Is, Where Is”

The sale of the Harwood Properties, or any of them, pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. Each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Harwood Properties prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Harwood Properties in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the Harwood Properties, made by the Receiver or Listing Agent or their respective officers, directors, employees, representatives or agents, or the accuracy or completeness of any such information, except as expressly stated in this Sale Procedure or, as to the Successful Bidder, the applicable Agreement of Purchase and Sale.

11. Free Of Any and All Encumbrances

Except as otherwise provided in the Successful Bid, those Harwood Properties that the Successful Bidder proposes to purchase pursuant to the Successful Bid shall be sold free and clear of all Encumbrances, except as set out in the Agreement of Purchase and Sale, in accordance with a vesting order of the Court, with all Encumbrances on or against the Harwood Properties that are sold, except for such Encumbrances set out in the Agreement of Purchase and Sale, to attach to the net

proceeds of the sale of such Harwood Properties after completion of such sale under a Successful Bid.

12. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall be entitled, but not required, to deem the Back-up Bid the Successful Bid. The Receiver may seek the Court's approval to consummate the transaction with the Back-up Bidder at the Sale Hearing on a conditional basis, or may seek such approval in the event that it deems the Back-up Bid to be the Successful Bid under this section.

13. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder, if any. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder, if any, shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the Agreement of Purchase and Sale of the Back-up Bidder at closing.

14. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

Schedule "A"

Hardwood Properties

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

**Schedule “B”
ACKNOWLEDGEMENT**

TO: RSM Canada Limited, in its capacity as court-appointed receiver and manager of the lands and premises described on Schedule “B” to the Sale Procedure (collectively, the “**Harwood Properties**”) (the “**Receiver**”)

RE: The sale procedure with respect to the sale by the Receiver of the Harwood Properties, as approved by the Court on June 1, 2023 (the “**Sale Procedure**”)

The undersigned hereby acknowledges receipt of, and its agreement with, the Sale Procedure.

DATED this ____ day of _____, 2023.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

**Schedule “C”
DEVELOPMENT AGREEMENT**

DEVELOPMENT AND PURCHASE AGREEMENT between

THE CORPORATION OF THE TOWN OF AJAX
(the “Town” or “Ajax”)

- And -

THE DEVELOPER CORPORATION
PURCHASER IN RECEIVERSHIP PROCESS
(the “Developer”)

WHEREAS the Developer, through the Receivership process defined herein, acquired title to the properties identified in Schedule “A” to this Agreement (hereinafter the “Schedule “A” Lands”)

AND WHEREAS the Developer has assured the Town of Ajax that the Developer will construct a mixed-use development in accordance with the Development Plans listed in Schedule “B” to this Agreement (hereinafter “the Development Plans”);

AND WHEREAS the Developer acquired title to the Schedule “A” Lands knowing that the Town of Ajax would require the Developer to enter into a Development Agreement for the purpose of ensuring that the mixed-use development and services upon a portion of the Schedule “A” Lands are constructed in accordance with the Development Plans;

AND WHEREAS the Developer acquired title to the Schedule “A” Lands knowing that its rights would be subject to a potential Conveyance Event (as defined below), if the Developer does not proceed with the construction of the mixed-use development in accordance with the terms of this Agreement;

AND WHEREAS it is vital to Ajax to see that the mixed-use development is developed upon a portion of the Schedule “A” Lands in a timely manner in accordance with the Development Plans;

AND WHEREAS the Developer had an opportunity to review this Agreement prior to acquiring title to the Schedule “A” Lands through the Receivership process;

AND WHEREAS the Town of Ajax approved of the Developer in accordance with the terms of the Receivership Order on the basis that the Developer would execute this Agreement, which requires the Developer to construct the mixed-use development and services upon a portion of the Schedule “A” Lands in accordance with the Development Plans and which also provides for a potential Conveyance Event;

NOW WITNESSETH that in consideration of the exchange of \$5.00 of lawful money of Canada

from one party to the other and other good and valuable consideration which each party acknowledges as having been exchanged between the parties, and the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are accurate and form part of this Agreement.

2. **DEFINITIONS**

- a. *Commence construction* means the day upon which (i) the Developer first starts excavation for the construction of the foundation and underground parking for the mixed-use development, (ii) the Developer first starts demolition of the buildings located on the Utility Lands, and (iii) the Receiver has confirmed, in its sole discretion, that such excavation and demolition has begun by giving written notice to the Developer and the Town.
- b. *Complete construction* means the conclusion of both the construction and clean-up process on the Development Lands, and ready for occupancy closing of the units.
- c. *Conveyance Event* means the event described in section 17 of this Agreement.
- d. *Development Lands* means the lands shown and described in Schedule “C” of this Agreement and which are the part of the Schedule “A” Lands upon which the Developer is to construct the mixed-use development. In the event of any discrepancy between the Development Lands as described by way of their legal description or as shown on the map as part of Schedule “C”, the legal description shall prevail.
- d. *Development Plans* means the plans, which have been agreed to as between the Town and the Developer prior to the Developer executing this agreement and as set out in Schedule “B” to this Agreement. The Development Plans shall be substantially in accordance with the existing approved Site Plan Agreement, which can be found at Schedule “D” of this Agreement, and the Development Plans shall be used and implemented by the Developer to construct the mixed-use development upon the Development Lands.
- e. *Escrow Funds* has the meaning given to it in section 19 of this Agreement.
- f. *Mixed-use development* means the mixed-use development and services that the Developer is obligated to construct in accordance with the terms of this Agreement upon the Development Lands.

- g. *Receiver* means RSM Canada Limited, in its capacity as the Receiver of the Schedule “A” Lands, by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, made in the proceeding bearing Court File No. CV-20-00651299-00CL.
- h. *Receivership process* means the Receivership that was ordered by the Court by way of an Order of Mr. Justice Cavanagh, dated April 15, 2021, as part of the proceeding bearing Court File No. CV-20-00651299-00CL.
- i. *Sales and Marketing Costs* means all costs of the Receiver associated with the marketing and sale of the Schedule “A” Lands to the Developer, including the costs of the Receiver’s sales agent, the Receiver’s professional costs, and those of their counsel, associated with the sales process, including negotiating with the Town, potential purchasers and the Developer, and the costs Receiver’s professional costs, and those of their counsel, associated with bringing a motion for approval of the sale to the Developer in the Receivership process.
- j. *Schedule “A” Lands* are all of the lands to which the Developer obtained title by way of acquiring all rights, title and interests in through the Receivership process and which are shown and described in Schedule “A” of this Agreement.

OBLIGATION TO CONSTRUCT MIXED-USE DEVELOPMENT IN ACCORDANCE WITH DEVELOPMENT PLANS

- 3. The Developer shall apply for a permit to allow construction to commence within 60 days after the date on which the Developer’s purchase of the Schedule “A” lands from the Receiver closes, and commence construction of the mixed-use development within the greater of 150 days after such permit has been obtained, or such other period mutually agreed to by the Developer, the Receiver and Ajax (the “Construction Commencement Date”). Should the Developer refuse or fail to commence the construction of the mixed-use development within the time permitted in Section 3 herein, the refusal or failure to commence is considered a Conveyance Event under the terms of this Agreement.
- 4. The Developer shall give the Receiver and Ajax five business days’ notice before the date that the Developer intends to start excavation for the construction of the foundation and underground parking for the mixed-use development. Representatives of the Receiver and Ajax will attend the Development on the date that the Developer commences construction.
- 5. The Developer shall complete construction of the mixed-use development within 30 months from the date on which the Developer commences construction.

6. Should the Developer refuse or fail to complete the construction of the mixed-use development within the time permitted in Section 5 herein, the Developer shall, within ten (10) days thereafter provide a written report to the Town explaining the reason or reasons for the delay and the expected completion date for the construction of the mixed-use development.
7. Should the Town, acting reasonably, be satisfied with the explanation for the delay and the expected completion date for the completion of the mixed-use development as set out in the report referenced in Section 6, above, the Town will so advise the Developer in writing within ten (10) days of receipt of the report from the Developer, and shall permit the construction to proceed without the payment of liquidated damages paid by the Developer as contemplated in Section 9 herein.
8. Should the Town not be satisfied with the explanation for the delay or the expected completion date of the mixed-use development as set out in the report referenced in Section 6, above, or should the Developer fail to submit the required report, the Town may impose a deadline upon the Developer, which cannot be less than ninety (90) days from original completion date by which the construction of the mixed-use development must be completed by the Developer (the “deadline extension date”).
9. Should the Developer refuse or fail to complete the construction of the mixed-use development by the expected completion date established by the Town in accordance with Section 7 or by the deadline extension date established by the Town in accordance with Section 8, above, the Town may claim liquidated damages against the Developer commencing the day after the expected completion date or the deadline extension date, as the case may be, of \$1000 per day, which liquidated damages shall be payable by the Developer on the Monday of the following week and every Monday thereafter until construction of the mixed-use development has been completed.
10. Should the Developer refuse or fail to pay the liquidated damages referenced in Section 9, above, the Town may, if and when it sees fit to do so, draw upon the Letter of Credit posted with the Town by the Developer, as referenced in Section 28, below, for the purpose of recovering the amount of the liquidated damages owed to the Town.

ABILITY OF THE DEVELOPER TO SEEK CHANGES TO THE DEVELOPMENT

PLANS AFTER DEVELOPER ACQUIRES TITLE TO THE DEVELOPMENT LANDS

11. Should the Developer wish to alter the Development Plans prior to or during the construction of the mixed-use development, it may do so by way of filing all reports and documents as required by the Town and in accordance with all applicable statutes, regulation, and policies of the Town.
12. It is acknowledged and agreed by the Developer that the Town, as decision maker (and not as a contracting party to this Agreement) under the *Planning Act* or any other applicable statute, may, at its sole discretion, approve or reject the alteration of the Development Plans as proposed by the Developer and the Developer agrees to abide by the decision of the Town, as decision maker.
13. Should the Developer file an application for an Official Plan Amendment, a Zoning By-law Amendment, or a Site Plan Amendment that in any way relates to the Development Lands and appeal any such application to the Ontario Land Tribunal, the filing of such an appeal is a Conveyance Event under the terms of this Agreement.
14. Should a Conveyance Event arise under the terms of this Agreement by way of the Developer filing an appeal in relation to any of an Official Plan Amendment application, a Zoning By-law Amendment application, or a Site Plan Amendment application that in any way relates to the Development Lands, the Developer shall, on the day that the appeal is filed and without taking any steps, be deemed to have, and will in fact have, assigned, any such appeal to the Town (as a contracting party to this Agreement) as it relates to the Development Lands. The Town may rely upon the terms of this Agreement to confirm that the appeal related to the Development Lands has been assigned to the Town.
15. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, the Developer agrees to pursue the approval of the minor variance at the Committee of Adjustment only if Town staff files a staff report in support of the requested variance(s).
16. Should the Developer file an application to seek a minor variance pursuant to Section 45 of the *Planning Act* that in any way relates to the Development Lands, and should Town staff file a staff report that recommends refusal of the requested variance(s), the Developer shall, within two (2) days of the release of the staff report, withdraw its request, prior to any decision having been rendered by the Committee of Adjustment, including a deferral of the consideration of the application, for any variances which staff recommends be refused through its staff report.

CONVEYANCE OF THE SCHEDULE “A” LANDS

17. A Conveyance Event means the following:
 - a. The attempted assignment of this Agreement without the prior written consent of the Town of Ajax and the Receiver;
 - b. The Developer filing an appeal to the Ontario Land Tribunal in furtherance of seeking approval for an Official Plan Amendment, a Zoning By-law Amendment or a Site Plan Amendment in relation to any of the Development Lands;
 - c. The Developer refusing or neglecting to withdraw its application for a minor variance or minor variances as required under Section 16 of this Agreement;
 - d. The Developer failing, for any reason, to commence construction of the mixed-use development, in accordance with the Development Plans, as may be amended pursuant to the terms of this Agreement, upon the Development Lands by the date set out in Section 3, above;
 - e. The Developer attempting to sell or selling, without the prior written consent of the Town of Ajax and the Receiver, any or all of the Schedule “A” Lands.
18. In the event that a Conveyance Event arises, the Town shall have the right to require that the Developer convey title to all, but not less than all of the Schedule “A” Lands, to the Receiver, free and clear of all encumbrances in accordance with the terms of this Agreement (a “Conveyance”).
19. Until the Construction Commencement Date, the Receiver will hold the price paid by the Developer for the Schedule “A” Lands, less an amount equal to the Sales and Marketing Costs, in escrow, such amounts being the “Escrow Funds”.
20. Notwithstanding anything to the contrary in this Agreement, after the Construction Commencement Date the Town shall have no right to require a Conveyance and the Receiver shall be under no obligation to hold the Escrow Funds in escrow.
21. In the event that a Conveyance Event arises, and the Town chooses to require a Conveyance, then the Town shall, within fifteen (15) days of the Town becoming aware of the fact that a Conveyance Event occurred, provide written notice to the Developer and the Receiver, of the Town’s intention to require a Conveyance pursuant to this Agreement.
22. Upon receiving notice in writing from the Town that the Town intends to require a Conveyance, the Developer shall transfer the title of Schedule “A” Lands, free and clear of

all encumbrances, to the Receiver, on or before fifteen (15) days from receipt of the written notice from the Town.

23. Upon a Conveyance, the Receiver shall pay to the Developer the Escrow Funds as consideration for the Conveyance.

RECEIVER'S RIGHT TO NOT CONVEY THE SCHEDULE "A" LANDS

24. Should a Conveyance Event arise, and the Town choose not to exercise its right to require a Conveyance of the Schedule "A" Lands, the Town may, at its sole discretion, permit the Developer to continue to deal with the Schedule "A" Lands in such manner as agreed to by the Town, in writing.
25. Any decision by the Town to allow the Developer to continue to deal with the Schedule "A" Lands for any period of time after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance pursuant to the terms of this Agreement, unless such right has expired pursuant to the terms of this Agreement or the Town has expressly, in writing, waived or otherwise limited its right to require a Conveyance by making specific reference to this section of this Agreement and by confirming its intention to waive or otherwise limit its right.
26. Any delay or failure of the Town to exercise its right to require a Conveyance after a Conveyance Event has occurred does not in any way limit the right of the Town to exercise its right to require a Conveyance at any time after another Conveyance Event has been discovered by the Town to have occurred.
27. The Developer expressly waives any and all claims that the Developer may have, or could have, against the Town or Receiver that in any way relate to an allegation that the Town or Receiver has been unjustly enriched, or that are based upon quantum meruit and/or betterment, as a result of the Receiver exercising its right to require a Conveyance pursuant to the terms of this Agreement.

LETTER OF CREDIT

28. Concurrent with the execution of this Agreement, the Developer shall post a letter of credit, in a form satisfactory to the Town and in an amount of \$250,000.00, for the purpose allowing the Town to draw upon the letter of credit pursuant to Section 10, above.

REPRESENTATIONS AND WARRANTIES

29. The Town represents and warrants to the Developer that:
 - a. as of the date of this Agreement, the Durham Region in-force Official Plan, the Town's in-force Official Plan and the in-force Zoning By-law applicable to the Development Lands permits the mixed-use development to be constructed upon the Development Lands;

- b. the Town will not initiate or grant any amendment to the in-force Official Plan or any amendment to the in-force Zoning By-law applicable to the Development Lands or pass an interim control by-law which would have the effect of prohibiting or delaying the construction of the mixed-use development.
- 30. The Developer represents and warrants to the Town that as of the date of this Agreement:
 - a. the Developer has the authority to enter into this Agreement and the ability to complete the obligations contemplated herein.

ARBITRATION TO RESOLVE DISPUTES

- 31. If the parties cannot, after good faith, discussions, agree upon the resolution of any dispute arising from the interpretation of a provision of this agreement, except as noted in Section 33, below, then the parties agree that such dispute will be resolved by binding arbitration pursuant to the *Arbitrations Act* 1991, S.O. 1991, c. 17, as may be amended from time to time, on the following basis:
 - a. The arbitration shall commence within 20 business days of delivery of an arbitration notice, which either party may deliver once one or both parties believe that a dispute is unlikely to be resolved in the absence of arbitration.
 - b. Upon receipt of the arbitration notice, the parties have seven (7) business days to agree upon a single arbitrator. In the event that the parties cannot agree upon a single arbitrator, each party shall, within three (3) business days thereafter, name an arbitrator. The two arbitrators chosen shall then, within five (5) days of being named, select a third arbitrator who shall serve as the sole arbitrator.
 - c. The selected arbitrator shall establish all procedural requirements of the arbitration pursuant to the *Arbitrations Act*, as well as the determination of costs that may be payable by one party to the other.
 - d. In selecting an arbitrator, the parties acknowledge and agree that the arbitration shall commence no later than twenty (20) business days after the delivery of the arbitration notice and any arbitrator nominated shall be available within such dates.
- 32. The parties acknowledge and agree that the right of the Town to require a Conveyance is not a matter that can be subject to the arbitration process set out above, and the parties further agree that the arbitrator has no jurisdiction to determine if the Town has the right, or had the right, to require a Conveyance pursuant to the terms of this Agreement. The Developer agrees that its obligation to effect a Conveyance in accordance with the terms of this Agreement is enforceable by specific performance and that an award of damages for breach of such obligation is not sufficient.
- 33. The parties acknowledge and agree that the decision of the arbitrator shall be final.

34. The parties acknowledge and agree that the expenses of any arbitration shall be borne by the parties in accordance with the decision of the arbitrator.

NOTICE AND SERVICE UNDER THIS AGREEMENT

35. The Town can be served at:

65 Harwood Avenue South
Ajax, ON
L1S 2H9
Attention: Chief Administrative Officer

36. The Developer can be served at:

XXXXXXXXXX

37. The Receiver can be served at:

11 King Street West, Suite 700,
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
Attention: Jeff Berger

CC Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON
M5K 1K7

Attention: Rebecca L. Kennedy
Attention: Alexander Soutter

38. Any notice if personally served shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 pm on a business day, otherwise the date of delivery shall be deemed to be the on the business day next following such date. Any notice, if sent by facsimile or e-mail, shall deemed to have been validly and effectively given and received on the date of transmission if received prior to 5:00 pm on a business day, otherwise the date shall be deemed to be on the business day next following such date. Notices given by regular mail shall be deemed to have been validly and effectively given on the fifth business day after the date upon which the notice was deposited in the mail for delivery.

MISCELLANEOUS

39. Notwithstanding any other provision of this Agreement, none of the provisions of this Agreement, including a provision stating the parties' intentions, is intended to operate, nor will have the effect of operating, in any way to fetter Town of Ajax Council which authorized the execution of this agreement or any of its successor councils in the exercise of any of councils' discretionary powers, duties or authorities. The Developer hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.
40. Nothing in this Agreement shall be construed so as to make either party a partner of the other nor to have the parties engaged in any joint venture.
41. This Agreement shall be registered by the Town on the Schedule "A" Lands and shall constitute a first registration thereon after the transfer of title to the Developer.
42. It is agreed and acknowledged by the parties that each is satisfied as to the jurisdiction of the other to enter into this Agreement. The parties agree that it will not challenge the jurisdiction of the other party to enter into this Agreement, nor will they challenge the legality of any provision in this Agreement.
43. The parties covenant and agree that at all times, and from time-to-time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required or more effectively implementing and carrying out the true intent and meaning of this Agreement.
44. Time shall be of the essence in all respect for the purposes of this Agreement.
45. Any tender of documents of money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or a cheque from a solicitor's trust account.
46. This Agreement may not be assigned by either party without the prior written consent of any party and each party may unreasonably withhold their consent to any proposed assignment.
47. This Agreement shall enure to the benefit of and shall be binding upon the parties and upon their permitted assigns and shall enure to the benefit of and be enforceable only by such permitted assigns which have received such assignment in the manner permitted by this Agreement.
48. This Agreement is subject to compliance with the provisions of the *Planning Act*.

49. This Agreement may be executed in counterparts, each of which is deemed to be an original and both of which taken together are deemed to constitute one and the same instrument, and production of one of the executed counterparts from each of the parties will be sufficient proof of execution of this Agreement.

Schedule A

PIN No. 26459-0050 (LT) – PT LT 3, PL 488 AJAX AS IN CO78428; AJAX – 134 HARWOOD

PIN No. 26459-0046 (LT) – LT 6 PL 488 AJAX; AJAX – 148 HARWOOD;

PIN No. 26459-0045 (LT) – LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule B
Development Plans

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
L-1b – Roof Level 4 Landscape Plan	MBTW	September 22, 2015
L-2 – Ground Level Grading Plan	MBTW	December 16, 2015
L-3a – Ground Level Planting Plan	MBTW	December 16, 2015
L-3b – Roof Level 4 Planting Plan	MBTW	December 16, 2015
L-D1 – Landscape Details	MBTW	December 16, 2015
L-D2 – Landscape Details	MBTW	December 16, 2015
L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
2 – Surface Removal Plan	Morrison Hershfield	December 16, 2015
3 – Sub-Surface Removal Plan	Morrison Hershfield	December 16, 2015
4 – Storm Drainage Area Plan	Morrison Hershfield	December 16, 2015
5 – Sanitary Drainage Area Plan	Morrison Hershfield	December 16, 2015
6 – General Plan	Morrison Hershfield	December 16, 2015
7 – Grading Plan	Morrison Hershfield	December 16, 2015
8 – Erosion and Sedimentation Control Plan	Morrison Hershfield	November 27, 2015
9 – Temporary Parking Plan Phase 1a	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
10 – Plan and Profile Street “A”	Morrison Hershfield	December 16, 2015
11 – Plan and Profile Street “B”	Morrison Hershfield	December 16, 2015
12 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street “C”	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street “D”	Morrison Hershfield	December 16, 2015
15 – Details	Morrison Hershfield	December 16, 2015
16 – Lighting Layout	Morrison Hershfield	December 16, 2015
17 – Photometric Layout	Morrison Hershfield	December 16, 2015
18 – Electrical Details	Morrison Hershfield	December 16, 2015
19 – Existing Vegetation Plan	Morrison Hershfield/Matthew Hooker	November 27, 2015
20 – Tree List and Details	Morrison Hershfield/Matthew Hooker	November 27, 2015
21 – Road Cross Sections	Morrison Hershfield	December 16, 2015
22 – Utility Coordination Plan	Morrison Hershfield	December 16, 2015
TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5 & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

Schedule C

PIN No. 26456-0108 (LT) – PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX – 184/188 HARWOOD

PIN No. 26459-0037 (LT) – LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX – 214 HARWOOD

PIN No. 26459-0036 (LT) – TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX – 224 HARWOOD

PIN No. 26459-0035 (LT) – PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX – 226 HARWOOD

Schedule D

Site Plan Agreement

THIS SITE PLAN AGREEMENT made this 29th day of Dec , 2015

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

(hereinafter referred to as the "Town")

OF THE FIRST PART,

- and -

2480832 Ontario Inc.

(hereinafter referred to as the "Owner")

OF THE SECOND PART.

WHEREAS:

The Town pursuant to a Development Agreement and Agreement of Purchase and Sale dated July 15, 2013 and amended by the Amending and Assumption Agreement dated June 29, 2015 (the "Development Agreement") has agreed to convey to the Owner the Lands as hereinafter defined;

By application SP2/14, the Owner has applied to the Town under Section 41 of the *Planning Act*, R.S.O. 1990, c. P.13, (the "Act") for site plan approval in respect of its development of the Lands;

The Town requires the Owner to enter into an agreement with it prior to the development, including redevelopment, of the Lands and the erection, construction and installation of buildings, structures, facilities and works thereon as permitted by subsection 41 (7) of the Act and as required by the Development Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of mutual benefits, the Parties hereto agree as follows:

1. The lands and premises affected by this Agreement (hereinafter referred to as the "Lands") are those lands more particularly described in Schedule "A" hereto.
2. No development, including redevelopment, shall be undertaken on the Lands except in accordance with the following plans and drawings and any revisions there to as approved by the Town (the "Plans"):

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A1.0 – Context Plan	Kirkor Architects & Planners	November 27, 2015
A1.1 – Site Plan	Kirkor Architects & Planners	December 15, 2015
A2.1 – Underground Parking Garage – Level P1 & P2	Kirkor Architects & Planners	December 15, 2015
A2.2 – Level 1 Floor Plan	Kirkor Architects & Planners	December 15, 2015
A2.3 – Mezzanine & Level 2 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.4 – Level 3 & 4 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.5 – Level 5 & 6 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.6 – Level 7 & 8 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.7 – Level 9 & 10 Floor Plans	Kirkor Architects & Planners	November 27, 2015
A2.8 – Mechanical Penthouse & Enlarged Plans	Kirkor Architects & Planners	November 27, 2015
A3.1 – Exterior Elevations	Kirkor Architects & Planners	November 27, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
A3.2 – Exterior Elevations (Courtyard)	Kirkor Architects & Planners	November 27, 2015
A4.1 – Building Sections	Kirkor Architects & Planners	November 27, 2015
A5.1 – Shadow Study	Kirkor Architects & Planners	November 27, 2015
PCL-CMP-01	PCL	March 20, 2015
PCL-CMP-02	PCL	March 20, 2015
PCL-CMP-03	PCL	March 20, 2015
PCL-CMP-04	PCL	March 20, 2015
PCL-CMP-05	PCL	March 20, 2015
PCL-CMP-06	PCL	March 20, 2015
PCL-CMP-07	PCL	March 20, 2015
L-1a – Ground Level Landscape Plan	MBTW	December 16, 2015
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L-D3 – Landscape Details	MBTW	December 16, 2015
L-D4 – Landscape Details	MBTW	December 16, 2015
L-D5 – Paving Details	MBTW	December 16, 2015
1 – General Notes	Morrison Hershfield	December 16, 2015
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10 – Plan and Profile Street 'A'	Morrison Hershfield	December 16, 2015
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12 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
13 – Plan and Profile Street 'C'	Morrison Hershfield	December 16, 2015
14 – Plan and Profile Street 'D'	Morrison Hershfield	December 16, 2015

PLAN/DRAWING	PREPARED BY	FINAL REVISION DATE
15 - Details	Morrison Hershfield	December 16, 2015
16 - Lighting Layout	Morrison Hershfield	December 16, 2015
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21 - Road Cross Sections	Morrison Hershfield	December 16, 2015
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TMIP's 9766C001, 9766C002, 9766C003	LEA Consulting Ltd.	December 18, 2015
Truck Turning Movements P1, P2, P3, P4, P5, & P6	LEA Consulting Ltd.	December 18, 2015
Stormwater Management Report	Morrison Hershfield	December 16, 2015

3. (1) As a condition to the approval of the said Plans, the Owner agrees to install and maintain to the Town's satisfaction and at the sole risk and expense of the Owner any or all of the facilities or works including the grading, landscaping, fencing, the removal of snow from access ramps and driveways, parking and loading areas and walkways as shown on the Plans (the "Works").
- (i) for the purpose of guaranteeing the installation and maintenance, by the Owner, of the Works required to be installed and maintained pursuant to a condition of approval imposed under Section 2 above, restoration of public lands under subsection (5) below, construction of the Services defined in Section 19 of this Agreement and payment of any amounts payable by the Owner pursuant to this Agreement the Owner shall deliver to the Town prior to the execution of this Agreement, security (the "Performance Guarantee") in the form of an irrevocable Letter of Credit issued by a chartered bank in Canada approved by the Treasurer of the Town, acting reasonably, in an amount as determined by the Town. The Performance Guarantee may be drawn upon by the Town in such amounts and at such times as the Town, in its sole discretion, deems advisable should the Owner fail to install or maintain the Works, fail to install or maintain the Services, fail to restore public lands or fails to pay any amount required to be paid by the Owner pursuant to this Agreement or fail to comply with any obligation of the Owner pursuant to this Agreement provided the Town has provided the Owner with a notice of default and established a time frame in which to rectify the default and the Owner fails to comply with such time frames.;
- (ii) the amount of the Performance Guarantee shall be based on the cost of installation of the Works and Services and may be reduced by the Town at the sole discretion of the Town upon the completion of the Works and Services but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost to complete or rectify any default plus the maintenance required of any Works or Services.
- (iii) if, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner

shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.

- (iv) Schedule "C" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (v) where any Works or Services are not installed or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Works or Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Lands. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person constructing or supplying any of the Works or Services, directly or indirectly, on behalf of the Owner.
- (2) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of **TWENTY THOUSAND DOLLARS (\$20,000.00)** (the "Mud and Right of Way Deposit") to guarantee that:
- (i) the streets shall be kept free from deposits and debris. In the event debris or deposits remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Mud and Right of Way Deposit; and
 - (ii) the Owner further covenants and agrees with the Town to repair any damage to other lands and/or streets caused by the work or construction carried on by the Owner on the Lands, by restoring the lands and streets to the condition existing prior to the damage sustained. Such restoration is to be undertaken by the Owner at its own expense upon notification by the Town to the Owner. If the Owner does not undertake the restoration in a reasonable time frame the Town shall be entitled to restore the lands and streets and deduct the cost from the Mud and Right of Way Deposit.
- The Owner shall immediately reimburse for all costs incurred so that the Mud and Right of Way Deposit is reinstated to the sum of **TEN-THOUSAND DOLLARS (\$10,000.00)**. The Mud and Right of Way Deposit shall be returned to the Owner once the development of the Lands is completed to the satisfaction of the Town. The Mud and Right of Way Deposit may be included in the Performance Guarantee.
- (3) Prior to the execution of this Agreement by the Town, the Owner shall, if required by the Town, deposit with the Town the sum of **FIVE-THOUSAND DOLLARS (\$5,000.00)** to guarantee that streets shall be kept free from litter and garbage emanating from the Lands during construction (the "Litter Deposit"). In the event litter and garbage remain on the streets for more than four (4) consecutive hours after receiving notice from the Town, the Town shall be entitled to clean the streets and deduct the cost of same from the Litter Deposit. The Owner shall immediately reimburse the Town for all costs incurred so that the Litter Deposit is reinstated to the sum of **FIVE-THOUSAND DOLLARS (\$5,000.00)**. The Litter Deposit may be included in the Performance Guarantee.
- (4) The Owner agrees with the Town:
- (i) to pay the taxes in full on the Lands as required by law from time to time;
 - (ii) to pay the costs of all registrations incurred by the Town relating in any way to this Agreement;
 - (iii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$1,000.00 for digital drawing management fees;

- (iv) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$201,600.00 for cash-in-lieu of parkland as required by the Town's Parkland Dedication Policy, By-law 79-2006, as amended;
 - (v) not applicable to this Agreement as the development is exempt from development charges pursuant to the Development Agreement;
 - (vi) to pay for the costs of the control architect for his review of the elevation Plans in accordance with Section 25 of this Agreement;
 - (vii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$750.00 for benchmark construction purposes;
 - (viii) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$3,000.00 for the Town's Litter Management Program;
 - (ix) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$50,910.75 for engineering review, inspection and administration service fees;
 - (x) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$63,715.57 for architectural landscape review and inspection service fees;
 - (xi) to pay to the Town prior to the signing of this Agreement by the Town, the sum of \$4,800.00 for the maintenance of the stormwater; and
 - (xii) to pay to the Town prior to the signing of this Agreement by the Town the legal fees incurred by the Town in connection with this Agreement in the amount of \$609.37.
- (5) The Owner covenants and agrees, at its sole cost, to restore any public lands disturbed or damaged as a result of the development of the Lands to the satisfaction of the Town.
 - (6) The Owner covenants and agrees that all garbage and recyclable material shall be stored inside the buildings shown on the Plans and accessible to vehicles for removal.
 - (7) The Owner covenants and agrees to be responsible for all waste collection from the Lands.
 - (8) The Owner covenants and agrees not to erect, locate, relocate or otherwise place any sign or light or light standard on any part of the Lands or on the exterior portion of any building or other structure thereon, unless the light or light standard and the sign location is as approved in the Plans. All signs shall conform to the Town's municipal By-law No. 27-2009 (Sign By-law) as amended. Site illumination must be designed with a zero illumination cut-off at the property line.
 - (9) The Owner covenants and agrees that no mechanical equipment, such as air conditioners or ventilators, or signs, satellite dishes or any other equipment shall protrude from the roof or any other portion of the building(s) unless the design and location thereof, including the screening of such equipment from public view, are as approved in writing by the Town.
 - (10) The Owner covenants and agrees to ensure that the "as-built" site servicing and landscape plans for the Lands are forwarded in digital format, and AutoCAD compatible, to the Town.
 - (11) The Owner covenants and agrees that a construction management plan and a pedestrian management plan shall be submitted to and be approved by the Town prior to the issuance of building permit approval. The construction management plan shall include, but is not limited to, all stages of construction, all proposed staging areas, all proposed construction access points, all material storage

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areas, all construction office trailers, all locations of required construction fencing and hoarding, and all parking locations for construction works and trades. The pedestrian management plan shall include, but is not limited to, all safe pedestrian walkways and sidewalks, all pedestrian signage, all accessible plaza parking locations during all stages of construction.

- (12) The Owner covenants and agrees to clean local area streets of mud caused by development on the Lands a minimum of three times per week and a maximum of five times per week, to the satisfaction of the Director of Planning and Development Services or his designate.
- (13) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement. The Owner agrees to submit all tests to the Town and the costs of such tests shall be paid by the Owner within thirty (30) days of the account for same being rendered by the Town.

4. Underground Stormwater Control Structure

- (1) The Owner covenants and agrees to install, maintain and not remove any underground stormwater quality control structure or any stormwater quantity devices. The Owner shall have the underground stormwater quality control structure inspected annually and maintained accordingly. The inspection and maintenance of the underground stormwater quality control structure must be completed by a qualified contractor. The Owner shall keep accurate and up to date records of all inspections and maintenance of the underground stormwater quality control structure. If the Town so requests, the Owner shall deliver to the Manager of Engineering of the Town, within ten (10) days of such request, a record of all inspections and maintenance of the underground stormwater quality control structure. If the Owner does not supply the records of inspection and maintenance the Town may enter upon the Lands, inspect the stormwater quality control structure and carry out, if necessary in the sole discretion of the Town, the maintenance thereof at the Owner's expense. In the event that any costs incurred by the Town are not paid by the Owner within ten (10) days of the deliver of the Town's invoice therefore, the Town shall be entitled, in addition to any other remedy it may have, to add such costs to the tax roll and collect same in the same manner as taxes.
- (2) Upon completion of the landscaping and submission of the certificate of substantial completion for the landscaping associated with the underground stormwater management quality control structure the Owner covenants and agrees to supply to the Town the following:
 - (i) a copy of a five year contract for the maintenance and cleaning of the underground stormwater management quality control structure,
 - (ii) a certificate stating that the underground stormwater quality control structure has been installed in conformance with the approved Plans and that the unit has been inspected, cleaned and all adjustments have been completed.

5. Refuse Storage

The Owner covenants and agrees to accommodate all facilities for refuse storage within the buildings which are part of the Development.

6. Timing of Completion

- (1) Upon approval by the Town of the Plans, the proposed building(s), structure(s), Works and Services shall be erected, constructed, installed and maintained in conformance with the Plans as approved. Unless otherwise agreed, the said work shall be fully completed within thirty (30) months of the date of commencement of erection or construction. For the purposes of establishing the thirty (30) month period, the date of building permit issuance shall be used to determine the commencement date and such determination shall be final and binding on the parties hereto.



- (2) If erection, construction or installation has not commenced in accordance with the provisions of the Development Agreement the approval of the Plans may, at the option of the Town, become null and void in which event the Plans must be resubmitted for approval prior to any erection, construction or installation commencing.

7. Building Permit Issuance

The Owner agrees that the issuance of any building permit in respect of the Lands may not be requested until the Plans have been approved by the Town and the Lands have been conveyed to the Owner by the Town.

8. Building Levels

- (1) The Owner covenants and agrees that all buildings erected on the Lands shall conform to building levels approved by the Town before the building operations are commenced. Building levels and building location shall be checked by an Ontario Land Surveyor and certification of such levels and locations shall be submitted to the Town prior to a sub-floor for such building being constructed.
- (2) At the time of application for building permit, a soil investigation report of the Lands must be provided to the Chief Building Official of the Town to verify the structural adequacy of the proposed foundation.
- (3) Prior to pouring concrete footings for each building or structure to be erected on the Lands a soils field report prepared by a qualified Professional Engineer shall be submitted to the Chief Building Official of the Town verifying adequate bearing capacity and the level of permanent ground water which may affect the soil bearing capacity. In the event the soils field report demonstrates a need for revisions to the foundation design or construction of a de-watering or subdrainage system the Owner covenants and agrees to submit to the Chief Building Official of the Town for his approval, prior to the commencement of construction, design drawings showing such revisions or system.
- (4) Prior to the issuance of a building permit, access to the Lands for any construction vehicles or equipment or emergency vehicles or equipment is required. The access must be a minimum of a granular base road, capable of providing a route for fire vehicles and extending to an existing, maintained public road, to the satisfaction of the Town and the Fire Department of the Town.
- (5) Prior to issuance of building permit, watermains and hydrants, storm and sanitary sewer facilities must be constructed and installed in accordance with this Agreement and a certificate of preliminary acceptance has been accepted.

9. Registration

The Owner covenants and agrees that the Town may register this Agreement against the title to the Lands and that the Town may enforce the provisions of this Agreement against the Owner of the Lands and against any and all subsequent owners of the Lands.

10. Certificates

The Owner covenants and agrees to deliver to the Town a Certificate of Compliance from a Professional Engineer certifying that all Works and Services have been constructed in accordance with the approved Plans and sound engineering practices and that grading has been completed according to approved grading plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Certificate of Substantial Completion from a Landscape Architect in good standing with the O.A.L.A. (Ontario Association of Landscape Architects) certifying that all landscape work has been constructed and materials installed in accordance with the approved Plans and that



sound engineering and horticultural practices have been implemented. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

The Owner covenants and agrees to deliver to the Town a Photometrics Certificate from a certified Electrical Engineering Consultant certifying that all electrical luminaires have been installed in accordance with the approved Plans. Such certificate or certificates shall be delivered to the Town within six (6) months of completion of installation of the Works and Services and prior to the return of the Performance Guarantee.

11. Breach of Agreement

Notwithstanding any action taken by or remedy available to the Town or to any other governing body or authority any breach of this Agreement may be restrained by action at the instance of a ratepayer of the Town or at the instance of the Town or a local board thereof just as if such breach were a contravention of a By-law of the Town to which Section 440 of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended, applied.

12. Binding Agreement

This Agreement, the Schedules hereto, and everything contained therein, shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns, and Section 446 of the *Municipal Act, 2001, S.O., 2001, c. 25* as amended, shall be applicable to the obligations created herein.

13. Indemnification

The Owner will indemnify the Town from all actions, causes of action, suits, claims and demands whatsoever and all costs incurred in respect thereof by reason of the Owner doing, failing to do or doing incorrectly or negligently anything which by the terms of this Agreement it is required to do. Without limiting the foregoing the Owner agrees to indemnify and hold harmless the Town for all costs, fees, expenses and disbursements incurred by the Town in connection with the preparation for and attendance at a hearing before a Court of Law or tribunal as a result of the *Occupational Health and Safety Act, R.S.O. 1990 c. O.1* and any Order issued thereunder with respect to the development of the Lands.

14. Noise

"Construction" includes erection, alteration, repair of the Works or buildings, painting, grading, excavating, laying of pipe and "construction equipment" means any equipment or device designed and intended for use in construction.

"Noise" means sound originating from construction on the Lands and received on other lands.

No noise shall be emitted or caused to be emitted from the Lands or from construction of the Services on other lands on Sunday and statutory holidays and except between the hours of 7:00 a.m. and 8:00 p.m. on each day Monday to Thursday, between the hours of 7:00 a.m. and 5:00 p.m. on Fridays and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays.

15. Street Numbers

The Owner covenants and agrees to affix the street number(s) for any building or parts of buildings on the Lands to a wall of the building, or other approved locations, which faces a public street so as to ensure clear visibility of the number at all times from the public street. Each number(s) shall be a minimum of ten (10) centimetres in height.

16. Liability Insurance

The Owner covenants and agrees to obtain and maintain public liability and property damage insurance, satisfactory to the Town, to protect the Owner and Town jointly against loss, damage or injury to persons or property caused directly or indirectly by reason of the Owner undertaking the development of the Lands. A certificate of such



insurance shall be filed with the Town prior to the execution of this Agreement, including the Town of Ajax as an additional insured, and such policy shall be effective until final sign off of the consulting engineer or architect and release of all securities by the Town.

Such policy shall be in an amount not less than \$5,000,000.00 and shall not be cancellable unless prior notice has been received by the Town not less than thirty (30) days prior to cancellation date.

17. Debris

The Owner covenants and agrees to remove debris and litter on the property in accordance with the Town's "The Clean and Clear By-law" as amended.

18. Refer to Section 47.

19. Municipal Services

- (1) In this Agreement "Services" shall mean works to be installed by the Owner and to be assumed for ownership by the Town or works to be installed or carried out on municipal property.
- (2) The Owner shall construct, install and carry out in a good and workmanlike manner all the Services as shown on the Plans, including but without limiting the foregoing, grinding and resurfacing, sidewalks, curbs and gutters, driveway aprons, and storm sewers connections. The Plans for Services may be amended from time to time but such amendments shall not take effect unless approved by the Town. All Plans for Services and any other drawings required therefore pursuant to this Agreement shall be prepared in accordance with the Design Criteria and Standard Detail Drawings adopted by the Town and in accordance with the Digital Data and format requirements of the Town.
- (3) The Owner shall carry out or caused to be carried out the installation of the storm sewer connections in the accordance with Town Standards. Upon completion of the said connections the Owner shall deliver to the Town as-built drawings for all storm sewer service connections and rear lot catch basins.
- (4) The Town may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Services required by this Agreement and the cost of such tests shall be paid by the Owner.

20. Private Property Maintenance Period for Works

- (1) The Owner agrees that all Works shall have a maintenance period of twelve (12) months from the date of receipt of the Certificate of Compliance and/or Certificate of Substantial Completion. The Owner must arrange for a final inspection of the Site Works towards the end of the maintenance period.
- (2) The Owner agrees that the Town shall not reduce the Performance Guarantee below 25% of the estimated cost of installation of the Works during the maintenance period.

21. Municipal Property Performance and Maintenance Guarantee

- (1) Before commencing the construction, installation or performance of any of the Services provided for herein or before the Town issues a letter releasing the Plan for registration, whichever first occurs, the Owner shall supply the Town with a 100% performance and maintenance guarantee (hereinafter called "Performance Guarantee"), either in the form of a cash deposit or Unconditional and Irrevocable Letter of Credit approved by the Town Treasurer in an amount as determined in Schedule "A" for the purpose of:
 - (i) guaranteeing the satisfactory construction, installation or performance of the Services;
 - (ii) guaranteeing the payment of any amounts payable to the Town under this Agreement;

- (iii) guaranteeing the payment of any amount, including legal expenses that the Town may be required to pay under or as a result of claims pursuant to the *Construction Lien Act, R.S.O. 1990 c. C30*;
 - (iv) guaranteeing all underground Services, workmanship and materials for a period of two (2) years from the date of certification;
 - (v) guaranteeing all above ground Services, workmanship and materials including all landscaping works and materials for a period of two (2) years from the date of certification set out in Section 22(3); and
 - (vi) guaranteeing all other obligations of the Owner in this Agreement.
- (2) The Performance Guarantee may be reduced by the Town at the sole discretion of the Town but in no event shall the Performance Guarantee be reduced below the amount equal to the total of 100% of the cost of the Services and Lot grading, sodding and driveway paving remaining to be completed, plus 10% of the value of the Services as finally completed. The balance of any Performance Guarantee shall be returned to the Owner, less any deductions for rectification of deficiencies, when the above ground Services have been assumed.
 - (3) If, in the opinion of the Town the amount of the Performance Guarantee is insufficient, then the Town shall recalculate the amount of the Performance Guarantee and shall advise the Owner of such recalculation and provide the Owner with a copy of such recalculation and the Owner shall deliver any additional security required by the Town within seven (7) business days of its receipt of such notice.
 - (4) Schedule "A" is a guide to the amount of the Performance Guarantee required but in determining the sufficiency of the Performance Guarantee regard shall be given to the total cost of satisfying all of the obligations of the Owner pursuant to any provisions of this Agreement.
 - (5) Where any Services are not installed in accordance with the Schedule of Construction or where the Owner is in default of any of its obligations in this Agreement, the Town may enter and install such Services or perform such obligations at the Owner's expense and apply the Performance Guarantee to reimburse the Town and where the Performance Guarantee is insufficient the expense shall be a charge on the Land as set out in Section 33. It is hereby acknowledged and agreed that the Performance Guarantee is held by the Town for its sole benefit and not for the benefit of, by way of trust or otherwise, any person performing any of the Services, directly or indirectly, on behalf of the Owner.
 - (6) To ensure the completion of all works, the Performance Guarantee shall not be reduced below an amount equal to the cost of completing the works as determined by the Town. If the works are not completed within six months of the first occupancy of the building, seasonal conditions permitting, in addition to any other available remedies, the Town may draw upon the Performance Guarantee to its full value and complete same.

22. Construction Lien Act

The Owner agrees that it will comply with the Construction Lien Act and hold in its possession and in a separate fund, which fund shall be designated a trust fund, the statutory holdback and added amounts required by reason of notice of construction lien claims. Such money will not be disbursed except in compliance with the Construction Lien Act. The Owner will be responsible to and save harmless the Town for any loss suffered by the Town, including legal expenses, by reason of any neglect or refusal by the Owner to comply with the Construction Lien Act and/or this Section. The Town shall be entitled to apply the Performance Guarantee to cover liens and costs that may be claimed against or include the Town in respect of work done or improvements made to lands owned by the Town.

23. Traffic Control - Flagging

Flagging for traffic control for the development of the Lands shall be in conformance with the procedure outlined in the pamphlet entitled "Traffic Control Manual for Roadway Work Operations - Field Edition" issued by the Ministry of Transportation of Ontario. Copies of this pamphlet may be obtained from Ministry of Transportation's District Office.

Each flagman shall, while controlling traffic, wear an approved fluorescent blaze orange or fluorescent red safety vest, an approved fluorescent blaze orange or fluorescent red armband on each arm and an approved fluorescent blaze orange or fluorescent red hat.

24. Supply of Construction Signs

The Owner is responsible for the supply, erection, maintenance and subsequent removal of all temporary traffic control devices, including signs, lights, barricades, delineators, cones, etc., required during the development of the Lands.

Traffic controls shall be provided in general accordance with the latest edition of the "Ontario Traffic Manual Book 7, Temporary Conditions".

The Owner shall provide the Town with a Traffic Control Plan (the "TCP") for review and approval. The TCP must include a procedure for the control and maintenance of traffic. The TCP must be supplied at least seven (7) days prior to commencing work.

25. Maintenance of Road for Local Traffic

The Owner hereby accepts full responsibility to maintain a road for local traffic and reasonable access for residents to their driveway. The Owner shall supply at its expense, all labour, equipment and material to maintain the road in a satisfactory condition including but not limited to the supply and placing of Granular 'A', calcium chloride, bituminous patching material.

26. Architectural Control

The Owner shall, prior to applying for any building permit, comply with the Town's architectural control requirements. The Owner shall pay for or reimburse the Town for the cost of a Control Architect. Such payments shall be made to the Town within thirty (30) days of the Town submitting to the Owner its invoice.

27. Professional Engineers and Other Consultants

(1) The Owner shall employ a Professional Engineer to:

- (i) design all Works and Services other than the landscape Works;
- (ii) prepare and furnish all drawings, plans, reports and certificates as required by the Town, or pursuant to this Agreement;
- (iii) obtain all approvals required from all other governmental authorities or agencies;
- (iv) provide the field layout, the contract administration and site supervision and inspection of the construction of all Works and Services;
- (v) maintain all records of construction and upon completion, advise the Town of all construction changes and final measurements;
- (vi) provide the Town with "as constructed" drawings from time to time upon completion of the construction of the Services in paper and digital format satisfactory to the Town;
- (vii) act as the Owner's representative in all matters pertaining to the construction of the Services;
- (viii) issue "Letter or Letters of Completion";
- (ix) perform such additional functions and services as may be required pursuant to this Agreement; and
- (x) provide the Town with Grading Certification.

(2) The Professional Engineer, or any successor thereto, shall continue to be retained until the completion of the development of the Lands and all certificates have been supplied.



- (3) The Owner shall, at all times and from time to time, at the Owner's expense, furnish all reasonable aid and assistance to the Professional Engineer, the Town and any other consultant, inspector or inspection firm in connection with this Agreement, the Services, the Plans or the Lands, including all necessary testing certification and inspection of material and methods as may be required by the Professional Engineer, the Town, inspector or inspection firm. All tests required shall be carried out in accordance with the specifications of the person requesting such test, and shall be performed at the cost of the Owner. Notwithstanding any inspection that may be carried out by the Town, or any inspector or inspection firm on behalf of the Town, the failure of the Town or the said inspector or inspection firm to condemn or object to any defective work or material shall not constitute a waiver of any specification or the approval or acceptance of any defective work or material, and the Owner shall remain responsible for all and any work done or required to be done in accordance with the terms of this Agreement, including the repair or replacement of any defective work or material, at the Owner's sole cost and expense. In the event that the Town has required any quantitative or qualitative test for any purpose whatsoever as a pre-condition of any further construction, the Owner shall not construct such Services for which the test is required until such test has been received, reviewed and approved by the Town and has issued an order in connection therewith. Such order may specify which work and in what manner it should be done, and may be subject to conditions and may specify that such work is to be completed within a specified time period and the Owner shall comply with all terms of such order.
- (4) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) to design and supervise landscape Works and to issue a "Certificate of Substantial Completion".
- (5) The Owner shall employ a Landscape Architect that is in good standing with the Ontario Association of Landscape Architects (O.A.L.A.) or an International Society of Arboriculture (I.S.A.) Certified Arborist to design tree preservation and supervise the installation of tree protection hoarding and tree removal Works.

28. Emergency Vehicle Access

The Owner covenants and agrees that access routes for emergency vehicles shall be provided in accordance with the requirements of the Ontario Building Code and Ajax Fire and Emergency Services. Where roadways provide access to condominium developments, or buildings on private lands, the design and construction of the access route shall meet the requirements of the Ontario Building Code and the Town of Ajax Engineering Standards. Access routes for emergency vehicles shall be maintained to new buildings, construction trailers and material storage areas at all times during construction. Water supply for fire fighting purposes must be kept accessible and operational at all times.

Prior to occupancy of any building, an application to designate the required fire route in accordance with the Town's Traffic By-law 5-2004, as amended, must be submitted and approved by Ajax Fire and Emergency Services. All fire route signs shall be installed, prior to occupancy, to the approval of Ajax Fire and Emergency Services.

29. Not applicable to this Agreement

30. Cost of Service Relocation

Should the relocation or abandonment of existing services and utilities become necessary as a result of any work done on or in conjunction with the Plans, the Owner covenants and agrees to pay the cost of such relocation or abandonment of any existing services and utilities.

31. Tree Preservation

- (1) Prior to the execution of this Agreement by the Town, the Owner shall, deposit with the Town the sum of **Eighteen Thousand Five Hundred Dollars (\$18,500.00)** as outlined in Schedule 'C' attached hereto, to ensure that the health of the persevered trees has been maintained during site works and



construction. This security may be released two (2) years after the completion of construction.

- (2) Trees allocated for preservation shall be fully protected with tree protection hoarding, as per the approved **Existing Vegetation Plan and Tree List and Details**. Tree protection zones shall be established prior to any site works, and shall remain in satisfactory condition, as deemed by the Town, until the completion of construction. No works, including construction, shall take place within tree protection zones.

32. Retaining Wall Installation and Inspection

The Owner covenants and agrees to apply for and obtain a building permit for a retaining wall, if any, prior to construction thereof. The Owner is responsible for the following requirements:

- (1) Obtaining a Consulting Engineer that would be responsible for the design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario. Prior to construction the Consulting Engineer shall review the site soil conditions and the geometric conditions to ensure the designed wall is compatible for the site;
- (2) The Consulting Engineer shall provide to the Town reports of construction of the retaining wall;
- (3) The Consulting Engineer shall supply a Certificate of Compliance for the retaining wall(s), certifying that all constructed retaining wall(s) have been constructed in accordance with the approved Plans and in accordance with good engineering practice.

Definition:

Consulting Engineer shall refer to an individual or firm retained by the Owner to provide design and inspection services for the retaining wall. The Consulting Engineer must be qualified in the area of segmental retaining wall design and construction and must be licensed to practice engineering in the Province of Ontario.

33. Air Conditioning Units

All required air conditioning units shall be installed in accordance with, By-law 95-2003, as amended, and/or in accordance with the location indicated on the Plans. All air conditioning units (condensers, evaporators, and line-sets) shall be installed and sized appropriately and to the manufactures specifications to ensure that all required air conditioning units function in an efficient manner and do not require future modifications. No air conditioning units shall be permitted at-grade or visible from a public street.

34. Sustainable Building Elements

The Owner covenants and agrees that the development of the Lands shall incorporate all sustainable elements outlined within Schedule 'E' of the Development Agreement which includes but is not limited to, parking standards for electric vehicles, cycling infrastructure in the form of cycle track, bike lockers and racks, pedestrian infrastructure in the form of sidewalks, crosswalks, transit stops, pedestrian lighting, indoor and outdoor waiting areas all being accessible in nature, urban heat island reduction methods being shade trees 8 - 12 metres apart where possible, with a continuous tree trench and/or silva cell system along all property lines, environmentally Conscious Roofing System (ECRS) in the form of a roof-top outdoor amenity space for the buildings occupants, individually metered units, stormwater runoff and retention methods to retain 25 mm of water for a 24 hour period and to remove 80% of total suspended solids, landscape elements to include 50% native species with water efficient characteristics, bird friendly design elements, light pollution limiting fixtures, and proper storage and collection methods for recycling and organic waste.

35. Construction of Streets 'A', 'B', 'C', and 'D' and associated services and lands

Future streets, being Street 'A', Street 'B', Street 'C' and Street 'D' as shown on the Plans shall remain under full ownership of the Town, but the Owner is fully obligated, and at its sole costs, for the construction of these streets, including, but without limiting the foregoing, the relocation of sanitary, stormwater and water services on Commercial Avenue and the conveyance of all or part of the Utility Lands as defined in the Development Agreement to the Town.

All proposed streets (Streets 'A', 'B', 'C' & 'D') are to be constructed to full municipal standards, including all services (sanitary, storm, and water services) as per the Town of Ajax and Region of Durham standard requirements. These streets will also be constructed as per Drawing 9 – Temporary Parking Phasing Plan prepared by Morrison Hershfield (Drawing No. 9, and dated December 16, 2015).

36. Timing of the Removal Parking Field

The Owner acknowledges that the Development Agreement requires the Owner to construct temporary parking prior to the commencement of construction on the Lands. The existing parking field consisting of 217 parking spaces on the Lands shall not be removed or decommissioned until the developer has completed the temporary parking requirements of the Development Agreement including, but without limiting the foregoing, the construction of all services in the Utility Lands and Streets 'A', 'B', 'C' and 'D', all as set out in the Development Agreement..

37. Sales Pavilion - Conditions of Removal

When the Owner no longer requires the temporary sales pavilion (or if the Sales Pavilion is no longer operational) as constructed by the Owner on other lands owned by the Town for the purposes of developing any portion of the Lands the sales pavilion shall be removed within 30 days by the Owner of the Sales Pavilion, unless the Town agrees otherwise.

38. Constructor Approval by Town

In accordance with the Development Agreement the Owner shall obtain the Town's prior written approval of the constructor whom is retained to carry out all works associated with the development of the project.

39. Survey for Lands to be Sold

That the Developer be responsible for and at its sole expense, prepare and register the reference plan survey necessary to complete the transaction of the lands that the development is going to be on. The survey shall also identify all abutting roads abutting the Phase 1A lands as parts on the survey.

40. Utility Lands

All dealings with the Utility Lands shall be in accordance with Development Agreement.

41. Building of the Project

The proposed building will be constructed in its entirety as one building. There will be no phasing of the building, nor will there be one side of the building built at a time. The entire building, including all underground parking structures will be built and a building permit will only be issued for the entire building, with no exceptions.

42. CMP/PMP & Communications Plan

An overall Construction Management Plan/Pedestrian Management Plan will be approved by the Town of Ajax prior to the issuance of any building permit for any component of the project. Also each stage of construction referenced in the approved Construction Management Plan/Pedestrian Management Plan will be reviewed and approved prior to construction occurring and with each stage of construction a Town approved communication will be prepared by the Developer for circulation to all affected properties and parties.

43. Monitoring and Maintenance of Permeable Elements

The Owner will be required to carry out all of the monitoring and maintenance of all permeable elements within the development for a period of 5 years after full installation of the permeable elements. Prior to the Town assuming the permeable elements the owner shall supply a report and certification of full functionality by the Owner's Professional Engineer, subject to the Town's approval.

44. Plan and Construction Coordination

All Plans shall be coordinated so that they depict the same base information. This must be done in order to ensure that at the time of construction all of these overlapping elements are addressed. These matters must be addressed through a preconstruction meeting.

45. Engineering Drawing Approvals Prior to Building Permit Issuance

All engineering drawings must be finalized and approved by the Town of Ajax Engineering Services prior to building permit issuance. This includes, but is not limited to, drawings showing how the interim streets are going to be constructed, how the future permanent streets are going to be constructed (Streets 'A', 'B', 'C', and 'D'), and a utility coordination plan signed off by all required utility providers.

46. Certification of Acceptance

(1) In this Agreement "Functional" means;

- i) the Professional Engineer's Letter of Completion has been delivered to the Town;
- ii) drawings for the General Plan of Services have been submitted to the Town in AutoCAD format acceptable to the Town in accordance with the Design Criteria; and
- iii) close circuit television (CCTV) inspection videos of the storm sewer system have been delivered to the Town.

(2) "Certificates of Preliminary Acceptance of Services" indicating the start of the maintenance period for underground Services shall be issued by the Town as follows:

- i) underground Services are Functional and all deficiencies corrected to the satisfaction of the Town;
- ii) base curb and base asphalt are complete;
- iii) as-built drawings for all underground Services including service connections have been delivered to the Town; and
- iv) a statutory declaration by the Owner that all accounts for underground Services have been paid has been delivered to the Town.

(3) "Certificate of Preliminary Acceptance of Services" indicating the start of maintenance period for aboveground Services shall be issued by the Town as follows:

- (i) completion of all aboveground Services including landscaping and boulevard planting required by this Agreement;
- (ii) if required by the Town the street and walkway lighting has been completed and is operational;
- (iii) the Professional Engineer's Letter of Completion referred to in Section 26;
- (iv) a Statutory Declaration of the Owner that all accounts have been paid has been delivered to the Town;
- (v) expiry of any Construction Lien Act (Ontario) holdback period;



- (vi) the Owner has complied with all of the provisions of this Agreement; and
 - (vii) Preliminary Lot Grading Certification has been delivered to the Town.
- (4) The Town shall, within sixty (60) days from the receipt of the Professional Engineer's Letter of Completion, either advise in writing the Professional Engineer that such work has been completed to its satisfaction or has not been completed to its satisfaction as the case may be and if the Town does not within the said sixty (60) day period so advise the Professional Engineer, it is assumed the work has been accepted unless the Town is delayed in inspecting the work and such delay is not the fault of the Town in which case the sixty (60) day period may be extended by the Town equal to the period of delay.
- (5) "Certificate of Final Acceptance" indicating the end of the maintenance period for underground Services shall be issued by the Town subject to the following:
- (i) issuance of a Certificate of Preliminary Acceptance of aboveground Services; and
 - (ii) an inspection by the Town of the Services to be covered by such Certificate of Final Acceptance indicating that all such Services have been maintained and all deficiencies and defects in such Services have been corrected by the Owner to the satisfaction of the Town.
- (6) "Certificate of Final Acceptance" indicating the end of the maintenance period for aboveground Services shall be issued by the Town subject to the following:
- (i) a complete set of "as constructed" Drawings satisfactory to the Town including lot grading elevations and boulevard tree planting locations submitted on mylar drafting film acceptable to the Town in accordance with the Design Criteria, but not until the Services are acceptable; and
 - (iii) the Owner has cleaned out, the oil and grit separator and inspected the quality control structure and outlet control devices and performed all of its obligations under the terms of this Agreement at which time the Town will assume ownership of the Services and the maintenance thereof.

47. Construction

- (1) The Owner shall not commence construction of any Services unless:
- (i) a Certificate of Insurance has been delivered in accordance with Section 16 and the Performance Guarantee has been provided in accordance with Section 3;
 - (ii) the Plans for the Services have been approved by the Town;
 - (iii) the Owner has given five (5) full business days written notice to the Town of its intention to commence construction; and
 - (iv) the Owner has submitted to the Town a detailed construction schedule (hereinafter called the "Schedule of Construction") at least 45 days prior to commencement of construction indicating the various stages of construction, references to the location of each stage, the anticipated date of commencement of construction and the anticipated completion date of each stage of construction relating to the construction of the Services and the Schedule of Construction has been approved by the Town. In the event that the Owner should fail to comply with the provisions of this paragraph, then the Town may at any time after such default prepare its own schedule of construction and upon sending a copy of such schedule to the Owner, it shall become binding and effective on the Owner in the same manner and to the same extent as if such schedule of construction had been prepared by the Owner and approved by the Town. The Schedule of Construction may be revised with the approval of the Town upon not less than thirty (30) days notice to the Town prior to the date on the Schedule of Construction to be revised.
- (2) The Owner shall construct the Services in accordance with the Schedule of Construction. Failure to fully complete all Services in accordance with the Schedule of

Construction shall be deemed to be a default of the Owner pursuant to the terms of this Agreement, and the Town shall be entitled to avail itself of all remedies contained herein with respect to such default. Upon such default and in addition to any other remedy the Town may have, the Town may require that the Owner cease and desist from doing any further work on the Lands, and the Owner hereby agrees to stop work if it receives notice to do so. The aforesaid agreement to stop work refers to any and all construction of any nature or kind whatsoever in connection with the Lands, including the construction of houses or other buildings or structures on the Lands. If the Owner is unable to fulfil the Schedule of Construction by labour disputes, fire or by a cause of any kind beyond its control then the Schedule of Construction shall be amended with the approval of the Town.

- (6) The construction of Services shall be deemed completed only upon the issuance of a Certificate of Preliminary Acceptance by the Town.
- (7) If the Owner covers or permits to be covered work that has been designated for special tests, inspections or approvals by the Town before such special tests, inspections or approvals have been made, given or completed, the Owner shall, if so directed by the Town, uncover such work, have the inspection or test satisfactorily completed and make good such work at the Owner's expense. The Town may order any part or parts of the Services to be specially examined should it believe that such work is not in accordance with the requirements of this Agreement. If, upon examination, such work is in the opinion of the Town found not in accordance with the requirements of this Agreement, the Owner shall correct such work and regardless of any finding as aforesaid the Owner shall pay all expenses in connection with the provisions of this clause.

48. Incomplete or Faulty Work

- (1) If in the opinion of the Town the Owner fails to install the Services, or, having commenced to install the Services, fails or neglects to proceed to complete the Services in accordance with the Schedule of Construction, or, in the event that the Services are not being installed according to the requirements of this Agreement, or if the Owner abandons the work, in addition to any other remedy the Town may have and upon the Town giving seven days' written notice to the Owner or its Professional Engineer, the Town may, without further notice, enter upon the Lands if necessary and proceed to supply all materials and to do all necessary works in connection with the installation of the Services including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, and to charge the cost thereof, together with an engineering fee of 15% of the cost of such materials and works, to the Owner who shall forthwith pay the same upon demand by the Town, such entry by the Town shall be as agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance or assumption of the Services by the Town. The Town, in addition to all other remedies it may have, may apply for an order from a Court of competent jurisdiction ordering the Owner to cease construction of any building on the Lands until such Services are completely installed in accordance with the requirements of the Town.
- (2) When, after the Owner has commenced construction of the Services, but before the Services have been finally accepted by the Town, any of the Services provided by the Owner do not function properly and, in the opinion of the Town, repairs are necessary to be made to prevent damage or hardship to any persons or any property, the Town shall notify the Owner or the Professional Engineer of the repairs which are required to be made. In the event the condition as aforesaid is an emergency, or immediate repair is required, then the Town without prior notice may take such action and do all such acts and things as are considered necessary and advisable in the place of the Owner, and the Owner shall reimburse the Town for any and all expenses incurred, whether directly or indirectly by the Town, in connection with such action.
- (3) The Owner further covenants and agrees with the Town that it will repair any damage that may be caused to any of the Services, including grading and landscaping, by any person, resulting from the construction of any buildings on the Lands or resulting from the construction of any of the Services or other matters which the Owner is obligated to perform under this Agreement. It is further understood and agreed that if damages should occur to any of the Services it shall be assumed that such damages were caused by the above-mentioned construction operations and the onus shall therefore be upon the Owner to prove otherwise.



49. Roadways

- (i) The Owner shall maintain all streets constructed or reconstructed by the Owner suitable for vehicular traffic after the installation of Granular 'A' material and until the work thereon has been finally accepted by the Town.
- (ii) The granular base, when possible, shall be laid just prior to the time that curbs and gutters are constructed. Any granular base material which has, in the opinion of the Town, become contaminated with deleterious material or is otherwise determined to be unacceptable, shall be removed and shall not become part of the final road base.
- (iii) The granular stone base shall be inspected and approved by the Professional Engineer before the base course of asphalt is laid in accordance with the Town's material testing requirements.
- (iv) The Owner agrees to maintain such streets free from construction deposits and debris after the first lift of asphalt has been laid.
- (v) The final lift of asphalt paving shall not be placed until underground service trenches have been subjected to a full winter for consolidation purposes and until the Owner has tested all such streets in accordance with a testing method approved by the Town.

50. Concrete Sidewalks

All sidewalks shall be constructed in locations as shown on the Plans.

51. Walkways and Boulevards

- (i) The Owner shall carry out or cause to be carried out, at its expense, boulevard tree planting in accordance with the Town's policy on boulevard planting, pruning and tree removal as amended from time to time and subject to the approval of the Town. Boulevard planting is to be illustrated on "STREET TREE PLANTING PLANS" describing species, quantities and schematic locations for street trees. Such plans are to be based upon the utility co-ordination drawings prepared for the development and shall form part of the engineering drawings described by Schedule "H" of this Agreement. Utility co-ordination plans are to be prepared in anticipation of the requirement for street trees. The tree planting shall be completed within six (6) months of the completion of grading and sodding of the boulevard.
- (ii) The Owner agrees to grade, topsoil, seed and provide interim drainage on all park blocks (as per Section H. Parklands and Open Space, Town of Ajax Design Criteria and Standard Drawings) in conjunction with the Drawings.
- (iii) In the event the Owner agrees to develop parks beyond the requirements of subparagraph (iii), parks and walkways, including lighting, shall be constructed in accordance with the approved Engineering Drawings. The said drawings shall show the proposed treatment of parks and all dedicated lands together with school sites and shall be prepared in accordance with drawings approved by the Town.
- (iv) Prior to the acceptance of the works in the parks and boulevards the Owner shall deliver to the Town as-built drawings showing all works and plantings constructed or planted thereon.
- (v) The Town reserves the right to revise or request a revision to any drawing necessary for the better utilization of the parks or boulevards.
- (vi) The Owner agrees to insert a notice in all agreements of purchase and sale for any dwelling unit in the Plan and in the sales office as follows:

"Any parks and open spaces shown within this plan of subdivision may or may not include future facilities for active and/or passive recreational use. This decision shall be at the sole discretion of the Town of Ajax."



52. Storm Sewers

- (i) A complete system of storm sewers and appurtenances shall be installed by the Owner to service the Lands and other lands covered t in accordance with the Plans.
- (ii) Storm sewers shall be connected and drained to outlets approved by the Town.
- (iii) The Owner shall flush and clean all the storm sewers prior to acceptance by the Town.
- (v) All storm sewers regardless of size are to be inspected by Closed Circuit Television and the Owner shall submit reports and tapes to the Town prior the issuance of a Certificate of Preliminary Acceptance of Services.

53. Street Lighting

The Owner covenants and agrees to design, supply and install at its own expense, street lighting, including poles, standards, lamps, wires and switches and supplemental equipment; and poles, standards and lamps to be at all locations shown in the Plans such work to be done to the approval of the Town and in accordance with the specifications. Note: LED lighting is required for this subdivision as per the new lighting standards in the Town Design Criteria and Standards dated January, 2014.

54. Hydro Services

The Owner covenants and agrees with the Town:

- (i) To enter into a separate agreement with Veridian Connections for the supply of electrical distribution services within the Plan;
- (ii) To provide evidence of entering into the said agreement with Veridian Connections prior to the release, by the Town, of the Plan for registration.
- (iii) To design, supply and install at their own expense an underground electrical distribution service using above ground, low profile transformers and junction boxes to service all lots and blocks within the Plan, according to drawings and specifications approved by Veridian.

55. Development Agreement

The Owner covenants and agrees to comply with the obligations of the Development Agreement with respect to the development of the Lands and the construction of the Services and the obligations of the Owner in this Agreement are in addition to the obligations of the Owner in the Development Agreement.

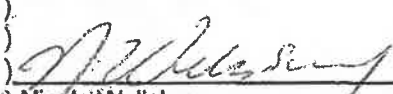


IN WITNESS WHEREOF the Parties hereto have hereunto affixed their respective corporate seals, duly attested by their proper authorized officers.

SIGNED, SEALED & DELIVERED


) THE CORPORATION OF THE TOWN OF AJAX

) 
Steve Parish, Mayor

) 
Nicole Wellsbury,
Manager of Legislative Services/Deputy Clerk

) I/We have the authority to bind the Corporation

) 2480832 Ontario Inc.

) 
Per: _____
Name: Thomas Lin
Title: President & CEO

) Per:

) Name:

) Title:

) I/We have the authority to bind the Corporation

SCHEDULE "A"

Legal Description

All and singular that certain parcel or tract of land described as Part 1, 40R-28209, Town of Ajax,
Regional Municipality of Durham. Part of PIN # 2645-60086 (LT),

LT

SCHEDULE "B"

SECURITY CALCULATIONS FORM

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
LANDSCAPING:				
Part A - On Site Work				
Permeable Precast Concrete Unit Paving - Vehicular	1,810	m ²	\$65.00	\$117,650.00
Precast Concrete Unit Paving - Pedestrian	825	m ²	\$75.00	\$61,875.00
Permeable Precast Concrete Unit Paving - Pedestrian	2,015	m ²	\$85.00	\$171,275.00
Poured Concrete Planter Curb	82	l.m.	\$60.00	\$4,900.00
Precast Concrete Planter - narrow	1	each	\$1,500.00	\$1,500.00
Bike Rack	19	each	\$300.00	\$5,700.00
Table and Chair Seating	5	each	\$1,500.00	\$7,500.00
Tactile Warning Strip	2	each	\$175.00	
Deciduous Tree	2	each	\$450.00	\$900.00
Shrubs	32	each	\$35.00	\$1,120.00
Perennials	628	each	\$15.00	\$9,420.00
Part B - Amenity Terrace				
Precast Concrete Unit Paving - Amenity Terrace	770	m ²	\$75.00	\$57,750.00
Private Terrace Paving	57	m ²	\$50.00	\$2,850.00
Precast Concrete Roof Slabs	54	m ²	\$50.00	\$2,700.00
Granular Paving	25	m ²	\$30.00	\$750.00
Precast Concrete Planter Wall	320	l.m.	\$150.00	\$48,000.00
Shade Structure	6	each	\$2,500.00	\$15,000.00
BBQ	4	each	\$600.00	\$2,400.00
Prefabricated Planter	14	each	\$150.00	\$2,100.00
Light Pole	12	each	\$1,250.00	\$15,000.00
Landscape Bollard	58	each	\$250.00	\$14,500.00
Bench	4	each	\$1,250.00	\$5,000.00
Sofa	4	each	\$2,000.00	\$8,000.00
Chair	8	each	\$900.00	\$7,200.00
Coffee Table	4	each	\$200.00	\$800.00
Small Game Table	6	each	\$250.00	\$1,500.00
Large Game Table	8	each	\$400.00	\$3,200.00
Cyber Lounge Seating	16	each	\$900.00	\$14,400.00



ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Dining Table – Small	8	each	\$400.00	\$3,200.00
Dining Table – Large	4	each	\$1,000.00	\$4,000.00
Dining Chair	56	each	\$250.00	\$14,000.00
Large Shrub	128	each	\$100.00	\$12,800.00
Shrubs	584	each	\$35.00	\$20,440.00
Perennials	1428	each	\$15.00	\$21,420.00
Live-Roof/Green-Roof Pre-vegetated Tray	156	m ²	\$20.00	\$3,120.00
Part C – Streetscape Work				
Permeable Precast Concrete - Vehicular	1,488	m ²	\$85.00	\$126,480.00
Precast Concrete Unit Paving - Pedestrian	1,145	m ²	\$85.00	\$97,325.00
Precast Concrete Unit Paving	940	m ²	\$75.00	\$70,500.00
Poured Concrete Paving – Pedestrian	355	m ²	\$60.00	\$21,300.00
Asphalt Cycle Track Path	230	m ²	\$50.00	\$11,500.00
Driveway Crossings	2	each	\$2,000.00	\$4,000.00
Precast Concrete Planter – Large	3	each	\$5,000.00	\$15,000.00
Precast Concrete Planter – Small	4	each	\$2,700.00	\$10,800.00
Precast Concrete Planter - Low	2	each	\$1,400.00	\$2,800.00
Bike Rack	18	each	\$300.00	\$5,400.00
Bench	10	each	\$1,250.00	\$12,500.00
Litter Receptacle	10	each	\$800.00	\$8,000.00
Light Pole	16	each	\$1,250.00	\$20,000.00
Continuous Soil Trench	280	m ²	\$150.00	\$42,000.00
Metal Tree Grate	12	each	\$900.00	\$10,800.00
Tactile Warning Strips	24	each	\$175.00	\$4,200.00
Deciduous Tree	27	each	\$450.00	\$12,150.00
Shrubs	172	each	\$35.00	\$6,020.00
Perennials	1048	each	\$15.00	\$15,720.00
Sub-Total				\$ 1,158,465.00
ENGINEERING:				
Foundation Certificate(s)	1	per block	\$5,000.00	\$5,000.00
Grading Certificate	1	each	\$5,000.00	\$5,000.00
Site Servicing Certificate/Stormwater Maintenance Contract	1	each	\$5,000.00	\$5,000.00
Photometrics Certificate		each	\$5,000.00	\$5,000.00
Entrance(s)	4	each	\$3,000.00	\$12,000.00
Street Lights	20	each	\$4,000.00	\$80,000.00

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
Underground Services (Water, Storm and Sanitary)	**	**	100% of total cost	\$419,850.00
Asphalt Paving, Concrete Curbing, Raised Intersections, and Permeable Pavers on all Roads (Harwood, Street A, B, C & D)	**	**	100% of total cost	\$578,500.00
Mud/Right of Way Damage Deposit	1	each	\$20,000.00	\$20,000.00
Garbage Facility	1	each	\$5,000.00	\$5,000.00
Litter Deposit	1	each	\$5,000.00	\$5,000.00
Sub-Total				\$1,131,350.00
TOTAL SECURITIES REQUIRED				\$2,289,815.00

Prior to Town Staff completing a site inspection to reduce/release a letter of credit, the required Certificate of Compliance and Certificate of Substantial Completion must be submitted by a Professional Engineer and Landscape Architect respectively certifying that all works have been constructed in accordance with the approved plans.



SCHEDULE "C"

Summary of financial payments and guarantees to the Town of Ajax by the Owner

PAYMENT	METHOD OF PAYMENT	AMOUNT	DUE DATE
Performance Guarantee	Irrevocable Letter of Credit	\$2,289,815.00	Prior to Execution of Agreement
Digital Drawing Management Fee	Bank Draft or Certified Cheque	\$ 1,000.00	Prior to Execution of Agreement
Cash-in-lieu of Parkland	Bank Draft or Certified Cheque	5% Residential \$57,600.00 2% Commercial \$144,000.00 Total \$201,600.00	Prior to Execution of Agreement
Tax Arrears	Cash	Nil	Prior to Execution of Agreement
Registrations	Cash	By Invoice	Upon Invoice by Town
Development Charges	Cash	As Per By-law	Prior to Issuance of Each Building Permit
Benchmark	Bank Draft or Certified Cheque	\$750.00	Prior to Execution of Agreement
Architectural Control	Cash	By Invoice	Upon Invoice by Town
Legal Fees	Bank Draft or Certified Cheque	\$609.37	Prior to Execution of Agreement
Litter Management Program	Bank Draft or Certified Cheque	\$3,000.00	Prior to Execution of Agreement
Tree Compensation Payment	Bank Draft or Certified Cheque	\$18,500.00	Prior to Execution of Agreement
Mud and Right-of-Way Deposit	Bank Draft or Certified Cheque	\$20,000.00	Prior to Execution of Agreement
Architectural Landscape Review and Inspection Service Fees	Bank Draft or Certified Cheque	\$63,715.57	Prior to Execution of Agreement
Engineering Review, Inspection and Administration Service Fees	Bank Draft or Certified Cheque	\$50,910.75	Prior to Execution of Agreement
Stormwater Maintenance Fee	Bank Draft or Certified Cheque	\$4,800.00	Prior to Execution of Agreement
Liability Insurance	Insurance Certificate	\$5,000,000.00	Prior to Execution of Agreement



APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

2615333 ONTARIO INC.

- and -

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., *et al*

Applicant

Respondents

Court File No. CV-20-00651299-00CL

	<div>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceedings commenced at Toronto, Ontario</div>
	<div>ORDER (Approving Sale Procedure and Ancillary Matters)</div>
	<div>Thornton Grout Finnigan LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Rebecca L. Kennedy (LSO# 61146S) Tel: (416) 304-0603 Email: rkennedy@tgf.ca Alexander Soutter (LSO# 72403T) Tel: (416) 304-0595 Email: asoutter@tgf.ca Lawyers for the Court-appointed Receiver, RSM Canada Limited</div>

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

2615333 ONTARIO INC.

- and - **CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC. *et al***

Applicant

Respondents

Court File No.: CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**MOTION RECORD
(Returnable June 1, 2023)
(Approval of Sale Procedure and Ancillary Matters)**

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
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Lawyers for the Court-appointed Receiver, RSM Canada Limited