

AGREEMENT OF PURCHASE AND SALE

BETWEEN

A. FARBER & PARTNERS INC.,
solely in its capacity as the Court-appointed receiver
of 2220277 Ontario Inc. and not in its personal capacity or in any
other capacity

- and -

650 BAY HOLDCO INC.

Dated: October 3, 2017

TABLE OF CONTENTS

ARTICLE 1 DEFINED TERMS	1
1.1 Definitions.....	1
ARTICLE 2 SCHEDULES.....	6
2.1 Schedules.	6
ARTICLE 3 AGREEMENT TO PURCHASE.....	6
3.1 Purchase and Sale of Purchased Assets.	6
3.2 Excluded Assets.	7
3.3 Excluded Liabilities.	7
ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE.....	8
4.1 Purchase Price.....	8
4.2 Deposit.	8
4.3 Satisfaction of Purchase Price.....	8
4.4 Allocation of Purchase Price.....	8
4.5 Adjustment of Purchase Price.....	8
ARTICLE 5 TAXES.....	9
5.1 Taxes.	9
ARTICLE 6 SALE APPROVAL PROCEEDINGS	9
6.1 The Sale Process.	9
6.2 Competing Bids.	9
6.3 The Winning Bid and the Auction Process.....	10
6.4 Court-Specified Time Periods.....	11
ARTICLE 7 CLOSING ARRANGEMENTS	12
7.1 Closing and Closing Procedure.....	12
7.2 Tender.	12
7.3 Receiver's Closing Deliverables.....	12
7.4 Purchaser's Closing Deliverables.	13
7.5 Receiver's Certificate.....	13
ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING	14
8.1 Conditions in Favour of the Receiver.	14
8.2 Conditions in Favour of Receiver Not Fulfilled.	14

TABLE OF CONTENTS

(continued)

8.3	Conditions in Favour of the Purchaser.....	14
8.4	Conditions in Favour of Purchaser Not Fulfilled.....	15
ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE RECEIVER.....		15
ARTICLE 10 REPRESENTATIONS & WARRANTIES OF THE PURCHASER.....		16
ARTICLE 11 COVENANTS		16
11.1	Mutual Covenants.	16
11.2	Receiver Covenants.	16
11.3	Purchaser Covenants.	17
ARTICLE 12 POSSESSION AND ACCESS PRIOR TO CLOSING.....		17
12.1	Possession of Purchased Assets.	17
12.2	Examination of Title and Access to the Purchased Assets.	17
12.3	Risk.	18
ARTICLE 13 AS IS, WHERE IS		18
13.1	Condition of the Purchased Assets.	18
ARTICLE 14 TERMINATION.....		19
14.1	Termination of this Agreement.	19
14.2	Remedies for Breach of Agreement.....	19
14.3	Termination If No Breach of Agreement.....	20
ARTICLE 15 GENERAL CONTRACT PROVISIONS.....		20
15.1	Further Assurances.....	20
15.2	Survival Following Completion.....	20
15.3	Notice.....	20
15.4	Waiver.....	22
15.5	Consent.	22
15.6	Governing Law.	22
15.7	Entire Agreement.	22
15.8	Time of the Essence.	22
15.9	Time Periods.	22
15.10	Assignment.	23
15.11	Expenses.	23
15.12	Severability.	23

TABLE OF CONTENTS

(continued)

15.13	No Strict Construction.	23
15.14	Cumulative Remedies.	23
15.15	Currency.	23
15.16	Receiver’s Capacity.	24
15.17	Planning Act.	24
15.18	No Third Party Beneficiaries.	24
15.19	Number and Gender.	24
15.20	Counterparts.	24
SCHEDULE “A” – APPROVAL AND VESTING ORDER		A-1
SCHEDULE “B” – PERMITTED ENCUMBRANCES		B-1

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 3rd day of October, 2017.

BETWEEN:

A. FARBER & PARTNERS INC.,

solely in its capacity as the Court-appointed receiver
of 2220277 Ontario Inc. and not in its personal capacity or in any
other capacity

(in such capacity, the “**Receiver**”)

- and -

650 BAY HOLDCO INC.

(the “**Purchaser**”)

WHEREAS pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on August 1, 2017 (the “**Receivership Order**”), A. Farber & Partners Inc. was appointed as the Receiver, without security, of all the assets, undertakings and properties of 2220277 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”);

AND WHEREAS pursuant to the provisions of the Receivership Order, the Receiver has the power to sell all or any part of the Property, subject to Court approval;

AND WHEREAS the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets (as defined herein) upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“**Accounts Payable**” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

“Agreement” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“Approval and Vesting Order” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser all the Debtor’s right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as **Schedule “A”** hereto;

“Assignable Assets” has the meaning given in section 3.1(3) herein;

“Auction” has the meaning given in section 6.3 herein;

“Auction Rules” has the meaning given in section 6.3 herein;

“bE SixFifty Hotel” means any of 756597 Ontario Limited o/a bE SixFifty Hotel, 9845496 Canada Inc. o/a bE SixFifty Hotel or bE SixFifty Hotel Inc.;

“Business” means the business carried on by the Debtor;

“Business Day” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and **“Claim”** means any one of them;

“Closing” means the successful completion of the Transaction;

“Closing Date” means the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is granted; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined;

“Closing Time” means 2:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“Competing Bid” has the meaning given in section 6.2 herein;

“Consents and Approvals” means the consents and approvals of all relevant third parties;

“Court” has the meaning set out in the recitals hereof;

“Debtor” has the meaning set out in the recitals hereof;

“Deposit” has the meaning given in section 4.2 herein;

“Encumbrances” means all liens, charges, security interests, pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

“ETA” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“Excluded Assets” means the Debtor’s right, title and interest in and to the following:

- (a) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor;
- (b) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date; and
- (c) the Hotel Lease, the Restaurant Lease and any other contracts to which the Debtor is a party;

“Excluded Liabilities” has the meaning given in section 3.3 herein;

“Farber” means A. Farber & Partners Inc.;

“Governmental Authority” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **“Governmental Authority”** means any one of them;

“Hotel Lease” means any and all leases or arrangements for use of any of the Real Property prior to Closing by bE SixFifty Hotel, including, without limitation, the documents entitled “leases” dated July 15, 2016 and July 27, 2016 between the Debtor (as landlord) and bE SixFifty Hotel (as tenant);

“HST” means harmonized sales tax imposed under Part IX of the ETA;

“Interim Period” means the period from and including the date of this Agreement to and including the Closing Date;

“ITA” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“Lead Bid” has the meaning given in section 6.3 herein;

“Notice” has the meaning given in section 15.3 herein;

“Parties” means the Receiver and the Purchaser;

“Permits” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Real Property;

“Permitted Encumbrances” means all those Encumbrances described in **Schedule “B”** hereto;

“Person” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“Personal Property Leases” means all leases of personal or moveable property that relate to the Business, including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof;

“Property” has the meaning set out in the recitals hereof;

“Purchase Price” has the meaning set out in section 4.1 herein;

“Purchased Assets” means all of the Debtor’s right, title and interest in and to:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
- (d) the Warranty Rights;

“Purchaser” means 650 Bay Holdco Inc., a corporation duly formed and validly subsisting under the laws of the Province of Ontario;

“Real Property” means the Debtor’s right, title and interest in and to the lands legally described in PIN No. 21199-0067 (LT), together with all buildings, improvements and structures thereon and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

“Receiver” has the meaning set out in the recitals hereof;

“Receivership Order” has the meaning set out in the recitals hereof;

“Restaurant Lease” means any and all leases or arrangements for use of any of the Real Property prior to Closing by 2452482 Ontario Inc., including, without limitation, the lease dated April 1, 2017 between the Debtor (as landlord) and 2452482 Ontario Inc. (as tenant);

“Rights” has the meaning given in section 3.1(3) herein, but only has such meaning in such section;

“Sale Process” has the meaning given in section 6.1 herein;

“Sale Process Orders” has the meaning given in section 6.1 herein;

“Stalking Horse Bid” has the meaning given in section 6.1 herein;

“Superior Bid” has the meaning given in section 6.2 herein;

“Taxes” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“Transaction” means the transaction of purchase and sale contemplated by this Agreement;

“Warranty Rights” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Debtor against manufacturers, contractors or any other Person which apply to the Real Property, but only to the extent that the same are capable of being assigned; and

“Winning Bid” has the meaning given in section 6.3 herein.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Relying on the representations and warranties herein, and subject to article 6 herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all its rights, claims and demands whatsoever in the Purchased Assets.
- (3) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this section 3.1(3), collectively, the “**Rights**”) under any Permits or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (a) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment;

- (b) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser; and
- (c) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Real Property or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

Subject to article 6 herein, the purchase price for the Purchased Assets shall be the aggregate of TWELVE MILLION DOLLARS (\$12,000,000.00) (the “**Purchase Price**”).

4.2 Deposit.

- (1) Within two (2) Business Days of the date of this Agreement, the Purchaser shall pay the Receiver a deposit by certified cheque or wire of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00) (the “**Deposit**”), which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in an interest bearing account, which Deposit and interest shall accrue to the benefit of the Purchaser from the date of this Agreement until the Closing Date or other termination of this Agreement and shall be credited to the Purchaser on the Closing Date.

4.3 Satisfaction of Purchase Price.

Subject to article 6 herein, the Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit, and any interest accrued thereon, shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit, shall be paid by the Purchaser to the Receiver on Closing.

4.4 Allocation of Purchase Price.

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price.

- (1) The Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a

receivership sale. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination.

- (2) Other than as provided for in this section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 TAXES

5.1 Taxes.

Provided that the Purchaser is determined to be the Winning Bidder, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 SALE APPROVAL PROCEEDINGS

6.1 The Sale Process.

Each of the Parties acknowledges and agrees that by no later than October 16, 2017, the Receiver shall obtain orders (collectively, the “**Sale Process Orders**”) from the Court which, *inter alia*, set out the terms and conditions of and a timetable for a bidding, auction and sale process with respect to the Purchased Assets (the “**Sale Process**”). The Sale Process Orders shall recognize this Agreement, and in particular the Purchase Price, as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”), and shall also provide for a marketing process of the Purchased Assets by the Receiver and a competitive bidding and auction procedure, to be administered by the Receiver. The Purchaser acknowledges and agrees that the aforementioned Sale Process is in contemplation of determining whether a materially higher price than that contemplated in the Stalking Horse Bid can be obtained for the Purchased Assets.

6.2 Competing Bids.

In addition to the foregoing, the Sale Process Orders shall also provide that in order to be accepted by the Receiver, any competing bid (each, a “**Competing Bid**”) for the Purchased Assets must be on substantially the same terms and conditions as the terms and conditions

contained in this Agreement, except with respect to the Purchase Price (any Competing Bid accepted by the Receiver as a superior bid to the Stalking Horse Bid being, in each case, a **“Superior Bid”**).

In order for any Competing Bid to be accepted by the Receiver as Superior Bid, such Competing Bid must meet all the following minimum criteria:

- (a) it must be received by the Receiver, in its entirety, by no later than 5:00 p.m. (Toronto time) on November 27, 2017;
- (b) it must be accompanied by a duly executed agreement of purchase and sale, blacklined against this Agreement, showing any and all variations from this Agreement, and a deposit in an amount equal to the sum of ten percent of the aggregate purchase price in such Competing Bid by way of certified cheque or wire, payable pursuant to the terms of such Competing Bid, and which is not subject to any encumbrances;
- (c) it must remain open for acceptance and completion until approval by the Court of an agreement of purchase and sale in respect of the Real Property;
- (d) it must be on terms no less favourable and no more burdensome or conditional than the terms of this Agreement;
- (e) it must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder’s obligation to close that are not otherwise contained in this Agreement;
- (f) it must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by such Competing Bid on the terms specified therein; and
- (g) it must be for an aggregate purchase price at least equal to the sum of the Purchase Price plus ONE-HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00).

6.3 The Winning Bid and the Auction Process.

In the event that one or more Superior Bid is lodged with the Receiver in accordance with section 6.2 hereof, the Sale Process Orders shall provide that the Receiver will distribute the following documentation by no later than 5:00 p.m. (Toronto time) on December 4, 2017 to the Purchaser and the maker(s) of each Superior Bid:

- (a) an invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. (Toronto time) on December 11, 2017 at the offices of the Receiver (the **“Auction”**);
- (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all the features of the bids, believes to be the most favourable

bid as between the Stalking Horse Bid and all the Superior Bids (the “**Lead Bid**”); and

- (c) a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the purchase price for the Purchased Assets (the “**Auction Rules**”), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) solely for the purpose of determining the successful bid at the Auction; and (iii) the highest bid received at the Auction shall be the “winning bid” (the “**Winning Bid**”).

Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the “**Winning Bidder**”) and the Receiver (the “**Winning Bid Agreement**”), in which case the Winning Bid Agreement shall be constituted by:

- (a) this Agreement or the agreement of purchase and sale submitted to the Receiver by the Winning Bidder, as the case may be, and as amended pursuant to the Auction; and
- (b) the acceptance of the Winning Bid.

In the event that there is no Superior Bid lodged with the Receiver in accordance with section 6.2 hereof, the Sale Process Orders shall provide that this Agreement and the Purchaser shall be declared to be the Winning Bid, the Winning Bid Agreement and the Winning Bidder, as applicable.

Once the Winning Bid Agreement is determined, the Receiver will make a motion to the Court in order to obtain the Approval and Vesting Order.

6.4 Court-Specified Time Periods.

Where any of the time periods specified in sections 6.1 through 6.3 of this Agreement are subject to be established by Court Order, and in the event that the Court establishes a date different than the date set out in this Agreement, then the corresponding date established by such provisions of this Agreement shall be deemed to be amended to accord with the Court established date, provided that no such amendment shall be deemed to have occurred without the express written consent of the Purchaser if the effect of such amendment is to delay the Closing Date by any period greater than 15 days.

ARTICLE 7 CLOSING ARRANGEMENTS

7.1 Closing and Closing Procedure.

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's lawyers, Dentons Canada LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

7.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

7.3 Receiver's Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.5 hereof;
- (3) an undertaking by the Receiver to readjust the adjustments set out in section 4.5 hereof;
- (4) an assignment and assumption agreement for all Warranty Rights, Permits, Consents and Approvals pertaining to the Property (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;
- (5) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
 - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (c) the non-merger specified in Section 15.2 and elsewhere herein;
- (6) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 8.1 hereof has been fulfilled, performed or waived as of the Closing Time; and

- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, Applicable Law or any Government Authority.

7.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 8.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (4) an assignment and assumption agreement for all Warranty Rights, Permits, Consents and Approvals pertaining to the Property (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;
- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
 - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (b) the non-merger specified in Section 15.2 and elsewhere herein;
- (6) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, Applicable Law or any Government Authority.

7.5 Receiver's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 8

CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Sale Process Orders and the Approval and Vesting Order.

8.2 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;

- (2) all the covenants of the Receiver contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (3) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper;
- (5) the Court shall have issued the Sale Process Orders and the Approval and Vesting Order; and
- (6) the Receiver shall have terminated the Hotel Lease and the Restaurant Lease, or the Receiver shall have obtained an Order of the Court terminating the Hotel Lease and the Restaurant Lease.

8.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;

- (2) the Receiver has been duly appointed by the Court, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Debtor in and to the Purchased Assets; and
- (3) the Receiver is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 10 REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and
- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date.

ARTICLE 11 COVENANTS

11.1 Mutual Covenants.

Subject to Article 6 hereof, each of the Parties hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

11.2 Receiver Covenants.

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Section 5.1 hereof and to execute all necessary forms related thereto.

11.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with Section 5.1 hereof and to execute all necessary forms related thereto.

ARTICLE 12 POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets.

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 8.1 hereof.

12.2 Examination of Title and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Real Property, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Lands, satisfy itself as to the use of the Lands being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Real Property may be insured to the satisfaction of the Purchaser.
- (2) The Purchaser and its agents and representatives may have reasonable access to the Purchased Assets during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Purchased Assets as it deems appropriate, provided that such inspections shall not unduly interfere (and the Purchaser undertakes to use its best efforts, which the Purchaser represents and warrants shall not be less than reasonable commercial efforts, not to so interfere) with the use, operation and enjoyment of the Purchased Assets by the Receiver. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Purchased Assets to substantially the condition same were in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the

inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above.

12.3 Risk.

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit together with all interest accrued thereon shall be returned to the Purchaser forthwith.

ARTICLE 13 AS IS, WHERE IS

13.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects,

conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 14 TERMINATION

14.1 Termination of this Agreement.

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 8.2 hereof by the Receiver;
- (3) pursuant to section 8.4 hereof by the Purchaser; or
- (4) pursuant to section 12.3 hereof.

14.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser's right to pursue all legal remedies with respect to such breach shall survive such termination, and the Deposit together with all interest accrued thereon and without deduction, shall be returned by the Receiver to the Purchaser forthwith. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

14.3 Termination If No Breach of Agreement.

If the Purchaser is not determined to be the Winning Bidder, or if this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of one of the Parties, then:

- (1) the Deposit, together with all interest thereon, shall be returned by the Receiver to the Purchaser forthwith and all other obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement; and
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 15 GENERAL CONTRACT PROVISIONS

15.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

15.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.5, article 9, article 10, section 14.2 and section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of Farber as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

15.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "**Notice**") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Receiver:

A. Farber & Partners Inc.
150 York Street, Suite 1600
Toronto, ON M5H 3S5

Attention: Stuart Mitchell and John Hendriks
Tel: (416) 496-3774 / (416) 496-3701
Email: smitchell@farberfinancial.com / jhendriks@farberfinancial.com

and a copy to the Receiver's counsel to:

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Attention: Ken Kraft and Sara-Ann Van Allen
Tel: (416) 863-4374 / (416) 863-4673
Email: sara.vanallen@dentons.com / kenneth.kraft@dentons.com

(b) to the Purchaser:

650 Bay Holdco Inc.
401 Bay Street, Suite 2410
Toronto, ON M5H 2Y4

Attention: Gerard Lee
Email: gerard.lee@lalucanada.com

and a copy to the Purchaser's counsel to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Steven L. Graff, Ian Aversa and Jeremy Nemers
Tel: (416) 865-7726 / (416) 865-3082 / (416) 865-7724
Email: sgraff@airdberlis.com / iaversa@airdberlis.com / jnemers@airdberlis.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any

Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

15.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

15.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Sale Process Orders or the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

15.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

15.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

15.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

15.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

15.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until Closing, the Purchaser shall have the right to direct that title to the Real Property be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that, (a) the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into, and (b) the Purchaser shall remain liable for all obligations and liabilities hereunder.

15.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

15.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

15.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

15.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

15.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

15.16 Receiver's Capacity.

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

15.17 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

15.18 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

15.19 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation."

15.20 Counterparts.

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

650 BAY HOLDCO INC.

Per: _____

Name: Gerard Lee

Authorized Signing Officer

ACCEPTED by the Receiver this ____ day of October, 2017

A. FARBER & PARTNERS INC., solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

**SCHEDULE “A”
APPROVAL AND VESTING ORDER**

Court File No. CV-17-11811-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **<*>**DAY, THE **<*>**
JUSTICE)
)
) DAY OF **<*>**, 2017

B E T W E E N :

ZAHERALI VISRAM

Applicant

- and -

2220277 ONTARIO INC.

Respondent

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by A. Farber & Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of 2220277 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and 650 Bay Holdco Inc. (the “**Purchaser**”), as purchaser, dated October 3, 2017 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “**<*>**” to

the Report of the Receiver dated <*>, 2017 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the “Purchased Assets” in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of <*> sworn <*>, 2017, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver's Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Debtor’s right, title and interest in and to the Real Property (as defined herein) listed on Schedule B hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial

or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Mesbur made August 1, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

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

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. **THIS COURT ORDERS** that, notwithstanding:

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

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

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

8. **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.

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-17-11811-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

ZAHERALI VISRAM

Applicant

- and -

2220277 ONTARIO INC.


Respondent

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

RECEIVER’S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 1, 2017, A. Farber & Partners Inc. (“**Farber**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2220277 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the proceeds thereof (the “**Property**”).

II. Pursuant to an Order of the Court dated , 2017, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and 650 Bay Holdco Inc. (the “**Purchaser**”), as purchaser, dated October 3, 2017 (the “**Sale Agreement**”), and provided for the vesting in the

Purchaser of all the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

A. FARBER & PARTNERS INC., solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

Schedule “B” – Legal Description of the Real Property

PIN 21199-0067 (LT)

PT LT 2 PL 60 TORONTO AS IN CA720524; CITY OF TORONTO

Schedule "C" – Instruments to Be Deleted from Title to Real Property

Reg. No.	Date	Type	Amount	Parties From	Parties To
AT2228544	2009/11/13	Trans Power Sale	\$2,425,000	B & M HANDELMAN INVESTMENTS LIMITED JRS CAPITAL MANAGEMENT CORP. HARZAHAV HOLDINGS INC. M. HIMEL HOLDINGS INC. UNION FELT PRODUCTS INC. BRENKIDS INC. STEELE VALLEY DEVELOPMENTS LIMITED 1530468 ONTARIO LTD. GOLDMAN, JENNIFER STANDING DEVELOPMENTS INC. LEDMAR INVESTMENTS INC. SHARJOD HOLDINGS INC. FLORDALE HOLDINGS LIMITED RABARDO CORPORATION	2220277 ONTARIO INC.
AT2228545	2009/11/13	Charge	\$2,100,000	2220277 ONTARIO INC.	B & M HANDELMAN INVESTMENTS LIMITED JRS CAPITAL MANAGEMENT CORP. HARZAHAV HOLDINGS INC. M. HIMEL HOLDINGS INC. UNION FELT PRODUCTS INC. BRENKIDS INC. STEELE VALLEY DEVELOPMENTS LIMITED 1530468 ONTARIO LTD. GOLDMAN, JENNIFER STANDING DEVELOPMENTS INC. LEDMAR INVESTMENTS INC. SHARJOD HOLDINGS INC. FLORDALE HOLDINGS LIMITED RABARDO CORPORATION
AT2960459	2012/03/06	Charge	\$1,200,000	2220277 ONTARIO INC.	VISRAM, ZAHERALI
AT2962763	2012/03/09	Charge	\$625,000	2220277 ONTARIO INC.	932005 ONTARIO INC.
AT2986827	2012/04/11	Postponement		932005 ONTARIO INC.	VISRAM, ZAHERALI
AT3095262	2012/08/07	Notice	\$2	2220277 ONTARIO INC.	VISRAM, ZAHERALI
AT3095296	2012/08/07	Postponement		932005 ONTARIO INC.	VISRAM, ZAHERALI
AT3141028	2012/10/01	Notice	\$2	2220277 ONTARIO INC.	VISRAM, ZAHERALI
AT3141050	2012/10/01	Postponement		932005 ONTARIO INC.	VISRAM, ZAHERALI
AT3195583	2012/12/12	Charge	\$100,000	2220277 ONTARIO INC.	HARBOUR FIRST MORTGAGE FUND GP INC.
AT3195584	2012/12/12	No Assgn Rent Gen		2220277 ONTARIO INC.	HARBOUR FIRST MORTGAGE FUND GP INC.
AT3292231	2013/05/03	Charge	\$100,000	2220277 ONTARIO INC.	GOLDCARD INC.
AT3413716	2013/09/24	Charge	\$2,500,000	2220277 ONTARIO INC.	CVC ARDELLINI INVESTMENTS INC.
AT3413748	2013/09/24	No Assgn Rent Gen		2220277 ONTARIO INC.	CVC ARDELLINI INVESTMENTS INC.

AT3894600	2015/05/28	Transfer of Charge		B & M HANDELMAN INVESTMENTS LIMITED JRS CAPITAL MANAGEMENT CORP. HARZAHAV HOLDINGS INC. M. HIMEL HOLDINGS INC. UNION FELT PRODUCTS INC. BRENKIDS INC. STEELE VALLEY DEVELOPMENTS LIMITED 1530468 ONTARIO LTD. GOLDMAN, JENNIFER STANDING DEVELOPMENTS INC. LEDMAR INVESTMENTS INC. SHARJOD HOLDINGS INC. FLORDALE HOLDINGS LIMITED RABARDO CORPORATION	VISRAM, ZAHERALI
AT3894601	2015/05/28	Notice	\$2	2220277 ONTARIO INC.	VISRAM, ZAHERALI
AT4005932	2015/09/10	Charge	\$525,000	2220277 ONTARIO INC.	ACCOMPLISH CAPITAL INC.
AT4065515	2015/11/13	Charge	\$600,000	2220277 ONTARIO INC.	9480536 CANADA INC.
AT4297814	2016/08/02	Charge	\$5,500,000	2220277 ONTARIO INC.	AM-STAT CORPORATION
AT4297815	2016/08/02	No Assgn Rent Gen		2220277 ONTARIO INC.	AM-STAT CORPORATION
AT4522643	2017/03/29	Notice		9480536 CANADA INC.	2220277 ONTARIO INC.
AT4645669	2017/08/02	Apl Court Order		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	A. FARBER & PARTNERS INC.

Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants

Reg. No.	Date	Type	Amount	Parties From	Parties To
63BA1267	1978/05/31	Plan Boundaries Act			
CA65043	1989/12/08	Agreement			CITY OF TORONTO

SCHEDULE “B”
PERMITTED ENCUMBRANCES

Reg. No.	Date	Type	Amount	Parties From	Parties To
63BA1267	1978/05/31	Plan Boundaries Act			
CA65043	1989/12/08	Agreement			CITY OF TORONTO

30494389.4