

Court File No. CV-21-656040-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

**MOTION RECORD
(Vesting Order)
(Returnable January 25, 2023)**

January 11, 2023

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TAB 1

Court File No. CV-21-00656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

**NOTICE OF MOTION
(Vesting Order)**

LAURENTIAN UNIVERSITY OF SUDBURY, the applicant in this proceeding (the “**University**”) and the plaintiff in an action commenced in Sudbury bearing court file number CV-18-00007924-0000 (the “**Litigation Action**”) against James Crispo and Dominique Ansell (the “**Neighbours**”), will make a motion to the Ontario Superior Court of Justice (Commercial List) on Wednesday, January 25, 2023 at 9 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference. The videoconference details will be circulated to the Service List for this motion once received from the Commercial List Office.

THE MOTION IS FOR:

- (a) an order substantially in the form attached hereto as Schedule “A” (the “**Vesting Order**”):

- (i) vesting all of the University's right, title and interest, if any, in and to the real property identified as Part 1 on Plan 53R-21719 (the "**Subject Property**"), being a portion of the real property legally described as PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY (the "**University Property**"), to and in favour of the Neighbours on an "as-is, where-is" basis; and
- (b) such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) the University is the registered owner of the University Property, subject to any rights that may exist in favour of any third parties affecting the University Property;
- (b) the Neighbours own certain abutting property (the "**Abutting Property**");
- (c) certain structures erected or installed by the prior owners of the Abutting Property encroach upon the University Property (the "**Encroachments**");
- (d) since 2016 the University and the Neighbours have been engaged in discussions regarding the Encroachments;

The Litigation Action

- (e) on October 24, 2018, the University commenced the Litigation Action against the Neighbours, claiming, among other relief:
 - (i) a declaration that the Neighbours have no title to, and no right or interest in, the University Property, including the Subject Property as defined herein;
 - (ii) a declaration that the Encroachments are an ongoing trespass on the University Property;
 - (iii) an order providing for the removal of the Encroachments; and
 - (iv) damages;
- (f) since 2018, the Neighbours have engaged in a publicity campaign concerning the Encroachments and other matters relating to the University and its affairs, including through a website that they created (the “**Publicity Campaign**”);
- (g) the Publicity Campaign has also been the subject of extensive discussions between the University and the Neighbours;
- (h) discussions between the University and the Neighbours did not resolve the issues of the Encroachments or the Publicity Campaign;
- (i) in February, 2019, the University and the Neighbours attended mediation in an attempt to resolve the issue of the Encroachments, which was unsuccessful;

- (j) pleadings were exchanged and a pleadings motion was resolved within the Litigation Action;
- (k) the University and the Neighbours continued to engage in discussions with a view to settling the Litigation Action commenced by the University and resolving issues relating to the Encroachments and the Publicity Campaign undertaken by the Neighbours;
- (l) until the Settlement Agreement (defined below) was reached by the parties in July 2022, the dispute remained outstanding and unresolved;

The Settlement

- (m) an Offer to Settle dated July 11, 2022 was made by the University and accepted by the Neighbours resulting in a settlement agreement being reached (the “**Settlement Agreement**”) that provides for a transfer of the Subject Property by way of a Vesting Order to be sought, in exchange for a \$20,000 cash payment (the “**Payment**”), the Litigation Action being dismissed on a with-prejudice and without-costs basis on consent of both parties, the Publicity Campaign ceasing, and certain other terms;
- (n) the Settlement Agreement is subject to certain conditions in favour of the University, including obtaining the Vesting Order to effect a transfer of the Subject Property and a severance of the Subject Property from the University Property by court order;

- (o) the Payment has been made, in trust, to the University's lawyers in the Litigation Action;
- (p) all conditions to implementation of the Settlement Agreement have either been satisfied or waived by the University, other than obtaining the Vesting Order sought herein, and the parties are ready to complete the Settlement Agreement;

Interested Parties

- (q) the University commenced a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA Proceeding**") on February 1, 2021 and an initial order was granted on February 1, 2021 (as amended and restated from time to time, the "**Initial Order**"). Ernst & Young Inc. was appointed as monitor of the University in the CCAA Proceeding (the "**Monitor**"). The Settlement Agreement includes a condition in favour of the University providing for the Monitor's approval of the settlement within the CCAA proceeding. The University has waived this condition, but is cognizant of the test set out in section 36 of the CCAA;
- (r) the Province of Ontario as represented by the Minister of Colleges and Universities (in such capacity, the "**Exit Lender**") holds a charge over all property, assets and undertaking of the University, including the University Property and the Subject Property that forms part of it. The Exit Lender has consented to the Settlement Agreement, thereby satisfying a condition of the Settlement Agreement;

- (s) when it was in effect prior to implementation of the Plan on November 28, 2022, the Initial Order did not require the University to seek an Order from the Court in the CCAA Proceeding for the transfer of its property where the value was less than \$50,000 in any single transaction. The transfer of the Subject Property to the Neighbours under the Settlement Agreement is below that monetary threshold, at \$20,000, and in any event, the Initial Order (other than protections in favour of the Monitor) was terminated upon implementation of the Plan on November 28, 2022 pursuant to the Plan Sanction Order dated October 5, 2022;
- (t) the Settlement Agreement includes a condition in favour of the University providing for court approval of the settlement within the CCAA proceeding. The University has waived this condition, but is cognizant of the test set out in section 36 of the CCAA;
- (u) the Settlement Agreement contemplates a transfer of the Subject Property to the Neighbours on an “as is, where is” basis, and accordingly no registered or unregistered interests in the Subject Property in favour of any third party are being affected by the Vesting Order that is sought, other than certain instruments registered on title that relate specifically to the CCAA proceeding (the “**CCAA Instruments**”). All parties who have an interest in the Subject Property or who may be affected by the relief sought are being served with the Motion Record herein;

- (v) the adjoining portion of the University Property and the Subject Property are designated as conservation lands. The University is serving Conservation Sudbury with the Motion Record herein;
- (w) the Vesting Order, if granted, alleviates the need for the University to undertake a process for a severance of land as prescribed by the *Planning Act*, RSO 1990, c P.13 (the “**Planning Act**”) to permit a transfer of the Subject Property. The Director of Planning Services at the City of Sudbury is being served with the Motion Record herein;
- (x) the Subject Property to be transferred by the University to the Neighbours by way of the Vesting Order is subject to a notice of agreement registered on title in 1969, being an agreement between the University and Her Majesty the Queen, in right of Ontario, as represented by the Minister of Lands and Forests (now His Majesty the King in Right of Ontario, as represented by the Minister of Northern Development, Mines, Natural Resources and Forests) (“**MNR**”) which agreement includes a reversionary interest in favour of MNR in the event that the University no longer requires the property. As the Settlement provides for a transfer to the Neighbours on an “as is, where is” basis, this agreement with MNR is not being vested off the Subject Property, pursuant to the Vesting Order. MNR (Legal Services Branch), Infrastructure Ontario (who has been involved with real estate affecting LU) and the Ontario Ministry of the Attorney General – Crown Law Office (Civil) are all being served with the Motion Record herein;

- (y) all parties served with the Motion Record will receive approximately 14 days' notice of the hearing date for the motion;

Jurisdiction to Grant a Vesting Order

- (z) section 100 of the *Courts of Justice Act*, RSO 1990, c C.43 (the “CJA”), section 37(1) of the *Conveyancing and Law of Property Act*, RSO 1990 c. C.34 (the “CLPA”), and sections 11 and 36(1) of the CCAA provide jurisdiction to the Court to grant a Vesting Order;
- (aa) it is just and convenient for the Vesting Order to be granted;

The Vesting Order

- (bb) the Litigation Action, issues relating to the Encroachments and the Publicity Campaign and all matters encompassed by the Settlement Agreement will be resolved through implementing the Settlement Agreement;
- (cc) if the University and the Neighbours sought to effect a transfer of the Subject Property in the absence of a Vesting Order, the subdivision control provisions of the *Planning Act* would need to be complied with and consent of the municipality would be required pursuant to section 50 thereof. In addition, it would require a new public process to be undertaken. Undertaking the *Planning Act* process at this time would increase the expense of, and delay the resolution of the Litigation Action and issues relating to the Encroachments;

- (dd) the proposed Vesting Order directs the Land Registrar to discharge, delete and expunge from title certain instruments that are listed on Schedule “C” to the Vesting Order. These instruments relate to Court Orders made in the CCAA proceeding, and all affected parties are receiving notice;
- (ee) the University is not aware of any party that intends to oppose the motion or the granting of the Vesting Order;

Other Grounds

- (ff) the provisions of the CJA, including section 100 thereof;
- (gg) the provisions of the CLPA, including section 37(1) thereof;
- (hh) the provisions of the CCAA, including sections 11 and 36(1) and 36(3) thereof;
- (ii) the provisions of the *Land Titles Act*, RSO 1990, c L.5, including section 119(9) thereof;
- (jj) rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (kk) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the affidavit of Pierre Fontaine sworn January 11, 2023; and
- (b) such further and other material as counsel may advise and this Court may permit.

January 11, 2023

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TO: **THE SERVICE LIST**

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SCHEDULE “A”
FORM OF VESTING ORDER

Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF)	WEDNESDAY, THE 25th
)	
JUSTICE MORAWETZ)	DAY OF JANUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

VESTING ORDER

THIS MOTION, made by Laurentian University of Sudbury (the “**Applicant**”) for an order vesting in James Crispo and Dominique Ansell (together, the “**Purchasers**”) the Applicant’s right, title and interest, if any, in and to the real property described at Schedule “A” hereto on an “as-is, where-is” basis (the “**Subject Property**”), was heard this day by Zoom judicial video conference in accordance with the *Guidelines to Determine Mode of Proceeding in Civil*, effective April 19, 2022.

ON READING the Applicant’s Motion Record dated January 11, 2023 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and such other counsel that appeared on the motion, and on being satisfied that all known parties who could be affected by or who may have an interest in the transfer of the Subject Property to the Purchasers have received proper notice and have been served with the Motion Record herein, no one appearing for any other person entitled to receive notice of this motion, although properly served as appears from the affidavit of service of [●] sworn [●], filed;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, upon the registration by the Applicant of an entered copy of this Vesting Order on title to the Subject Property in accordance with paragraph 3 herein, all of the Applicant's right, title and interest, if any, in and to the Subject Property shall vest in the Purchasers.
3. **THIS COURT ORDERS** that upon the registration by the Applicant in the Land Title Division for the Land Registry Office No. 53 for Sudbury (the "**Land Registry Office**") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and attaching an entered copy of this Vesting Order, the Land Registrar for the Land Registry Office is hereby directed to enter the Purchasers as the registered owners of the Subject Property identified and described in Schedule "A" hereto in fee simple and open the appropriate Property Identifier Number for the Subject Property in the name of the Purchasers, subject only to the instruments identified and described in Schedule "B", and is hereby directed to delete and expunge from title to the Subject Property all of the instruments listed in Schedule "C" hereto, such that those instruments shall not appear on the Property Identifier Number opened by the Land Registrar for the Subject Property.
4. **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 Applicant and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Subject Property in the Purchasers pursuant to this Vesting Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall

not be void or voidable by creditors of the Applicant, 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.

Chief Justice G.B. Morawetz

Part of Parcel 34100, Section SES being Part Broken Lot 1, Concession 1 MCKIM Location 145 designated as Part 1 on Reference Plan 53R21719; Greater Sudbury

Being Part of PIN 73593-0406(LT)

Schedule “B” – Instruments to Remain registered on title to the Subject Property

1. LT264521 Crown Patent registered January 29, 1969
2. LT264533 Notice Agreement registered January 30, 1969
3. 53R21719 Plan Reference deposited September 13, 2022

Schedule “C” – Instruments to be deleted and expunged from title to the Subject Property

1. SD414794 Application to Register Court Order registered February 12, 2021
2. SD442590 Application to Register Court Order registered January 28, 2022
3. SD466093 Charge registered November 24, 2022
4. SD467679 Application to Amend based on Court Order registered December 15, 2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. CV-21-00656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

VESTING ORDER

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

Court File No. CV-21-00656040-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Vesting Order)**

THORNTON GROUT FINNIGAN LLP

3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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Lawyers for the Applicant

TAB 2

Court File No. CV-21-00656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

AFFIDAVIT OF PIERRE FONTAINE

I, Pierre Fontaine, of the City of Greater Sudbury, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am Director, Maintenance and Operations at Laurentian University of Sudbury (the “**University**”), the applicant in this CCAA proceeding and the Plaintiff in the Sudbury Action (defined below), and as such I have knowledge of the matters contained in this affidavit, except where it is stated to be based on information received from others, in which case I have identified the source of the information, and in all cases I believe it to be true.

2. In various places in this affidavit, I describe facts provided to me by Sarah Turney of the law firm Fasken Martineau DuMoulin LLP (“**Fasken**”). In doing so, neither the University nor I are waiving privilege over any information passing between the University and its counsel. Fasken has, and continues to represent the University in the ongoing dispute with James Crispo and Dominique Ansell (the “**Neighbours**”), which is a litigation proceeding that was commenced in Sudbury in 2018 as court file no. CV-18-00007924-0000 (“**Sudbury Action**”).

3. I swear this affidavit in support of the University's motion for an order vesting all of the University's right, title and interest in and to the real property identified as Part 1 on Plan 53R-21719 (the "**Subject Property**"), being a portion of the real property legally described as PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY (the "**University Property**"), in the Neighbours on an "as-is, where-is" basis (the "**Vesting Order**"). I am advised by Sarah Turney of Fasken and do verily believe that a copy of Plan 53R-21719, which depicts in a visual diagram the Subject Property to be transferred pursuant to the Vesting Order, is attached as **Exhibit "A"**.

Background

4. I am advised by Sarah Turney of Fasken of the specific facts set out in paragraphs 4, 5, 7 to 19, 25 to 29, and 34 to 35 of this Affidavit, and verily believe them to be true. The University is the registered owner of the University Property. A copy of the parcel register for the University Property, as described to me by Dawne Jubb, the University's Interim General Counsel, is attached as **Exhibit "B"**.

5. The Neighbours are the registered owners of real property that abuts the University Property (the "**Abutting Property**"). A copy of the parcel register for the Abutting Property as identified to me by Dawne Jubb, the University's Interim General Counsel, is attached as **Exhibit "C"**.

6. Certain structures erected or installed by the prior owners of the Abutting Property or their predecessors in title encroach upon the University Property (the "**Encroachments**").

7. I am advised by Sarah Turney of Fasken that, starting in or around Autumn 2016, the University and the Neighbours began discussing a potential resolution to the issue of the Encroachments.

8. Since at least mid-2018, the Neighbours have also engaged in a publicity campaign concerning the Encroachments and other matters relating to the University and its affairs, including through their website “laurentian.org” (the “**Publicity Campaign**”).

9. The Publicity Campaign has also been the subject of extensive discussions between the University and the Neighbours, including through the University’s counsel, Fasken, and the Neighbours’ counsel in the Sudbury Action.

10. Prior to July 2022, these discussions did not resolve the issues of the Encroachments, the Sudbury Action or the Publicity Campaign.

The Sudbury Action

11. On October 24, 2018, the University commenced the Sudbury Action against the Neighbours by issuing a statement of claim (the “**Statement of Claim**”). Now shown to me and attached as **Exhibit “D”** to this Affidavit is a copy of the Statement of Claim.

12. The Sudbury Action seeks, among other relief:

- (a) a declaration that the Neighbours have no title to, and no right or interest in, the University Property, which includes the Subject Property;
- (b) a declaration that the Encroachments are an ongoing trespass on the University Property;
- (c) an order providing for the removal of the Encroachments; and

(d) damages.

13. Following its issuance, but prior to serving the Statement of Claim on the Neighbours, on February 19, 2019 the University attended mediation with the Neighbours in an attempt to resolve the issue of the Encroachments, but the mediation was unsuccessful.

14. On or around April 11, 2019, the University served the Statement of Claim on the Neighbours. Thereafter, the Neighbours served a statement of defence (the “**Defence**”) and counterclaim (the “**Counterclaim**”) dated May 3, 2019. Now shown to me and marked as **Exhibit “E”** is a copy of the Defence and Counterclaim served by the Neighbours in the Sudbury Action.

15. On or around October 3, 2019, the University served upon the Neighbours a motion to strike certain paragraphs of the Defence and the Counterclaim in its entirety (the “**Motion to Strike**”).

16. The Motion to Strike was resolved by consent order made by Justice Cornell in the Sudbury Action on December 7, 2020, which order, among other things, discontinued the Counterclaim and granted the Neighbours leave to amend the Defence (the “**Consent Order**”). Now shown to me and marked as **Exhibit “F”** is a copy of the Consent Order dated December 7, 2020 granted in the Sudbury Action.

17. The Neighbours’ fresh as amended statement of defence (the “**Amended Defence**”) is attached at Schedule “A” to the Consent Order referenced above.

18. On or around January 27, 2021, the University served a reply to the Amended Defence (the “**Reply**”). Now shown to me and marked as **Exhibit “G”** is a copy of the Reply filed on behalf of the University in the Sudbury Action.

19. Other than discussions from time to time in an effort to resolve the Encroachments, the Claim and the Publicity Campaign, the Sudbury Action has not advanced beyond the pleadings stage.

The CCAA Proceeding

20. I am advised by Dawne Jubb, Interim General Counsel of the University, of the facts set out in paragraphs 20 to 24 of this Affidavit that are not otherwise apparent on the face of the court orders referred to herein, and do verily believe them to be true. By initial order granted February 1, 2021 (as amended and restated from time to time, the “**Initial Order**”), Ernst & Young Inc. was appointed by the Court as the monitor of the University (in such capacity, the “**Monitor**”) in a proceeding commenced by the University under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceeding**”). Within the CCAA Proceeding, His Majesty the King in right of Ontario as represented by the Minister of Colleges and Universities (“**MCU**”) was the debtor-in-possession lender to the University pursuant to a loan facility made available by MCU (the “**DIP Facility**”).

21. MCU became the University’s secured lender (the “**Exit Lender**”) under an Exit Loan Agreement dated October 21, 2022 (the “**Exit Loan Agreement**”), effective as of implementation of the Plan of Compromise and Arrangement (the “**Plan**”) which occurred on November 28, 2022, with all amounts owing pursuant to the DIP Facility being repaid in full at that time.

22. Pursuant to paragraph 20 of the Plan Sanction Order dated October 5, 2022, all Orders issued within the CCAA Proceeding, other than the Initial Order, remain in full force and effect following implementation of the Plan, and the CCAA Proceeding remains ongoing until all

distributions to creditors under the Plan have been completed. All provisions of the Initial Order, save and except as it relates to protections in favour of the Monitor, terminated upon implementation of the Plan on November 28, 2022.

23. While the Initial Order is no longer in effect, the Initial Order did not require court approval for the sale of assets out of the ordinary course of business where the amount was less than \$50,000 in any single transaction. Given the amount involved in the Settlement Agreement, as detailed below, court approval for the sale of the Subject Property was not required under the Initial Order while it was in effect.

24. The Exit Lender has consented to the transfer of the Subject Property to the Neighbours under the Settlement Agreement.

The Settlement Agreement

25. On July 11, 2022, an Offer to Settle was made by the University and accepted by the Neighbours resulting in a settlement agreement being reached (the “**Settlement Agreement**”). The Settlement Agreement is subject to the satisfaction of certain conditions in favour of the University, as described therein. A copy of the Settlement Agreement is attached at **Exhibit “H”**. The University and the Neighbours have agreed that the Settlement Agreement and the without prejudice information therein cannot be relied upon by either the University or the Neighbours in the event that the settlement does not close.

26. The Settlement Agreement provides that the University will seek the Vesting Order to transfer and vest its interest in the Subject Property in the Neighbours, on an “as-is, where-is” basis. In exchange, the Neighbours will pay to the University \$20,000 (the “**Payment**”), the

Sudbury Action will be dismissed on a with-prejudice and without-costs basis on consent of both parties, and all issues relating to the Encroachments and the Publicity Campaign will be resolved.

27. The Payment has been received by Fasken in trust for the University.

28. The Settlement Agreement is subject to certain conditions in favour of the University. The Settlement Agreement required all conditions to be satisfied or waived by November 15, 2022, except with consent of the parties. The parties have agreed to extend this date to January 30, 2023.

29. One of the conditions to the Settlement Agreement is the obtaining of the Vesting Order. The Settlement Agreement provides that the Vesting Order is to be sought from the Court overseeing the CCAA Proceeding (the “**CCAA Court**”).

30. It is also a condition that the Settlement Agreement be approved by the CCAA Court and the Monitor. I am advised by Dawne Jubb, Interim General Counsel at the University and do verily believe that the Board of Governors of the University has waived these conditions.

31. I am further advised by Dawne Jubb and do verily believe that all conditions to implementation of the Settlement Agreement have either been satisfied or waived by the University, other than the granting of the Vesting Order being sought herein, and the parties are ready to complete the Settlement Agreement.

The Vesting Order Is Appropriate

32. I am advised by Dawne Jubb, Interim General Counsel of the University, and do verily believe that the Sudbury Action, issues relating to the Encroachments and the Publicity

Campaign and matters relating to the Settlement Agreement have, and continue to, cost the University professional fees and disbursements. If the Settlement Agreement is not completed, it will also distract the University's senior management and members of the Board of Governors from the various post-emergence steps to be undertaken.

33. As described above, the Settlement Agreement will resolve all issues relating to the Encroachments and the Publicity Campaign. The granting of the Vesting Order is the final step to resolving this matter.

34. If the condition requiring the obtaining of a Vesting Order is not waived or satisfied and the Settlement Agreement is not completed, the University and the Neighbours would need to either: (i) renegotiate the terms of the Settlement Agreement as it relates to that condition, or (ii) continue to litigate the Sudbury Action. In either event, the costs relating to the Sudbury Action, the Encroachments and the Publicity Campaign will continue to be incurred, and the distractions entailed thereby will persist.

35. Additionally, should the University and the Neighbours seek to effect a transfer of the Subject Property to the Neighbours without a Vesting Order, the provisions under the *Planning Act* (Ontario) would need to be complied with because a severance of land would otherwise be required to permit a transfer of the Subject Property. The process under the *Planning Act* to sever land includes the requirement for a public process and obtaining the consent of the municipality. Undertaking such a process at this time will result in further expense and delay a resolution of the Sudbury Action and issues relating to the Encroachments.

36. I am advised by Dawne Jubb, Interim General Counsel of the University, that the Vesting Order that is sought does not affect any registered or unregistered interests in the Subject

Property in favour of any third party, other than: (i) the CCAA Instruments (defined in paragraph 45 below); and (ii) the parties who are being served with the Motion Record as described herein.

37. I am advised by Dawne Jubb, Interim General Counsel of the University, that the Subject Property to be transferred to the Neighbours is subject to a notice of agreement registered as instrument number LT264533 on January 30, 1969, which provides notice of an agreement between Her Majesty the Queen, in right of Ontario, as represented by the Minister of Lands and Forests (now His Majesty the King in Right of Ontario, as represented by the Minister of Northern Development, Mines, Natural Resources and Forests (“**MNR**”), and the University dated October 15, 1968 (the “**1968 Agreement**”). On its face, the 1968 Agreement reflects that the Crown issued letters patent granting the University Land (which includes the Subject Land) to the University. The 1968 Agreement also provides that if at any point in time all, or any portion of the University Land is no longer required by the University, the University must reconvey that portion back to the Crown forthwith, if requested to do so. The 1968 Agreement is binding on the University and its successors and assigns, and enures to the benefit of the Crown and its successors and assigns.

38. I am advised by Dawne Jubb, the University’s Interim General Counsel, that, because the Settlement Agreement will vest the University’s interest in the Subject Property in the Neighbours on an “as is, where is” basis, the 1968 Agreement with MNR is not being vested off the Subject Property.

39. I am advised by Dawne Jubb, the University’s Interim General Counsel, that the following ministries or agencies of the Province of Ontario will be served with the Motion Record:

- (a) the Ministry of Colleges and Universities;

- (b) Infrastructure Ontario, who have been involved with real estate affecting the University within the CCAA proceeding;
- (c) the MNR; and
- (d) the Ministry of the Attorney General – Crown Law Office (Civil).

40. The adjoining portion of the University Property and the Subject Property are designated as conservation lands. I am advised by Dawne Jubb that the University will also be serving Conservation Sudbury with the Motion Record.

41. I am advised by Dawne Jubb, the University's Interim General Counsel, and do verily believe that no party, other than those parties listed on the Service List herein, is entitled to notice or is required to be served with the Motion Record in order to vest the Subject Property in the Neighbours pursuant to the *Conveyancing and Law of Property Act*, the *Planning Act* or the *Land Titles Act* or other applicable legislation affecting real property in Ontario.

42. I am advised by Dawne Jubb, the University's Interim General Counsel, and do verily believe that the City of Greater Sudbury has confirmed it does not oppose this motion or the granting of the Vesting Order, and that the City Solicitor and the Director of Planning Services will each be served with this Motion Record on behalf of the City of Greater Sudbury.

43. Based on the information I describe in this affidavit and my understanding of the Sudbury Action, the Encroachments and the Publicity Campaign, I believe it is appropriate in the circumstances to grant the Vesting Order because:

- (a) the University has incurred considerable expense and devoted significant resources addressing the issues caused by the Encroachments and the Publicity Campaign since 2016;
- (b) the Vesting Order represents an efficient, cost-effective, and timely resolution to the longstanding litigation between the University and the Neighbours and will result in the cessation of the Publicity Campaign;
- (c) as of the time of swearing of this affidavit, the University is not aware of any party that opposes the transfer by the University of the Subject Property to the Neighbours, and the granting of the Vesting Order;
- (d) the Exit Lender has consented to the granting of the Vesting Order;
- (e) further costs will be incurred by the University if the *Planning Act* procedure for severing the Subject Property is required, in the event that the Vesting Order is not granted; and
- (f) any party who would potentially have an interest in the transfer of the Subject Property is being served with the Motion Record.

Registrations to be Deleted by the Vesting Order

44. I am advised by Dawne Jubb, Interim General Counsel of the University, of the facts set out in paragraphs 44 to 57 of this Affidavit that are not otherwise apparent on the face of the court orders referred to herein, and do verily believe them to be true.

45. The proposed Vesting Order directs the Land Registrar to discharge, delete and expunge from title to the Subject Property certain instruments that are listed on Schedule “C” to the Vesting Order, all of which were registered on title to the University Property in connection with the Applicant’s CCAA proceeding (the “**CCAA Instruments**”). A description of the CCAA Instruments attached as Schedule “C” to the Vesting Order is provided below.

46. All parties who are affected by the requested deletion from title of the CCAA Instruments pursuant to the Vesting Order are being served with the Motion Record.

- (i) **Instrument No. SD414794 registered February 12, 2021 being Application to Register Court Order by Firm Capital Mortgage Fund Inc.**

47. This instrument is the Initial Order in the CCAA proceeding that was registered on PIN 73593-0406, a copy of which is attached as **Exhibit “T”**.

48. This instrument was registered on title by the original DIP lender in the CCAA proceeding in respect of the court-ordered charge in the Initial Order in favour of the original DIP lender. On January 27, 2022, the Court granted an Order (the “**DIP Approval Order**”) approving a replacement DIP Facility offered by MCU in such capacity which, among other things, repaid in full and replaced the original DIP facility advanced by the original DIP lender.

49. The subsequent DIP Approval Order provided that all indebtedness, liabilities and obligations of the University to the original DIP lender were released and discharged. Paragraph 13(b) of the DIP Approval Order also provided that all encumbrances in favour of the original DIP lender in respect of the University or its real property shall be released, deleted and discharged.

50. Accordingly, this instrument registering the Initial Order is to be discharged, deleted and expunged from title to the Subject Property pursuant to the requested Vesting Order.

(ii) **Instrument No. SD442590 registered January 28, 2022 being Application to Register Court Order by the Replacement DIP Lender**

51. This instrument is the DIP Approval Order and was registered on PIN 73593-0406, a copy of which is attached as **Exhibit “J”**.

52. This instrument had been registered on title to the University Property in respect of the replacement DIP Facility provided by MCU. On November 1, 2022, the Court granted an Order approving the Exit Loan Agreement granted by MCU (the “**Exit Loan Order**”), which refinanced the DIP Facility. Attached as **Exhibit “K”** is a copy of the Exit Loan Order.

53. The Exit Loan Order provided that all indebtedness, liabilities and obligations of the University to MCU as DIP Lender were released and discharged on the Plan Implementation Date as defined by the Amended Plan of Compromise and Arrangement dated September 9, 2022 (the “**CCAA Plan**”). Paragraph 5(b) of the Exit Loan Order also provided that all encumbrances in favour of MCU as DIP Lender with respect to its DIP Facility or the University’s real property shall be released, deleted and discharged on the Plan Implementation Date.

54. The Plan Implementation Date occurred on November 28, 2022. Instrument No. SD442590 registering the DIP Approval Order is to be discharged, deleted and expunged from title to the Subject Property pursuant to the requested Vesting Order.

(iii) **Instrument No. SD466093 registered November 24, 2022 being a Charge in favour of the Exit Lender**

55. This instrument is a Debenture registered on PIN 73593-0406 in favour of MCU as Exit Lender in respect of the Exit Loan Agreement approved pursuant to the Exit Loan Order. The exit funding was fully advanced by MCU to the University on the Plan Implementation Date. Attached as **Exhibit “L”** is a copy of this instrument. This instrument registering the Debenture is to be discharged, deleted and expunged from title to the Subject Property pursuant to the requested Vesting Order.

(iv) **Instrument No. SD467679 registered December 15, 2022 being Application to Amend based on Court Order by the Exit Lender**

56. This instrument is the registration of the Exit Loan Order registered on PIN 73593-0406 to delete from title the registration of the Initial Order by the original DIP lender registered as Instrument No. SD414794. Attached as **Exhibit “M”** is a copy of this instrument.

57. As discussed above, paragraph 13(b) of the DIP Approval Order provided that all encumbrances in favour of the original DIP lender in respect of the University or its real property shall be released, deleted and discharged. Instrument No. SD414794 is one of these encumbrances. Accordingly, this instrument registering the Exit Loan Order is to be discharged, deleted and expunged from title to the Subject Property pursuant to the requested Vesting Order.

Conclusion

58. The University seeks the Vesting Order in the proposed form of order attached at Tab 3 of the University’s Motion Record.

59. This affidavit is sworn in support of the University’s motion for the Vesting Order, and for no other or improper purpose.

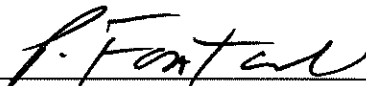
- 15 -

SWORN REMOTELY BY Pierre Fontaine
of the City of Greater Sudbury, in the
Province of Ontario, before me at the City of
Toronto, in the Province of Ontario, on
January 11th, 2023, in accordance with O.
Reg. 431.20, Administering Oath or
Declaration Remotely



DEREK HARLAND

Commissioner for Taking Affidavits, etc.
(or as may be)



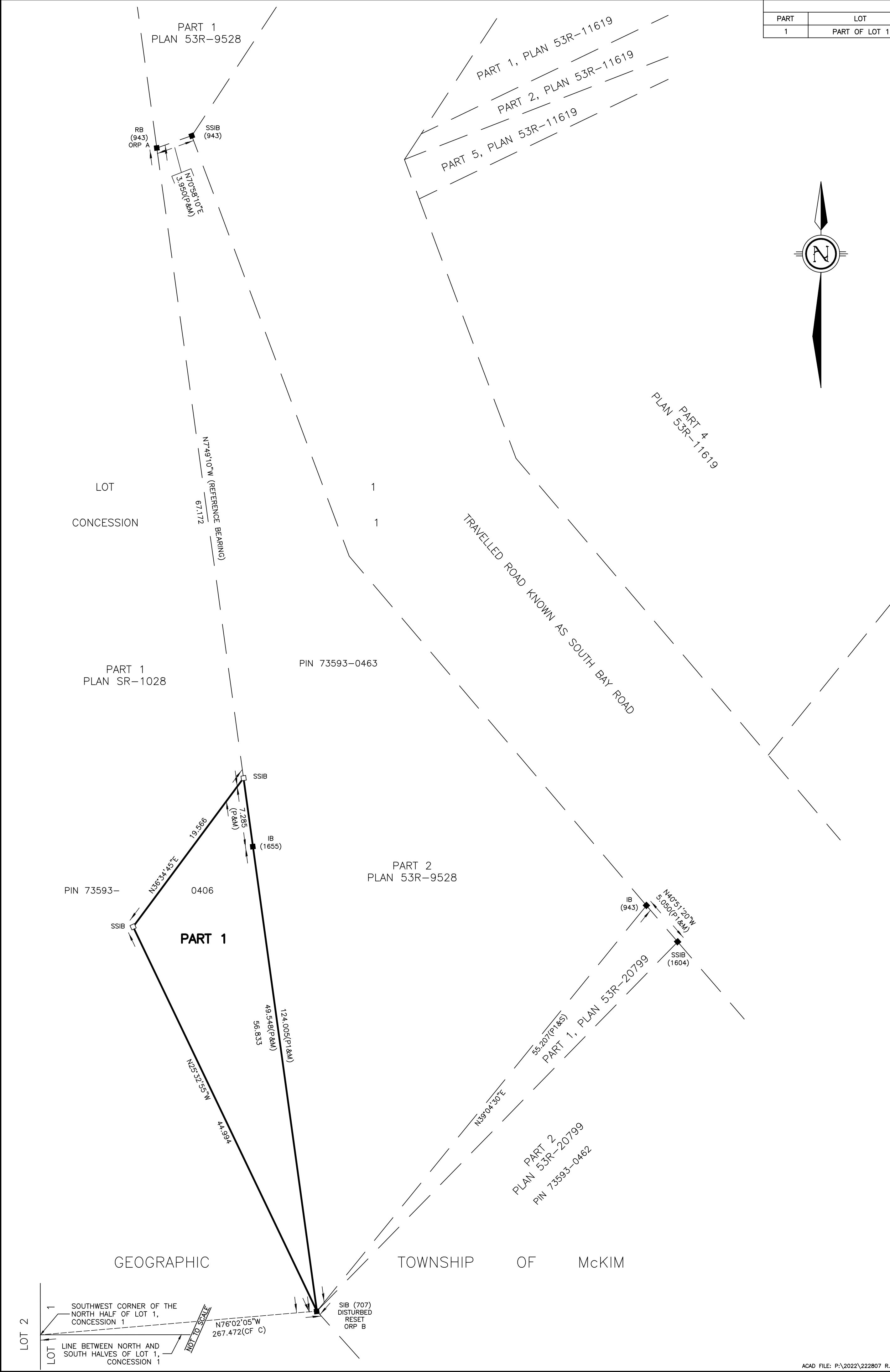
PIERRE FONTAINE

This is Exhibit “A” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND



SCHEDULE				
PART	LOT	CONCESSION	PIN	AREA
1	PART OF LOT 1	1	PART OF PIN 73593-0406	389m²

PLAN 53R-21719

Received and deposited

September 13th, 2022

John Laporte

Representative for the
Land Registrar for the
Land Titles Division of
Sudbury (No.53)

PLAN OF SURVEY OF
PART OF LOT 1, CONCESSION 1
GEOGRAPHIC TOWNSHIP OF McKIM
CITY OF GREATER SUDBURY
DISTRICT OF SUDBURY
TULLOCH GEOMATICS INC., O.L.S.
2022



SCALE 1 : 250

THE INTENDED PLOT SIZE OF THIS PLAN IS 610mm IN WIDTH BY 610mm
IN HEIGHT WHEN PLOTTED AT A SCALE OF 1:250.

BEARING NOTE:

BEARINGS ARE UTM GRID AND ARE DERIVED FROM OBSERVED REFERENCE POINTS A AND B
BY REAL TIME NETWORK (RTN) OBSERVATIONS, UTM ZONE 17, NAD83(CSRS)(2010.0), HAVING
A BEARING OF N7°49'10"W AS SHOWN HEREON.

METRIC:

DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED
TO FEET BY DIVIDING BY 0.3048.

DISTANCE NOTE:

GROUND DISTANCES SHOWN HEREON CAN BE CONVERTED TO UTM GRID BY MULTIPLYING BY
A COMBINED SCALE FACTOR OF 0.999558.

CONVERGENCE NOTE:

NO CONVERGENCE (ROTATION) FACTOR HAS BEEN APPLIED TO THE UTM GRID BEARINGS OF
UNDERLYING PLANS P & P1.

- LEGEND:**
- DENOTES FOUND MONUMENT
 - DENOTES PLANTED MONUMENT
 - DENOTES STANDARD IRON BAR 0.025 x 0.025 x 1.22
 - DENOTES SHORT STANDARD IRON BAR 0.025 x 0.025 x 0.61
 - DENOTES IRON BAR
 - DENOTES ROCK BAR
 - DENOTES R.T. LANE, O.L.S.
 - DENOTES ENDLEMAN HOLDER LAUNEN, O.L.S.
 - DENOTES TOLLUCH GEOMATICS INC., O.L.S.
 - DENOTES TERRY DEL BOSCO, O.L.S.
 - DENOTES CALCULATED FROM
 - DENOTES MEASURED
 - DENOTES SET
 - DENOTES OBSERVED REFERENCE POINT
 - DENOTES PROPERTY IDENTIFICATION NUMBER
 - DENOTES PLAN OF SURVEY BY TULLOCH GEOMATICS INC. (FILE: 165655)
 - DENOTES PLAN 53R-20799
 - DENOTES CALCULATION FROM P1 & PLAN SR-1028

INTEGRATION COORDINATE TABLE		
COORDINATES ARE DERIVED FROM GPS OBSERVATION USING REAL TIME NETWORK (RTN) AND ARE REFERRED TO UTM ZONE 17 (81' WEST LONGITUDE), NAD83 (CSRS) (2010).		
COORDINATE VALUES ARE TO URBAN ACCURACY IN ACCORDANCE WITH SECTION 14 (2) OF O.REG 216/10.		
ORP	NORTHING	EASTING
A	5144969.06	503736.05
B	5144846.25	503752.94
COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH THE CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.		

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE
SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE
REGULATIONS MADE UNDER THEM.
- THE SURVEY WAS COMPLETED ON THE 25th DAY OF AUGUST, 2022.

SEPTEMBER 12, 2022
DATE

N. J. McFadden
NICHOLAS J. MCFADZEN
ONTARIO LAND SURVEYOR

THIS PLAN OF SURVEY RELATES TO AOLS PLAN SUBMISSION FORM NUMBER 2191367.

TULLOCH GEOMATICS INC.
1942 REGENT ST. T. 705 671.2295
UNIT L F. 705 671.9477
SUDBURY, ON TF. 800 810.1937
P3E 5V5
sudbury@tulloch.ca

DRAWN BY: EM
FILE: 222807

This is Exhibit “B” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

PROPERTY DESCRIPTION: PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
2003/09/22

OWNERS' NAMES
LAURENTIAN UNIVERSITY OF SUDBURY

CAPACITY SHARE
BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/09/19 **						
LT264521	1969/01/29	CROWN PATENT	\$92		LAURENTIAN UNIVERSITY OF SUDBURY	C
REMARKS: LETTERS PATENT						
LT264533	1969/01/30	NOTICE AGREEMENT				C
SR1028	1969/06/29	PLAN REFERENCE				C
SD341084	2017/08/11	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** SEMPLE GOODER NORTHERN LIMITED		
SD343379	2017/09/18	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** EXP SERVICES INC.		
SD343781	2017/09/22	CERTIFICATE		*** COMPLETELY DELETED *** SEMPLE GOODER NORTHERN LIMITED		
REMARKS: SD341084; DELETED ON 2018/10/12 AT 14:05 BY M.SEVERY						
SD345746	2017/10/20	CERTIFICATE		*** COMPLETELY DELETED *** EXP SERVICES INC.		
REMARKS: SD343379						
SD361231	2018/08/16	APL DEL CONST LIEN		*** COMPLETELY DELETED *** EXP SERVICES INC.	FIRM CAPITAL MORTGAGE FUND INC.	
REMARKS: SD343379. AND CERTIFICATE			SD345746			
SD363274	2018/09/21	APL DEL CONST LIEN		*** COMPLETELY DELETED *** BMG. GLASS + ALUMINUM INC.		
REMARKS: SD341084. SD346403, SD344601, SD344670, SD343065, SD341084, SD348844, SD348886, SD347198, SD343904, SD343781						
SD414794	2021/02/12	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE		C
SD430066	2021/08/24	CHARGE		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SD442589	2022/01/28	APL AMEND ORDER	\$50,000,000	LAURENTIAN UNIVERSITY OF SUDBURY	FIRM CAPITAL MORTGAGE FUND INC.	C
REMARKS: TO DELETE SD430066				*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF COLLEGES AND UNIVERSITIES	
SD442590	2022/01/28	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF COLLEGES AND UNIVERSITIES	
SD460334	2022/09/12	APL DEPOSIT PLAN		*** COMPLETELY DELETED ***		
53R21719	2022/09/13	PLAN REFERENCE				
REMARKS: SD460334.						
SD466093	2022/11/24	CHARGE		LAURENTIAN UNIVERSITY OF SUDBURY	HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF COLLEGES AND UNIVERSITIES	
SD467679	2022/12/15	APL AMEND ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	LAURENTIAN UNIVERSITY OF SUDBURY	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

This is Exhibit "C" referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

LAND
REGISTRY
OFFICE #53

73593-0463 (LT)

PAGE 1 OF 1
PREPARED FOR BOBBIE
ON 2023/01/09 AT 15:42:17

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PART BROKEN LOT 1 CON 1 MCKIM PARTS 1 AND 2 ON PLAN 53R9528 EXCEPT PART 1 ON PLAN 53R15191; PART LOT 1 CON 1 MCKIM PART 1 ON PLAN 53R20799; CITY OF GREATER SUDBURY

PROPERTY REMARKS: CROWN GRANT SEE EP6375. CROWN GRANT SEE EP6115. PLANNING ACT CONSENT IN DOCUMENT SD332616.

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
CONSOLIDATION FROM 73593-0065, 73593-0461

PIN CREATION DATE:
2017/04/05

OWNERS' NAMES
CRISPO, JAMES ALEXANDER GEORGE
ANSELL, DOMINIQUE

CAPACITY SHARE
JTEN
JTEN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2017/04/05 **						
53R9528	1981/12/18	PLAN REFERENCE				C
53R10879	1986/06/25	PLAN REFERENCE				C
LT975844	2004/07/07	NOTICE		CITY OF GREATER SUDBURY	SMITH, TIM SMITH, LAURIE	C
SD171886	2010/05/12	NOTICE	\$2	CITY OF GREATER SUDBURY		C
SD308549	2016/01/04	TRANSFER	\$442,500	DAVIDSON, BENJAMIN EDGAR DAVIDSON, LINA LOUISE	ANSELL, DOMINIQUE CRISPO, JAMES ALEXANDER GEORGE	C
REMARKS: PLANNING ACT STATEMENTS.						
SD308550	2016/01/04	CHARGE	\$442,500	ANSELL, DOMINIQUE CRISPO, JAMES ALEXANDER GEORGE	NATIONAL BANK OF CANADA	C
53R20799	2017/01/31	PLAN REFERENCE				C
SD332616	2017/03/09	TRANSFER	\$14,000	DUPONT, ANDRE DUPONT, VANESSA	ANSELL, DOMINIQUE CRISPO, JAMES ALEXANDER GEORGE	C
SD332617	2017/03/09	APL CONSOLIDATE		ANSELL, DOMINIQUE CRISPO, JAMES ALEXANDER GEORGE		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

This is Exhibit “D” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

Court File No.

CY-18-00007924-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

LAURENTIAN UNIVERSITY OF SUDBURY

Plaintiff

- and -

JAMES CRISPO and DOMINIQUE ANSELL

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$3,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date OCT 24 2018

Issued by



Local Registrar

Address of
court office: Sudbury Courthouse
155 Elm St
Sudbury ON P3C 1T9

TO: **James Crispo**
2115 South Bay Road
Sudbury, ON

AND TO: **Dominique Ansell**
2115 South Bay Road
Sudbury, ON

CLAIM

1. The plaintiff claims:

- (a) a declaration that, or to the effect that, the defendants have no title to, and no right or interest in, the University Property (defined below);
- (b) a declaration that, or to the effect that, the Encroachments (defined below) are an ongoing trespass on the University Property (defined below);
- (c) a mandatory order that the defendants forthwith remove the Encroachments (defined below) and return the University Property (defined below) to a condition that is substantially equal to the condition it was in prior to the Encroachments (defined below) and directing such order to the sheriff to undertake or supervise;
- (d) further or in the alternative to paragraph 1 (c), an order that the plaintiff may cause the removal of the Encroachments (defined below) and, if reasonably necessary, that its contractors, employees and agents may enter onto the Abutting Property (defined below) for the purpose of removing the Encroachments, without such entry being a trespass;
- (e) further to paragraph 1(d), a declaration that, or to the effect that, the plaintiff and its contractors, employees and agents, are not liable for work done in good faith pursuant to an order of this court;
- (f) damages in the amount of \$75,000.00 and/or such additional amounts as may be claimed;

- (g) special damages in an amount to be disclosed not less than ten days before trial;
- (h) costs; and
- (i) such further and other relief, including declaratory, mandatory and interim relief, as counsel may advise.

The Parties and Properties

2. The plaintiff, Laurentian University of Sudbury ("**Laurentian**"), is a university incorporated by *An Act to Incorporate Laurentian University of Sudbury*, S.O., 1960 Chapter 151 as amended by 1961-62, Chapter 154 (the "**Laurentian Act**").

3. Laurentian owns certain property, legally described as follows:

PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT
1 CON 1 MCKIM LOCATION 145, PT 1 SR1028;
GREATER SUDBURY (the "**University Property**").

4. The defendants, James Crispo and Dominique Ansell (collectively, the "**Abutting Owners**"), are the registered owners of certain property legally described as follows:

PART BROKEN LOT 1 CON 1 MCKIM PARTS 1 AND
2 ON PLAN 53R9528 EXCEPT PART 1 ON PLAN
53R15191; PART LOT 1 CON 1 MCKIM PART 1 ON
PLAN 53R20799 CITY OF GREATER SUDBURY (the
"**Abutting Property**").

5. The Abutting Property was conveyed to the Abutting Owners on or about January 4, 2016.

6. The Abutting Property is immediately adjacent to the University Property.

The Encroachments

7. The Abutting Owners, or their predecessors in title, have caused certain structures to be placed on the University Property. The structures are comprised of a septic system leaching bed, a shed and an interlocking stone patio (the “**Encroachments**”).

No Interest In Land

8. The University Property has been in the land titles system since on or about January 29, 1969 and is in “Land Titles Absolute” as a first conversion from book. Pursuant to section 51(1) of the *Land Titles Act*, R.S.O. 1990, Chapter L.5 (the “*Land Titles Act*”), no title to, and no right or interest in, the University Property, that is adverse to or derogates from Laurentian’s title, may be acquired, or be deemed to have been acquired, by any length of possession or by prescription. As such, the Abutting Owners do not have a possessory or prescriptive interest in the University Property.

9. The Encroachments are on the University Property, without permission.

10. The University has demanded that the Abutting Owners remove the Encroachments from the University Property. The Abutting Owners have refused or failed to do so.

Removal

11. The Encroachments connect to structures on the Abutting Property. Without limitation, the septic system leaching bed straddles both the University Property and the Abutting

Property. As such, it may not be feasible to remove the Encroachments from the University Property, without entering upon the Abutting Property.

12. The Encroachments have the effect of enlarging the Abutting Property beyond its boundaries, by encroaching onto, and taking away use of, a portion of the University Property.

13. The Encroachments were constructed intentionally, without regard for the impact that the Encroachments have on the University Property.

14. The Abutting Owners knew or ought to have known that the Encroachments were on the University Property at the time that they purchased the Abutting Property. In the alternative, if the Abutting Owners did not know that the Encroachments were on the University Property at the time of their purchase, that lack of knowledge is a consequence of their failure to inspect the Abutting Property, and/or exercise reasonable care and diligence, prior to their purchase.

15. In the alternative to paragraph 14, the Abutting Owners caused the Encroachments to be placed on the University Property, without notice to, or permission from, Laurentian.

16. An order for the removal of the Encroachments is just and convenient.

Statutes and Rules

17. The plaintiff pleads and relies on the *Courts of Justice Act*, R.S.O. 1990, c. C.43, including sections 11, 101, 141 and 142 thereof; and the *Land Titles Act*, including section 51 thereof.

October 24, 2018

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors

333 Bay Street, Suite 2400

Bay Adelaide Centre, Box 20

Toronto, ON M5H 2T6

Jonathan F. Lancaster (LSO: 34754S)

Sarah J. Turney (LSO: 59220K)

sturney@fasken.com

Tel: 416 865 4542

Fax: 416 364 7813

Lawyers for the plaintiff

LAURENTIAN UNIVERSITY OF SUDBURY**-and- JAMES CRISPO et al.**
Plaintiff

Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE****Proceeding commenced at
Sudbury****STATEMENT OF CLAIM****FASKEN MARTINEAU DuMOULIN LLP****Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6****Jonathan F. Lancaster (LSO: 34754S)****jlancaster@fasken.com****Sarah J. Turney (LSO: 59220K)****sturney@fasken.com****Tel: 416 865 4542****Fax: 416 364 7813****Lawyers for the plaintiff**

This is Exhibit “E” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LAURENTIAN UNIVERSITY OF SUDBURY

PLAINTIFF

—AND—

JAMES CRISPO AND DOMINIQUE ANSELL

DEFENDANTS

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The Defendants, James Crispo and Dominique Ansell admit the allegations contained in paragraphs 5 and 6 of the Statement of Claim.
2. The Defendants deny or have insufficient knowledge of the allegations contained in paragraphs 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Statement of Claim, and deny that the Plaintiff is entitled to the relief sought in paragraph 1 of the Statement of Claim.
 - a. In respect of paragraph 7, the Defendants do not admit such paragraph and state that there are encroaching portions of a secondary driveway, buried plumbing and electrical wires servicing the shed, and a buried irrigation system in addition to the structures set out in paragraph 7. Further, the Defendants are unclear on the “causes” of these structures (the “Encroachments”) being placed on the lands in question.
 - b. In respect of paragraph 10, the Statement of Claim omits to mention that the Plaintiff initially invited the Defendants to make a formal offer to purchase the lands upon which the alleged Encroachments are located.
 - c. In respect of paragraph 11, the Plaintiff indicates that it may have to enter the Abutting Property. This issue is not relevant given that it is simply not feasible to remove or relocate some of the structures.

Background to the Action:

3. The Plaintiff and the Defendants are owners of abutting properties situated at 935 Ramsey Lake Road and 2115 South Bay Road, respectively, in Sudbury, Ontario.

4. The Plaintiff's property is approximately 765 acres in size, the majority of which is zoned for institutional purposes (some split-zoning). The Plaintiff's approximately 46.48-acre parcel of land that abuts the Defendants' property was acquired in or around 1968 from the Province of Ontario at a total cost of \$92.96.
5. The Defendants' property is zoned residential and is approximately 1.2 acres in size.
6. The Defendants are the fourth owners of their residential property. Their property was transferred from R. W. Belanger to Tim and Laurie Smith in April 2004. Benjamin and Lina Davidson then acquired the property from the Smiths in May 2006, and the Defendants purchased the property from the Davidsons on January 4, 2016.
7. The Davidsons' August 2015 MLS listing of the Defendants' residential property did not reference any third-party interests in the property.
8. Prior to waiving purchase conditions, the Defendants were provided a copy of a 2004 property survey and septic system permit application from their immediate predecessors in title (the Davidsons), which indicated that the home and septic system were situated within the property boundaries.
9. No survey monuments were set during the 2004 survey of the Defendants' property. The 2004 survey indicated that survey monuments set during a 1981 survey of their property were still in their original locations.
10. Prior to waiving purchase conditions, the Defendants arranged for a home inspection of the residential property, which included walking the property boundaries with an immediate predecessor in title (Mr. Davidson). At that time, Mr. Davidson advised that all structures associated with the property were within the property boundaries.
11. Upon closing in January 2016, the Defendants' immediate predecessor in title (the Davidsons) executed a Declaration confirming their belief that there were no boundary disputes and that, to the best of their knowledge, all buildings were located within the property boundaries.
12. The Defendants discovered a more than 14-year old and approximately 389 m² encroachment of their residential property onto the Plaintiff's property in July 2016.
13. The Encroachments are roughly 1.3 km ('as the bird flies') from the closest building on the Plaintiff's property, and it does not have direct road access; the Plaintiff may only access the lands through approximately 1.0 km of wooded area with no utility roads or otherwise.
14. The landscape surrounding the encroachments comprise rock dominated knolls, as well as low and sparse canopies of White Birch and Red Oak rooted in shallow soils above consolidated bedrock. Bedrock outcroppings are common and are unvegetated or covered in lichen.

15. The Eastern Whip-poor-will and Blanding's Turtle, both listed as a threatened species under both the Ontario *Endangered Species Act* and the Canadian *Species at Risk Act*, have been identified near the Defendants' property by the Ministry of Natural Resources and Forestry.
16. In October 2016, a Defendant (James Crispo) notified the Plaintiff of the Encroachments onto the Plaintiff's property and invited the Plaintiff to visit the Defendants' property to examine the nature of the discovered Encroachments. On October 26, 2016, the Plaintiff visited the Defendants' home and examined the Encroachments with a Defendant (James Crispo).
17. On November 2, 2016, the Plaintiff provided the Defendants with a letter requesting a resolution to the property Encroachments and a plan that the Plaintiff prepared on how to resolve the Encroachments. In their letter, the Plaintiff invited the Defendants to make a formal offer to the Plaintiff for the purchase of the encroaching property at a fair market value plus any additional costs. It should be noted that at no time did the Plaintiff indicate in their correspondence that their invitation for a purchase offer was without prejudice, which is why it is referenced herein.
18. On November 10, 2016, at the Plaintiff's invitation, the Defendants presented the Plaintiff with a formal offer of \$12,268.30 for the purchase of the land upon which the Encroachments are located, which the Defendants believed to be the approximate fair market value for the property.
19. On January 27, 2017, the Plaintiff advised a Defendant (James Crispo) that the Plaintiff had rejected the Defendants' purchase offer for the land upon which the Encroachments are located.
20. Between February 2017 and March 2019, the Defendants presented the Plaintiff with many alternate proposals to resolve the discovered Encroachments, including offers that would result in the Plaintiff maintaining the same quantum of land or acquiring additional land from the Defendants.
21. On February 14, 2018, the Plaintiff made their first written request for the Defendants to remove the Encroachments from the Plaintiff's property.
22. On June 20, 2018, the Defendants notified the Plaintiff of two additional residential properties, 1825 and 1863 South Bay Road, respectively, that are encroaching on the Plaintiff's property.

Pleading Defences:

23. The Defendants state and the facts are that they reasonably believed that they had title to or an interest in the land that entitled them to occupy property owned by the Plaintiff.
24. The Defendants state and the facts are that the Plaintiff demanded that the Defendants remove the Encroachments from the Plaintiff's property only after: a) providing the

- Defendants with a plan that the Plaintiff prepared on how to resolve the Encroachments and b) inviting the Defendants to make a formal offer to the Plaintiff for the purchase of the encroaching property at a fair market value plus any additional costs.
25. The Defendants plead that, at the request of the Plaintiff, they presented the Plaintiff with a written purchase offer for the encroached property that satisfied all the Plaintiff's pre-specified terms and conditions.
 26. The Defendants state and the facts are that the Plaintiff has not used this property in more than 14 years.
 27. The Defendants deny taking away use of a portion of the Plaintiff's property, and put the Plaintiff to the strictest proof thereof.
 28. If the Plaintiff has lost use of a portion of their property, which is not admitted but expressly denied, then the Plaintiff has failed to take any action over a more than 14-year period against the Defendants or their predecessors in title to mitigate such loss.
 29. The Defendants plead that all improvements made upon the Plaintiff's land were made prior to October 2005 by the Defendants' predecessors in title (the Smiths) with an honest and bona fide belief that the land upon which the improvements were made was their own.
 30. The Defendants plead that all improvements made upon the Plaintiff's land were innocently made by the Defendants' predecessors in title based on a 2004 property survey.
 31. The Defendants further plead that all improvements made upon the Plaintiff's land are lasting in nature and that the balance of convenience is decidedly in their favour regarding possession of the land occupied by the Encroachments; and that they are therefore entitled to retain the Plaintiff's land.
 32. The Defendants plead that they exercised reasonable care and diligence prior to their property purchase; relying on 2004 property survey, a septic system permit application, conversations with the vendors during a home inspection, and a Statutory Declaration from the vendors to reach their conclusion that all structures associated with their property were situated within the property boundaries.
 33. The Defendants state and the facts are that the Plaintiff has no practical, direct means of accessing the lands on which the Encroachments are located; significant development of forested areas would be required.
 34. The Defendants state and the facts are that the Plaintiff has not claimed any planned developments on the lands or to the surrounding areas. The land itself is zoned "Open Space Conservation," and there are no pending rezoning applications.

35. The Defendants plead that the Plaintiff's claims for the removal of the Encroachments and for monetary damages are excessive, exaggerated, and too remote to be recoverable in law.
36. The Defendants plead therefore that the within action against them should be dismissed with costs payable by the Plaintiff on a substantial indemnity basis.

COUNTERCLAIM

37. The Defendants in the main Action, Plaintiffs by counterclaim (hereinafter the "Plaintiffs"), claim against the Plaintiff in the main Action, the Defendant by counterclaim (hereinafter the "Defendant"):
 - a) An order requiring the Defendant to deliver the portion of their land upon which lasting improvements have been made, and sufficient to satisfy the Municipality's zoning by-law, to the Plaintiffs pursuant to section 37(1) of the *Conveyancing and Law of Property Act* as amended;
 - b) Damages in the amount of \$450,000 because it was reasonably foreseeable that the Plaintiffs would suffer stress, anxiety, humiliation, embarrassment, and financial and familial distress, which entitles them to general and punitive damages, all of which will be particularized prior to a trial of this Action;
 - c) Their costs of this Action; and
 - d) Such further and other relief as this Honourable Court may deem just.
38. The Plaintiffs repeat and rely upon the allegations contained in the Statement of Defence in the main Action and the following paragraphs.
39. The Plaintiffs state and the facts are that while structures essential to the habitability of their home do encroach upon the land of the Defendant, their predecessors in title have undertaken lasting and substantial improvements to that home, made in the genuine belief that the structures were wholly situate upon their property.

Bad Faith

40. Within seven (7) days of first examining the Encroachments with a Plaintiff (James Crispo), the Defendant invited the Plaintiffs to make a formal offer to the Defendant for the purchase of the encroaching property at a fair market value plus any additional costs. The Plaintiffs presented the Defendant with a formal offer to purchase the encroached property within two (2) weeks of receiving the Defendant's invitation, and incurred costs in the preparation of their purchase offer. The Defendant subsequently rejected the Plaintiffs' purchase offer.
41. The Defendant has a history of resolving encroachments through the conveyance of land. On July 25, 2016, the Defendant approved a conveyance of approximately 300 m² of land

at no cost to a neighbouring golf club to resolve the encroachment of a tee box on the Defendant's property. These actions are contrary to the Defendant's claims regarding their appreciation for the value and quantum of their land.

42. In 2001, the Defendant leased 26.4 acres of its prime waterfront property to the St. Joseph's Health Centre of Sudbury for a period of ninety-nine (99) years for a total rent payment of \$300,000. The Lease provides an option to renew for a further term of ninety-nine (99) years for an additional sum of \$1. This further demonstrates the Defendant's willingness to negotiate with other neighbours, but not with the Plaintiffs.
43. The Defendant's Administration has advocated for the sale of the encroached property from the Defendant to the Plaintiffs on numerous occasions, including at meetings of the Defendant's Property Development and Planning Committee. The Defendant has rejected the recommendations of its Administration in this matter.
44. The Defendant has been made aware of other residential encroachments on its property, including encroachments that are significantly larger than that of the Plaintiffs; however, has not requested the removal of these encroachments, nor initiated any action against other encroaching Parties.
45. The Defendant is deliberately causing the Plaintiffs grief by conveying land at no cost to some neighbours, leasing land to other neighbours, and not addressing other residential encroachments, while reneging on its initial proposal to the Plaintiffs and the plan that the Defendant prepared on how to resolve the Encroachments.
46. Actions by the Defendant in this matter have caused the Plaintiffs to experience distress, anxiety, and other ill health effects requiring the intervention of professionals that has resulted in considerable loss of income.
47. On multiple occasions, the Defendant denied the Plaintiffs the opportunity to make deputations to its Board of Governors and its Property Development and Planning Committee. The Plaintiffs were only permitted to make a deputation to the Defendant's Board of Governors after the Ontario Ombudsman requested that the Plaintiffs be permitted to do so. The Defendant provided the Plaintiffs with less than three days' notice of their opportunity to make a deputation to its Board of Governors and restricted their deputation to no more than five minutes.
48. On May 23 and May 31, 2018, the Plaintiffs made written requests to the Defendant to make a deputation about 'encroachments affecting Laurentian University' at the June 6, 2018 public meeting of the Defendant's Property Development and Planning Committee. On June 4, 2018, the Plaintiffs were advised by the Defendant that the June 6, 2018 public meeting of the Defendant's Property Development and Planning Committee had been cancelled.
49. On June 5 and July 17, 2018, the Plaintiffs made written requests to the Defendant to inquire about the date, time, and location of the next meeting of the Defendant's Property Development and Planning Committee, and whether the Plaintiffs requested deputation

may be added to the next meeting agenda. The Defendant failed to reply to the Plaintiffs' requests.

50. The Defendant expressed to the Plaintiffs in writing that meetings of its Board of Governors and Property Development and Planning Committee are open, transparent, and public. Since October 2016, the Defendant has not publicly advertised the dates, times, and locations of meetings of its Board of Governors and Property Development and Planning Committee, nor included same information on the Defendant's website.
51. Since October 2016, meeting minutes resulting from open, transparent, and public meetings of the Defendant's Board of Governors and Standing Committees have not been made available on the Defendant's website.
52. On October 24, 2018, the Defendant filed their Statement of Claim in the main Action with the Ontario Superior Court of Justice. On February 19, 2019, the Defendant attended mediation at the invitation of the Plaintiffs, but did not disclose the pending claim until after mediation. The Plaintiffs incurred costs from the mediation.

Laws Pled:

53. The Defendants plead and rely upon the:
 - a. *Conveyancing and Law of Property Act*;
 - b. *Trespass to Property Act*;
 - c. *Land Titles Act*;
 - d. *Courts of Justice Act, including the Rules of Civil Procedure*; and
 - e. Such other statute(s) as may be applicable and which this Honourable Court will permit to be relied upon.

DATED: May 3, 2019

WISHART LAW FIRM LLP
BARRISTERS AND SOLICITORS
390 BAY STREET, 5TH FLOOR
SAULT STE. MARIE, ON P6A 1X2

STEVEN SHOEMAKER
LSUC# 59209J
Email: sshoemaker@wishartlaw.com

TELEPHONE: (705) 949-6700
FAX: (705) 949-2465

LAWYERS FOR THE DEFENDANTS

**AND
TO**

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BARRISTERS AND SOLICITORS
333 BAY STREET, SUITE 2400
BAY ADELAIDE CENTRE, BOX 20
TORONTO ON M5H 2T6

JOHATHAN F. LANCASTER
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LSUC# 59220K
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LAWYERS FOR THE PLAINTIFF

LAURENTIAN UNIVERSITY OF SUDBURY

V. JAMES CRISPO AND DOMINIQUE ANSELL

PLAINTIFF

DEFENDANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced in Sudbury

STATEMENT OF DEFENCE
AND COUNTERCLAIM

WISHART LAW FIRM LLP

Barristers and Solicitors

390 Bay Street, 5th Floor

SAULT STE MARIE ON P6A 1X2

Telephone: (705) 949-6700

Fax: (705) 949-2465

Email: sshoemaker@wishartlaw.com**STEVEN G. SHOEMAKER**

LSUC# 59209J

LAWYERS FOR THE DEFENDANTS

This is Exhibit “F” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND



Court File No. CV-18-00007924-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

MONDAY THE 7th

JUSTICE CORNELL

)

)

DAY OF DECEMBER 2020

B E T W E E N:

LAURENTIAN UNIVERSITY OF SUDBURY

Plaintiff

- and -

JAMES CRISPO and DOMINIQUE ANSELL

Defendants

ORDER

THIS MOTION, made by the plaintiff, was heard this day by telephone conference.

ON READING the motion record and the consent filed,

1. THIS COURT ORDERS that the counterclaim of the defendants is hereby discontinued and that the defendants are hereby granted leave to amend their statement of defence in accordance with the draft fresh as amended statement of defence attached as Schedule "A" (the "**Amended Defence**"), provided that this Order does not release and is without prejudice to the plaintiff's rights and remedies in respect of all matters pleaded in the Amended Defence. Without limiting the foregoing, this Order does not limit or otherwise affect the plaintiff's ability to plead and rely on the allegations that the defendants' pleading of relief under section 37(1) of the

Conveyancing and Law of Property Act, R.S.O. 1990, c C.34 is an improper defence and that such relief is statute-barred.

2. THIS COURT ORDERS that the costs of this motion shall be fixed in the amount of \$5,000, payable to the plaintiff in any event of the cause.

3. THIS COURT ORDERS that this Order is enforceable as at the date hereof without the need for entry and filing.



ENTERED AT SUDBURY

on Monday, December 14th, 2020

Court No. 7712

by:

SCHEDULE “A”**COURT FILE NUMBER CV-18-00007924-0000****ONTARIO
SUPERIOR COURT OF JUSTICE****BETWEEN:****LAURENTIAN UNIVERSITY OF SUDBURY****PLAINTIFF****—AND—****JAMES CRISPO AND DOMINIQUE ANSELL****DEFENDANTS****FRESH AS AMENDED STATEMENT OF DEFENCE**

1. The Defendants, James Crispo and Dominique Ansell admit the allegations contained in paragraphs 5 and 6 of the Statement of Claim.
2. The Defendants deny or have insufficient knowledge of the allegations contained in paragraphs 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Statement of Claim, and deny that the Plaintiff is entitled to the relief sought in paragraph 1 of the Statement of Claim.
 - a. In respect of paragraph 7, the Defendants do not admit such paragraph and state that there are encroaching portions of a secondary driveway, buried plumbing and electrical wires servicing the shed, and a buried irrigation system in addition to the structures set out in paragraph 7. Further, the Defendants are unclear on the “causes” of these structures (the “Encroachments”) being placed on the lands in question.
 - b. In respect of paragraph 11, the Plaintiff indicates that it may have to enter the Abutting Property. This issue is not relevant given that it is simply not feasible to remove or relocate some of the structures.

Background to the Action:

3. The Plaintiff and the Defendants are owners of abutting properties situated at 935 Ramsey Lake Road and 2115 South Bay Road, respectively, in Sudbury, Ontario.
4. The Plaintiff’s property is approximately 765 acres in size, the majority of which is zoned for institutional purposes (some split-zoning).
5. The Defendants’ property is zoned residential and is approximately 1.2 acres in size.
6. The Defendants are the fourth owners of their residential property. Their property was transferred from R. W. Belanger to Tim and Laurie Smith in April 2004. Benjamin and Lina Davidson then acquired the property from the Smiths in May 2006, and the Defendants purchased the property from the Davidsons on January 4, 2016.

7. The Davidsons' August 2015 MLS listing of the Defendants' residential property did not reference any third-party interests in the property.
8. Prior to waiving purchase conditions, the Defendants were provided a copy of a 2004 property survey and septic system permit application from their immediate predecessors in title (the Davidsons), which indicated that the home and septic system were situated within the property boundaries.
9. No survey monuments were set during the 2004 survey of the Defendants' property. The 2004 survey indicated that survey monuments set during a 1981 survey of their property were still in their original locations.
10. Prior to waiving purchase conditions, the Defendants arranged for a home inspection of the residential property, which included walking the property boundaries with an immediate predecessor in title (Mr. Davidson). At that time, Mr. Davidson advised that all structures associated with the property were within the property boundaries.
11. Upon closing in January 2016, the Defendants' immediate predecessor in title (the Davidsons) executed a Declaration confirming their belief that there were no boundary disputes and that, to the best of their knowledge, all buildings were located within the property boundaries.
12. The Defendants discovered a more than 14-year old and approximately 389 m² encroachment of their residential property onto the Plaintiff's property in July 2016.
13. The Encroachments are roughly 1.3 km ('as the bird flies') from the closest building on the Plaintiff's property, and it does not have direct road access; the Plaintiff may only access the lands through approximately 1.0 km of wooded area with no utility roads or otherwise.
14. On October 17, 2016, a Defendant (James Crispo) notified the Plaintiff of the Encroachments onto the Plaintiff's property and invited the Plaintiff to visit the Defendants' property to examine the nature of the discovered Encroachments. On October 26, 2016, the Plaintiff visited the Defendants' home and examined the Encroachments with a Defendant (James Crispo).
15. On February 14, 2018, the Plaintiff made their first written request for the Defendants to remove the Encroachments from the Plaintiff's property.
16. On June 20, 2018, the Defendants notified the Plaintiff of two additional residential properties, 1825 and 1863 South Bay Road, respectively, that are encroaching on the Plaintiff's property.

Pleading Defences:

17. The Defendants state and the facts are that they reasonably believed that they had title to or an interest in the land that entitled them to occupy property owned by the Plaintiff.
18. The Defendants state and the facts are that the Plaintiff has not used this property in more than 14 years.
19. The Defendants deny taking away use of a portion of the Plaintiff's property, and put the

Plaintiff to the strictest proof thereof.

20. If the Plaintiff has lost use of a portion of their property, which is not admitted but expressly denied, then the Plaintiff has failed to take any action over a more than 14-year period against the Defendants or their predecessors in title to mitigate such loss.
21. The Defendants plead that all improvements made upon the Plaintiff's land were made prior to October 2005 by the Defendants' predecessors in title (the Smiths) with an honest and bona fide belief that the land upon which the improvements were made was their own.
22. The Defendants plead that all improvements made upon the Plaintiff's land were innocently made by the Defendants' predecessors in title based on a 2004 property survey.
23. The Defendants further plead that all improvements made upon the Plaintiff's land are lasting in nature and that the balance of convenience is decidedly in their favour regarding possession of the land occupied by the Encroachments; and that they are therefore entitled to retain the Plaintiff's land.
24. The Defendants plead that they exercised reasonable care and diligence prior to their property purchase; relying on 2004 property survey, a septic system permit application, conversations with the vendors during a home inspection, and a Statutory Declaration from the vendors to reach their conclusion that all structures associated with their property were situated within the property boundaries.
25. The Defendants state and the facts are that the Plaintiff has no practical, direct means of accessing the lands on which the Encroachments are located; significant development of forested areas would be required.
26. The Defendants state and the facts are that the Plaintiff has not claimed any planned developments on the lands or to the surrounding areas. The land itself is zoned "Open Space Conservation," and there are no pending rezoning applications.
27. The Defendants plead that the Plaintiff's claims for the removal of the Encroachments and for monetary damages are excessive, exaggerated, and too remote to be recoverable in law.
28. The Plaintiff filed their Statement of Claim more than two years after being notified by the Defendants of the approximately 389 m² encroachment of their residential property onto the Plaintiff's property. The Defendants plead therefore that the within action against them is in violation of the Limitations Act and should be dismissed with costs payable by the Plaintiff on a substantial indemnity basis.
29. The Defendants rely upon Section 37(1) of the *Conveyancing and Law of Property Act* as amended;

Laws Pleded:

30. The Defendants plead and rely upon the:
 - a. *Conveyancing and Law of Property Act*;

- b. Trespass to Property Act;*
- c. Land Titles Act;*
- d. Courts of Justice Act, including the Rules of Civil Procedure; and*
- e. Such other statute(s) as may be applicable and which this Honourable Court will permit to be relied upon.

LAURENTIAN UNIVERSITY OF SUDBURY

-and- JAMES CRISPO et al.
Plaintiff

Defendants

Court File No. CV-18-00007924-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at
Sudbury**

ORDER

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Fax: 416 364 7813

Lawyers for the plaintiff

This is Exhibit “G” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LAURENTIAN UNIVERSITY OF SUDBURY

Plaintiff

- and -

JAMES CRISPO and DOMINIQUE ANSELL

Defendants

REPLY

1. The plaintiff, Laurentian University of Sudbury (“**Laurentian**”), admits the allegations contained in paragraphs 3 and 15 of the statement of defence (the “**defence**”). In respect of paragraph 12 of the defence, Laurentian admits that in July 2016 the defendants discovered that certain improvements owned by them are encroaching onto the University Property, but the size of the encroachment, as pleaded in paragraph 12 of the defence, is denied.

2. Laurentian has insufficient knowledge to plead in respect of the allegations contained in paragraphs 4 – 11 of the defence and the first part of paragraph 13 of the defence (ending at the comma).

3. Except as expressly admitted herein, Laurentian denies all other allegations contained in the defence.

4. Laurentian repeats and relies on the allegations contained in the statement of claim and incorporates herein the defined terms from the statement of claim.

Discovery of the Encroachments and Limitation Period

5. In reply to the allegations contained in paragraphs 14 and 15 of the defence, Laurentian admits that a Laurentian employee viewed the Encroachments with James Crispo on October 26, 2016, but denies that James Crispo notified Laurentian of the Encroachments on October 17, 2016.

6. With respect to paragraphs 27 and 28 of the defence, Laurentian pleads that the presence of the Encroachments on the University Property is a continuing trespass and, in any event, the relief sought by Laurentian is not barred (or governed) by the two year limitation period set out in the *Limitations Act, 2002*.

Irrelevant Pleadings

7. Paragraphs 4 and 5, the first part of paragraph 13 of the defence (ending at the comma) and paragraph 16 are irrelevant to the within action. As such, Laurentian has not investigated the veracity of the allegations contained in those paragraphs.

The University Property and use by Laurentian

8. Laurentian denies the allegations in the second half of paragraph 13 (following the comma), paragraphs 18 – 20 and 25 of the defence, which allege that Laurentian neither uses nor has suitable access to the lands affected by the Encroachments. Laurentian pleads that it is using the lands that surround the Encroachments for the use they are zoned for (*i.e.* open space and natural green space) and that road access is irrelevant to such use. Laurentian further pleads that open space and natural green space are maintained by Laurentian for the benefit of its students. At present, Laurentian wishes to use the portion of the University Property that is

impacted by the Encroachments for open space and natural green space, but has been prevented from doing so, by the defendants.

9. With respect to paragraph 26 of the defence, Laurentian admits that the lands upon which the Encroachments are located are zoned Open Space Conservation and Laurentian has not sought a rezoning of the lands.

Conveyancing and Law of Property Act

10. Laurentian pleads that the pleading at paragraph 29 of the defence is not the proper subject matter of a defence.

11. Further, or in the alternative to paragraph 10 of this reply, any relief sought by the Abutting Owners under section 37(1) of the *Conveyancing and Law of Property Act*, RSO 1990, c C.34 (the “**CLPA**”) is statute-barred.

12. In the alternative to paragraphs 10 and 11 of this reply, if the Abutting Owners are entitled to seek relief under section 37(1) of the CLPA (which is denied), such relief should not be granted, including because:

- (a) the Abutting Owners’ conduct disentitles them from relief under section 37(1) of the CLPA;
- (b) without limiting (a), the equities favour Laurentian;
- (c) contrary to the allegations contained in paragraphs 2(b) and 23 of the defence (which are denied), the Encroachments are not lasting in nature and can be removed; and

- (d) the defendants are unable to prove that the Encroachments were installed under a genuine, *bona fide* belief that the land being encroached upon formed part of the Abutting Property and, in any event, such belief (if it existed) was unreasonable in the circumstances.

13. In the further alternative to paragraphs 10, 11 and 12 of this reply, in the event that the defendants are entitled to relief under section 37(1) of the CLPA (which is denied), Laurentian pleads that it is entitled to be fully compensated for any interest in the University Property that is granted to the defendants and is entitled to its costs of this proceeding.

Statutes

14. Laurentian pleads and relies on the *Limitations Act, 2002*, SO 2002, c. 24, Sch B and *The Laurentian University of Sudbury Act, 1960*, SO 1960, c. 151, including section 7 thereof.

January 27, 2021

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LAURENTIAN UNIVERSITY OF SUDBURY
Plaintiff

-and-

JAMES CRISPO et al.
Defendants

Court File No. CV-18-00007924-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at
Sudbury**

REPLY

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Lawyers for the plaintiff

This is Exhibit “H” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

Court File No. CV-18-00007924-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LAURENTIAN UNIVERSITY OF SUDBURY

Plaintiff

- and -

JAMES CRISPO and DOMINIQUE ANSELL

Defendants

OFFER TO SETTLE

JULY 11, 2022

The plaintiff (hereafter the “**Plaintiff**” or the “**University**”) offers to settle this proceeding on the following terms:

1. The Plaintiff and the Defendants shall consent to an order vesting the Property (defined below) in the Defendants (the “**Vesting Order**”). The form of Vesting Order shall be prepared by counsel for the Plaintiff and shall be approved by the Plaintiff and Defendants acting reasonably. The Vesting Order shall be sought by Plaintiff’s counsel from the Court overseeing the Plaintiff’s proceeding under the *Companies Creditors’ Arrangement Act* (Canada) (the “**CCAA**” and such Court the “**CCAA Court**”). Aside from consenting to the Vesting Order, the Defendants will not participate in any hearing related to the motion in which the Vesting Order is sought and shall irrevocably direct their lawyer to attend the motion for the sole purpose of confirming the

Defendants' support for the Vesting Order. No statements will be made at any time, whether by the Defendants directly or through counsel, before the CCAA Court or otherwise with respect to this litigation proceeding, other than that the matter has settled on terms acceptable to both parties.

2. Forthwith upon accepting this offer to settle, the Defendants will retain at their sole expense a qualified surveyor to prepare a draft reference plan that depicts an area of approximately 389 square meters in accordance with the sketch attached to this offer as Schedule "A" (the "**Property**"). The Defendants shall provide a draft of the reference plan to the Plaintiff for its comment and approval, which approval will be provided in writing by the Plaintiff in its sole discretion acting reasonably. In the event that the Plaintiff provides comments that the Defendants are unwilling to accept and a solution cannot be negotiated between the parties, acting reasonably, then this offer to settle shall be null and void. Forthwith upon receiving written approval to the draft reference plan from the Plaintiff, the Defendants shall cause the surveyor to deposit the reference plan on title.
3. The Defendants shall pay the Plaintiff the sum of \$20,000 (the "**Payment**") within 10 business days of the acceptance of this offer. The Payment will be held by the Plaintiff's counsel in escrow pending the issuance of the Vesting Order. In addition to the Payment, the Defendants shall be responsible for all registration and other fees and expenses related to the preparation and registration of the reference plan and the Vesting Order (except for the Plaintiff's legal fees), including land transfer tax.

4. Upon acceptance of this offer, the Defendants shall forever refrain from making any disparaging, critical, and/or other negative comments or complaints, orally or in writing (including, without limitation, any statements on any social media platform or other media), to any third parties at any time, regarding the Plaintiff (or any and all of its current and former Board of Governors, officers and directors, management, employees, counsel and advisors, students and other persons affiliated with the Plaintiff (collectively, the “**Personnel**”)) where such comments relate in any way to the Property, the matters raised in this litigation, the Plaintiff’s ongoing proceeding pursuant to the CCAA, or any other events or circumstances existing as of the date of this offer. The Defendants shall not take any action or make any comments whatsoever, whether orally or in writing (including, without limitation, any statements on any social media platform or other media), that could reasonably be expected to adversely affect the Plaintiff or its Personnel and/or its reputation, where such comments relate in any way to the Property, the matters raised in this litigation, the Plaintiff’s ongoing proceeding pursuant to the CCAA, or any other events or circumstances existing as of the date of this offer. For clarity, the restrictions in the preceding sentence include, but are not limited to, prohibiting the Defendants from initiating any complaints with the Law Society of Ontario regarding the Plaintiff or its Personnel. Where the Defendants have, prior to the date of this offer, made public or published any statements of the type prohibited by this paragraph, in any medium (whether on social media, public signs, or otherwise), the Defendants shall remove or delete such statements within 5 business days of the granting of the Vesting Order. For clarity, the preceding sentence includes, but is not limited to, the removal of any and all advertisements that have been placed

on public benches and the sale or distribution of mugs with the image and/or name of Dr. Hache (or any other Personnel) on them (the “**Mugs**”). The parties agree that if Mugs were ordered and paid for by third parties (arms length of the Defendants) prior to the acceptance of this offer, then the Defendants may fulfil those existing orders, however, the Defendants must immediately stop offering Mugs for sale, advertising the Mugs and taking any other new or related actions to disparage the University and/or its Personnel immediately upon acceptance of this offer.

5. During the Conditional Period of this offer, the Defendants will not publish or post any new information, opinions or other content on the website www.laurentian.org. Within 5 business days of the granting of the Vesting Order, the Defendants shall deactivate www.laurentian.org, such that it is not longer visible to the public, and initiate the permanent transfer of ownership of the domain name www.laurentian.org, including all rights related thereto, to the Plaintiff, at no cost to the Plaintiff. The Defendants shall diligently carry out all steps required for the transfer of ownership so that the transfer is completed as soon as is reasonably practicable following the issuance of the Vesting Order.
6. The Defendants shall withdraw, abandon and/or discontinue all pending requests made pursuant to the *Freedom of Information and Protection of Privacy Act* or any similar legislation that are directed, or related, to the Plaintiff. For the avoidance of doubt, this includes any and all matters or appeals that are currently pending before the Information and Privacy Commissioner of Ontario. The Defendants agree not to make any further requests pursuant to the *Freedom of Information and Protection of Privacy*

Act or any similar legislation that are related to the Property, the matters raised in this litigation, or the Plaintiff's ongoing proceeding pursuant to the CCAA.

7. The parties shall execute and exchange full and final mutual releases in a form to be agreed by counsel for each party, acting reasonably, whereby: (i) the Defendants fully and finally release, remise and forever discharge the Plaintiff from all claims that the Defendants have had, now have, or may in the future have, relating to the Property and/or the Encroachments; and (ii) the parties release each other from all matters raised in the within action, except claims, suits, actions and damages relating to the remaining property owned by the Plaintiff (i.e. the lands and property owned by the Plaintiff from and after the Property is vested in the Defendants) (collectively, the “**Release**”). For greater certainty and without limiting the foregoing, the Release shall not include a release of the Defendants' liability for their septic system and contamination, if any, leaching from that septic system or any other Encroachment belonging to the Defendants. Without limiting any of the foregoing, the Defendants irrevocably acknowledge and agree that they accept the Property on a strictly “as-is, where-is” basis.
8. The parties shall consent to an order dismissing the within action on a without costs basis. The order shall be entered following: i) receipt of the Payment by the Plaintiff; ii) issuance of the Vesting Order; and iii) completion of all steps described in paragraphs 5, 6, and 7.
9. Except to the extent required by law, or as necessary to seek approval of any settlement

from the CCAA Court, or with the prior written consent of both parties, the parties hereto shall keep the terms of this offer to settle, the negotiations surrounding them, and the terms of any settlement, if accepted, strictly confidential. This provision does not restrict a party's ability to disclose information to lawyers, accountants, and/or auditors, provided that each agrees to keep the information confidential. This provision does not restrict the Plaintiff's ability to report to its Board of Governors or to share this offer with stakeholders of the University, including (without limitation) union representatives, lenders and insurers of the University, provided those stakeholders agree to maintain the confidentiality of this offer to settle. This provision does not restrict either party's ability to respond to inquiries from the Ministry of Finance regarding the land transfer tax that may be payable in respect of the transaction contemplated by the Vesting Order. For greater certainty, except for the foregoing permitted disclosures, the parties and their counsel shall not communicate or cause to be communicated any information that could directly or indirectly reveal any aspect of this offer to settle, any negotiations surrounding this offer, and any settlement, if accepted.

10. This offer to settle shall be conditional upon the following:
 - a. a resolution by the Board of Governors of the University approving this offer;
 - b. approval of this offer by the Province of Ontario in its capacity as lender to the University;
 - c. approval of the offer by the CCAA Court appointed Monitor;

- d. approval of the settlement described in this offer by the CCAA Court; and
- e. the issuance of the Vesting Order

(collectively, the “**Conditions**”). The Conditions are for the benefit of the University, and may be waived by the University in its sole discretion.

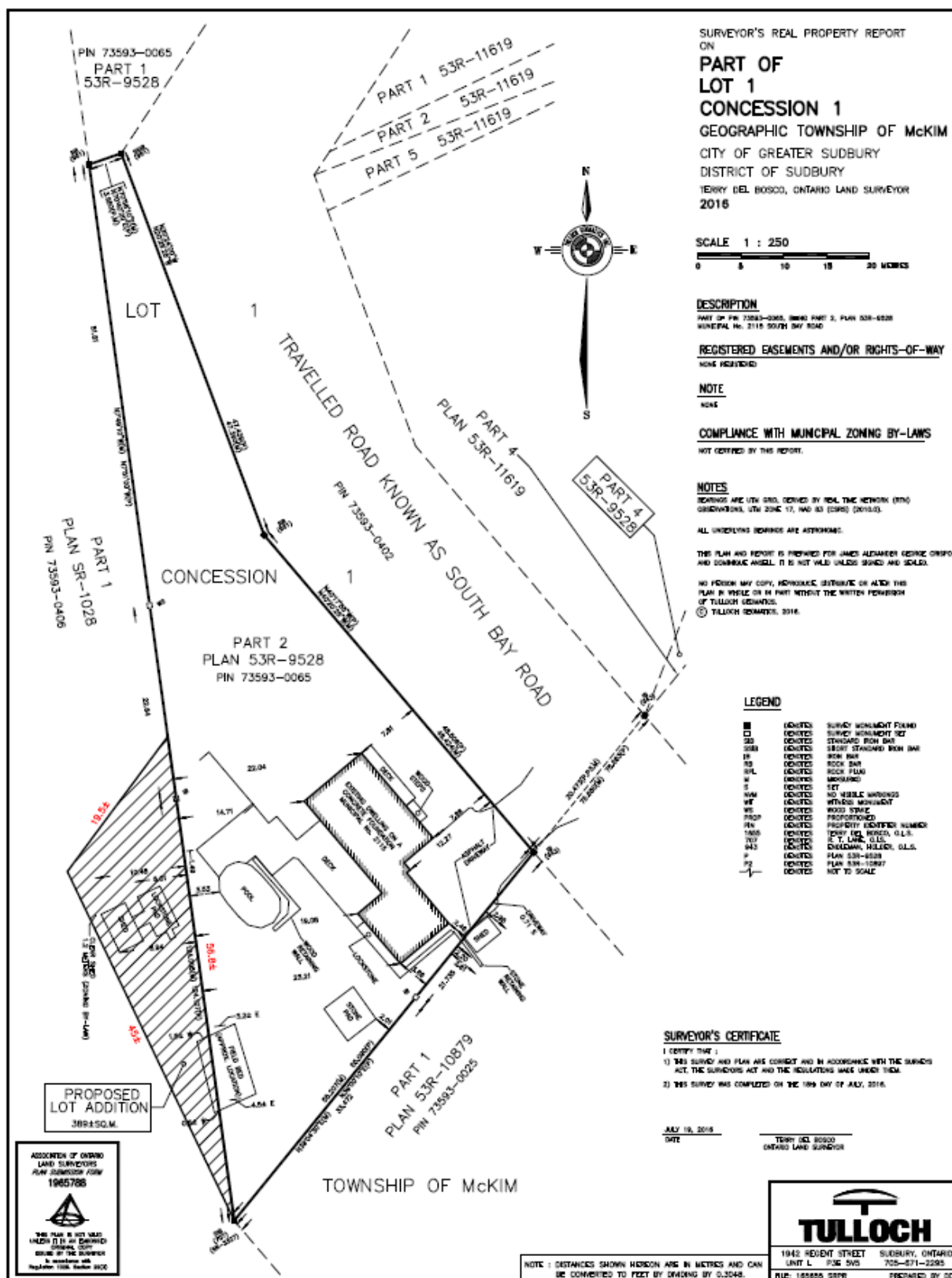
11. The University will make commercially reasonable efforts to fulfil the Conditions. In the event that the Conditions, or any of them, are not fulfilled or if the University determines, in its sole and absolute discretion, that the Conditions, or any of them, cannot be fulfilled, this offer to settle shall be null and void. The Conditions set out in paragraph 10 (a), (b) and (c) (the “**Approval Conditions**”) shall be conclusively deemed to have been fulfilled upon written notice from the University or its lawyers that the Approval Conditions have been fulfilled. The parties agree that for the purpose of this offer, the period of time between acceptance of this offer and the fulfilment of all Conditions is the “**Conditional Period**”. The parties agree that the University shall have until November 15, 2022 to fulfil the Conditions. If the Conditions are not fulfilled by that time and the offer remains extant (ie the University has not advised that the Conditions, or any of them, cannot be fulfilled) then the University can still attempt to fulfil the Conditions but the parties agree that at any time after November 15, 2022, the Defendants may advise the University in writing that they withdraw their acceptance of the offer, at which time this offer shall become null and void.
12. The Plaintiff shall not commence any legal proceeding against the Defendants, LAURENTIAN.ORG Inc., or any corporation jointly owned by the Defendants where the cause of action is in respect of any disparaging, critical, and/or other negative

- 8 -

comments or complaints, orally or in writing (including, without limitation, any statements on any social media platform or other media), to any third parties made prior to the acceptance of this offer, regarding the Plaintiff or its Personnel and/or its reputation.

13. This offer to settle automatically expires at 5 pm on July 18, 2022, if not accepted prior to that time.

SCHEDULE "A"



This is Exhibit "I" referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

Properties

PIN	73584 - 0678	LT	Interest/Estate	Fee Simple
Description	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY			
Address	SUDBURY			
PIN	73584 - 0804	LT	Interest/Estate	Fee Simple
Description	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY			
Address	SUDBURY			
PIN	73585 - 1167	LT	Interest/Estate	Fee Simple
Description	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0084	LT	Interest/Estate	Fee Simple
Description	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0412	LT	Interest/Estate	Fee Simple
Description	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920: 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793			
Address	SUDBURY			
PIN	73592 - 0426	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0427	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195 AS IN SD246792			
Address	SUDBURY			
PIN	73593 - 0063	LT	Interest/Estate	Fee Simple
Description	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0406	LT	Interest/Estate	Fee Simple
Description	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0446	LT	Interest/Estate	Fee Simple
Description	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0465	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 8 53R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY			
Address	SUDBURY			

Party From(s)

Name

ONTARIO SUPERIOR COURT OF JUSTICE

Address for Service

393 University Avenue

Toronto, Ontario M6G 1E6

Applicant(s)	Capacity	Share
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Name

FIRM CAPITAL MORTGAGE FUND INC.

Address for Service

163 Cartwright Avenue

Toronto, Ontario M6A 1V4

Statements

The applicant applies to register the following order See Schedules. The order is still in full force and effect

Signed By

Hong Fan Qian

77 King Street West Suite 3000 PO
Box 95 TD Centre
Toronto
M5K 1G8

acting for
Applicant(s)

Signed

2021 02 12

Tel

416-864-9700

Fax

416-941-8852

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

FOGLER, RUBINOFF LLP

77 King Street West Suite 3000 PO
Box 95 TD Centre
Toronto
M5K 1G8

2021 02 12

Tel

416-864-9700

Fax

416-941-8852

Fees/Taxes/Payment

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

File Number

Party From Client File Number : 210476 (JF/MSY)



Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

THURSDAY, THE 11TH

JUSTICE MORAWETZ

)

DAY OF FEBRUARY, 2021

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the Initial Order (the "**Initial Order**") issued on February 1, 2021 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**"), the Pre-filing Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021, the First Report of the Monitor dated February 7, 2021 (the "**First Report**") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Angela Maharaj sworn February 9, 2021, the Affidavit of Service of Derek Harland sworn February 4, 2021, and on reading the consent of Ernst & Young Inc. to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

NON-APPLICANT STAY PARTY

THIS COURT ORDERS that the Laurentian University Students General Association (the “SGA”) shall be referred to herein as a “**Non-Applicant Stay Party**”. Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel

and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Initial Affidavit, which for greater certainty includes any segregated bank accounts now existing (together with any segregated bank accounts established pursuant to paragraph 7, the “**Cash Management System**”), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the Initial Filing Date.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant’s Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the “**Segregated Funds**”) shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant’s Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, in all cases subject to the availability of financing under the DIP Term Sheet (as defined below):

- (a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Initial Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;
- (b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;
- (c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and
- (d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order,

provided that, to the extent such expenses were incurred prior to the date Initial Filing Date, the Applicant shall only be entitled to pay such amounts if they are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Initial Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

PENSION PLAN

13. **THIS COURT ORDERS** that the Applicant's obligation to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Pension Plan, as such term is defined in the Haché Initial Affidavit, and whether in respect of the Applicant's own employees and former employees or in respect of the employees and former employees of the other employers participating in the

Pension Plan as set out in the Haché Initial Affidavit) in respect of the defined benefit component of the Pension Plan (such payments being the “**Special Payments**”), shall be suspended effective on and after February 1, 2021 for the duration of this CCAA proceeding, subject to further Order of this Court. For greater certainty, the suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Applicant of any component of the Pension Plan, nor does it constitute an acknowledgment of any obligation by the Applicant to make Special Payments relating to employers other than the Applicant.

14. **THIS COURT ORDERS** that for the duration of this proceeding, no Person (as hereinafter defined), including employees and former employees of the Applicant (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Pension Plan (whether or not such member was represented by a union when the member was employed by the Applicant) or the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Applicant has not made the Special Payments.

15. **THIS COURT ORDERS** that the Applicant and each of its respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

16. **THIS COURT ORDERS** that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien charge or trust, including deemed trust, shall have priority over the Charges (as hereinafter defined) in this proceeding, or in any subsequent receivership, interim receivership or bankruptcy of the Applicant.

RESTRUCTURING

17. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate. Notwithstanding the foregoing, the Applicant shall not cease, downsize or shut down any parts of its Business if such action would cause any current students of the Applicant to be unable to continue and complete courses that they are already enrolled in, subject to further Order of the Court;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate;
- (c) vacate, abandon or quit any leased premises and disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, subject to paragraphs 11 and 18 of this Order;
- (d) disclaim arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA;
- (e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (f) pursue all avenues and to engage in discussions with key stakeholders of the Applicant in an effort to give effect to an operational restructuring of the Applicant;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business (the “**Restructuring**”).

18. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days' prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

19. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

20. **THIS COURT ORDERS** that until and including April 30, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the

Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, including any existing, pending or future information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act*, except with the written consent of the Applicant and the Monitor, or leave of this Court, including, without limitation, by way of terminating, making any demand, accelerating, amended or declaring in default, sweeping any cash in the Applicant's bank accounts (if available), exercising any option, right or remedy or taking any enforcement steps under or in respect of any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, by reason of:

- (a) the Applicant being insolvent or having made an application to this Court under the CCAA;
- (b) the Applicant being a party to this proceeding or taking any steps related thereto; or
- (c) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

provided that nothing in this Order shall:

- (a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;
- (b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;
- (c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;
- (d) prevent the filing of any registration to preserve or perfect a security interest;
- (e) prevent the registration of a claim for lien; or
- (f) prevent any actions that are permitted by Section 34(8) of the CCAA.

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

- (a) the Applicant being insolvent or having made an application to this Court under the CCAA;
- (b) the Applicant being a party to this proceeding or taking any steps related thereto; or
- (c) the stay granted pursuant to this paragraph 22; and
- (d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant 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, insurance, transportation services, utility or other services to the Business or the Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the “**Board**”) with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5,000,000, as security for the indemnity provided in paragraph 27 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Applicant’s directors, officers and the Board shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant’s receipts and disbursements;
- (b) liaise with and assist the Applicant and the Assistants with respect to all matters relating to the Applicant’s Business, the Applicant’s Property and the Restructuring, and such other matters as may be relevant to the proceedings herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

- (d) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;
- (e) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("MCU") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;
- (f) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined below) and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (g) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (h) assist the Applicant, to the extent required by the Applicant, with the holding and administering of a creditors' meeting for voting on the Plan;
- (i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not,

by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’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.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of \$250,000, plus HST, pending further Order of the Court.

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

38. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Firm Capital Mortgage Fund Inc., or its assignee (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$25,000,000, unless permitted by further Order of this Court.

40. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of January 29, 2021 (the "**DIP Term Sheet**") attached as Exhibit "HHH" to the Haché Initial Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.

41. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents and other definitive documents (collectively, the “**DIP Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Term Sheet, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents, as and when the same become due, and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, including without limitation, the real property set out in Schedule “A” (the “**Real Property**”), and the DIP Lender’s Charge shall not secure any obligation that exists between the Applicant and the DIP Lender before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the DIP Documents;
- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender’s Charge or upon the Maturity Date (as defined in the DIP Term Sheet), the DIP Lender, upon 14 days’ written notice to the Applicant and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, the DIP Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicant, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

44. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any other or similar proceeding that may be commenced by the Applicant with respect to any advances made under the DIP Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,250,000);

Second – Directors' Charge (to the maximum amount of \$2,000,000);

Third – DIP Lender's Charge (to the maximum amount of \$25,000,000); and

Fourth – Directors' Charge (to the maximum amount of \$3,000,000).

46. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also

obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

49. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

51. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Funds.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, 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: www.ey.com/ca/Laurentian.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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.

55. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

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

SEALING PROVISION

57. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Initial Affidavit, are hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

58. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

59. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Real Property of the DIP Lender's Charge in the form prescribed in the *Land Titles Act* or the

Registration Reform Act, or both, as applicable, the Land Registrar is hereby directed to register the DIP Lender's Charge on title of the Real Property.

60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

61. **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 Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of the Applicant and the Monitor 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 Monitor 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.

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

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

A handwritten signature in black ink, appearing to read 'G.B. Morawetz', is positioned above a horizontal line.

CHIEF JUSTICE G.B. MORAWETZ

Schedule "A"
Real Property

PIN	Legal Description
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920; 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R19195 AS IN SD246792
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN

	EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY
	Lease between Her Majesty the Queen in Right of Ontario as Represented by the Minister of Government and Consumer Services and Laurentian University dated January 1, 2020

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

Court File No.: CV-21-656040-00CL

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

**AMENDED AND RESTATED INITIAL
 ORDER**

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

D.J. Miller (LSO# 344393P)
 Email: djmiller@tgf.ca

Mitchell W. Grossell (LSO# 699931)
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 Email: ahanrahan@tgf.ca

Derek Harland (LSO# 79504N)
 Email: dharland@tgf.ca

Tel: 416-304-1616
 Fax: 416-304-1313

Lawyers for the Applicant

This is Exhibit “J” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

Properties

PIN	73584 - 0678	LT	Interest/Estate	Fee Simple
Description	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY			
Address	SUDBURY			
PIN	73584 - 0804	LT	Interest/Estate	Fee Simple
Description	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY			
Address	SUDBURY			
PIN	73585 - 1167	LT	Interest/Estate	Fee Simple
Description	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0084	LT	Interest/Estate	Fee Simple
Description	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY			
Address	SUDBURY			
PIN	73594 - 0412	LT	Interest/Estate	Fee Simple
Description	PCL 11105 SEC SES; PT BROKEN LT 5 CON 1 MCKIM AS IN LT61441; S/T D248, LT25019; GREATER SUDBURY			
Address	289 NEPAHWIN AVE SUDBURY			
PIN	73592 - 0426	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0427	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195 AS IN SD246792			
Address	SUDBURY			
PIN	73593 - 0063	LT	Interest/Estate	Fee Simple
Description	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0406	LT	Interest/Estate	Fee Simple
Description	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0446	LT	Interest/Estate	Fee Simple
Description	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0465	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 8 53R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY			
Address	SUDBURY			

The applicant(s) hereby applies to the Land Registrar.

Party From(s)

Name ONTARIO SUPERIOR COURT OF JUSTICE
Address for Service

Applicant(s)	Capacity	Share
---------------------	-----------------	--------------

Name	HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF COLLEGES AND UNIVERSITIES
Address for Service	c/o Goodmans LLP 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7

Statements

The applicant applies to register the following order See Schedules. The order is still in full force and effect
I Sasha Engel Hercz, solicitor make the following law statement : the Monitor's Certificate has been complied with.
This document relates to registration number(s)SD414794.
This instrument is approved as to form for registration, under preapproval number (PA 2022-07680).

Signed By

Alexander Engel Hercz	Bay Adelaide Centre 333 Bay Street Suite 3400 Toronto M5H 2S7	acting for Applicant(s)	Signed	2022 01 28
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Tel 416-979-2211
Fax 416-979-1234

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

GOODMANS LLP	Bay Adelaide Centre 333 Bay Street Suite 3400 Toronto M5H 2S7	2022 01 28
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Tel 416-979-2211
Fax 416-979-1234

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

File Number

Party From Client File Number :	212855-APL COURT ORDER-DIP APPROVAL ORDR
Applicant Client File Number :	212855-APL COURT ORDER-DIP APPROVAL ORDR

Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

THURSDAY, THE 27TH

JUSTICE MORAWETZ

)

DAY OF JANUARY, 2022



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

DIP APPROVAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order authorizing the Applicant to borrow under a credit facility governed pursuant to a DIP Loan Agreement dated as of January 19, 2022 (as it may be amended or modified in accordance with its terms, the "**DIP Agreement**") between the Applicant and Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the "**DIP Lender**") and granting related relief was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 20, 2022 and the Exhibits thereto (the "**Haché Affidavit**") and the Tenth Report of Ernst & Young Inc. (the "**Monitor**") dated January 24, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Derek Harland sworn January 24, 2022:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that this Motion is properly returnable today.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order dated as of February 11, 2021 (as amended prior to the date hereof, the "**Amended and Restated Initial Order**").

DIP FINANCING

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from the DIP Lender, provided that principal borrowings under the DIP Facility shall not exceed \$35,000,000.00 unless permitted by further Order of this Court.
4. **THIS COURT ORDERS AND DIRECTS** the Applicant, within one (1) Business Day of receiving the Advance (as defined in the DIP Agreement), to utilize the proceeds of the Advance, together with such other funds of the Applicant as may be necessary, to repay in full and discharge the indebtedness and obligations owing by the Applicant under the credit facility (the "**Existing DIP Facility**") made available to the Applicant by Firm Capital Mortgage Fund Inc. (the "**Existing DIP Lender**") pursuant to the DIP Loan Agreement dated as of February 10, 2021 (as amended by the First Amendment to the DIP Loan Agreement dated as of May 19, 2021 and the Second Amendment to the DIP Loan Agreement dated as of August 20, 2021, and as it may be further amended, restated or modified from time to time, the "**Existing DIP Agreement**").
5. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement between the Applicant and the DIP Lender attached as Exhibit "G" to the Haché Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.
6. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, security instruments, guarantees and other instruments and documents (collectively, and together with the DIP

Agreement, the “**DIP Documents**”), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Agreement, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, costs, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the other DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order or the Amended and Restated Initial Order.

7. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, including without limitation, the real property set out in Schedule “B” to this Order (the “**Real Property**”), as security for the Applicant’s indebtedness and obligations under the DIP Documents, which DIP Lender’s Charge shall not secure any obligation that exists before this Order is made.

8. **THIS COURT ORDERS** that the DIP Lender’s Charge shall constitute a charge on the Property and such DIP Lender’s Charge shall rank in priority to all other security interests, trusts (including any actual, deemed, constructive or equitable trust arising pursuant to common law, statute or otherwise), liens, construction liens and certificates of action, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any Person. The DIP Lender’s Charge, as amongst the other Charges, shall have the priority set out in paragraph 45 of the Amended and Restated Initial Order.

9. **THIS COURT ORDERS** that the filing, registration, recordation or perfection of the DIP Lender’s Charge shall not be required, and that the DIP Lender’s Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender’s Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the Amended and Restated Initial Order:

- (a) the DIP Lender may, but is not required to, take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the DIP Documents;

- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge, the DIP Lender may immediately cease making advances and make demand, accelerate payment and give other notices and, upon seven (7) days' written notice to the Applicant and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, the other DIP Documents or the DIP Lender's Charge, including to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

11. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada), with respect to any advances made under the DIP Documents.

12. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if this Order or any provision hereof shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (a "**Variation**"), whether by subsequent order of this Court or any court of appeal, such Variation shall not in any way impair, limit or lessen the protections, rights or remedies of the DIP Lender, whether pursuant to this Order (as made prior to the Variation), the Amended and Restated Initial Order, the DIP Documents, the DIP Lender's Charge, or otherwise, with respect to any advance made prior to the DIP Lender receiving written notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made by the DIP Lender prior to such Variation.

APPLICATION OF THE AMENDED AND RESTATED INITIAL ORDER

13. **THIS COURT ORDERS** that, upon the delivery of a certificate by the Monitor substantially in the form appended as Schedule "A" to this Order confirming that the obligations

of the Applicant to the Existing DIP Lender under the Existing DIP Facility and Existing DIP Agreement have been repaid in full (the “**Monitor’s Certificate**”):

- (a) the Applicant and the Property shall be released and discharged from all indebtedness, liabilities and obligations under the Existing DIP Facility, the Existing DIP Agreement and all other documents and instruments delivered in connection therewith;
- (b) all Encumbrances in favour of the Existing DIP Lender against the Applicant or its Property (including the Real Property) shall be released, deleted and discharged;
- (c) the Applicant is hereby authorized and directed to effect the discharge of the Existing DIP Mortgage (as defined below) and any and all registrations and filings made in favour of the Existing DIP Lender in respect of the Applicant under the *Personal Property Security Act* (Ontario) or under any other registry system;
- (d) paragraphs 39 to 44 (inclusive) of the Amended and Restated Initial Order shall be rendered inoperative and of no further force or effect and shall be deemed to be deleted from the Amended and Restated Initial Order;
- (e) any reference in the Amended and Restated Initial Order to the “DIP Term Sheet” shall mean the DIP Agreement as defined in this Order;
- (f) any reference in the Amended and Restated Initial Order to the “DIP Documents” shall mean the DIP Documents as defined in this Order;
- (g) any reference in the Amended and Restated Initial Order to the “DIP Lender” shall mean the DIP Lender as defined in this Order;
- (h) any reference in the Amended and Restated Initial Order to the “DIP Lender’s Charge” shall mean the DIP Lender’s Charge as defined in this Order; and
- (i) any reference in the Amended and Restated Initial Order to the “Charges” shall include the DIP Lender’s Charge as defined in this Order.

14. **THIS COURT ORDERS** that upon the registration of this Order in the Land Registry Office for the Land Titles Division #53 in the form prescribed in the *Land Titles Act* or the *Land Registration Reform Act*, as applicable, the Land Registrar is hereby directed to: (a) register this Order, which includes, without limitation, the DIP Lender's Charge, on title to the Real Property, and (b) discharge, delete and expunge from title to the Real Property all Encumbrances in favour of the Existing DIP Lender or any nominee or agent on its behalf, including, without limitation, Instrument No. SD430066, being a charge in favour of Firm Capital Mortgage Fund Inc. (the "**Existing DIP Mortgage**").

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

GENERAL

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, land registrar, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.



Chief Justice G.B. Morawetz

Schedule A – Form of Monitor’s Certificate

Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

MONITOR’S CERTIFICATE

RECITALS

- A. Pursuant to an Amended and Restated Initial Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 11, 2021 (the “**Amended and Restated Initial Order**”), Ernst & Young Inc. was appointed as monitor (the “**Monitor**”) of Laurentian University of Sudbury (the “**Applicant**”) in proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
- B. Pursuant to a DIP Approval Order of the Court dated January ●, 2022 (the “**DIP Approval Order**”), the Court authorized the Applicant to borrow under a credit facility (the “**DIP Facility**”) made available by Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the “**DIP Lender**”) pursuant to a DIP Loan Agreement dated as of January 19, 2022 between the Applicant and the DIP Lender and directed the Applicant to utilize the funds advanced by the DIP Lender under the DIP Facility to repay in full and discharge the obligations owing by the Applicant under the Existing DIP Facility.

- C. The DIP Approval Order provides for certain matters set forth in paragraph 13 of the DIP Approval Order to occur or be deemed to occur upon the delivery of a certificate by the Monitor confirming that the obligations of the Applicant to the Existing DIP Lender under the Existing DIP Facility and Existing DIP Agreement have been repaid in full.
- D. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the DIP Approval Order.

THE MONITOR CERTIFIES the following:

- 1. The Existing DIP Lender has delivered written notice to the Monitor that the obligations of the Applicant to the Existing DIP Lender under the Existing DIP Facility and Existing DIP Agreement have been repaid in full.
- 2. The matters set forth in paragraph 13 of the DIP Approval Order which are to occur or be deemed to occur upon delivery of the Monitor's Certificate have become operative as of the date and time set forth immediately below.

This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE], 2022.

**ERNST & YOUNG INC., solely in its capacity
as Monitor of the Applicant, and not in its
personal or corporate capacity**

Per: _____
Name:
Title:

Schedule "B"
Real Property

PIN	Legal Description
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920; 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R19195 AS IN SD246792
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN

	EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY
	Lease between Her Majesty the Queen in Right of Ontario as Represented by the Minister of Government and Consumer Services and Laurentian University dated January 1, 2020

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

Court File No.: CV-21-656040-00CL

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

DIP APPROVAL ORDER

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Fax: 416-304-1313

Lawyers for the Applicant

This is Exhibit “K” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND



Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

TUESDAY, THE 1ST

)

JUSTICE MORAWETZ

)

DAY OF NOVEMBER, 2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

**ORDER
(Exit Financing)**

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, authorizing the Applicant to enter into an exit financing loan agreement dated October 21, 2022 (the "**Exit Financing Agreement**") between the Applicant and His Majesty the King in right of Ontario, as represented by the Minister of Colleges and Universities (the "**Lender**") and granting related relief was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn October 25, 2022 and the Exhibits thereto (the "**Haché Affidavit**") and the Eighteenth Report of Ernst & Young Inc. (the "**Monitor**") dated October 27, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the participant sheet, no one else appearing although duly served as appears from the Affidavit of Service of Derek Harland sworn October 26, 2022:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that this Motion is properly returnable today.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Amended Plan of Compromise and Arrangement of the Applicant dated September 9, 2022 (the "**Plan**") or the Exit Financing Agreement.

EXIT FINANCING

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute, deliver and perform its obligations under the Exit Financing Agreement and the Security Documentation together with any other instruments and documents (collectively, and together with the Exit Financing Agreement and the Security Documentation, the "**Exit Financing Documentation**"), as are contemplated by the Exit Financing Agreement or as may be reasonably required by the Lender pursuant to the terms of the Exit Financing Agreement.
4. **THIS COURT ORDERS AND DIRECTS** the Applicant to utilize the proceeds of the Advance to repay in full and discharge the indebtedness and obligations owing by the Applicant under the DIP Facility.
5. **THIS COURT ORDERS** that, at the Effective Time on the Plan Implementation Date, upon the proceeds of the advance under the Exit Financing Agreement having been applied in repayment of the DIP Facility and all DIP Obligations (as defined in the DIP Loan Agreement) having been paid in full:
 - (a) the Applicant and the Property (as defined in the Amended and Restated Initial Order, dated February 11, 2021) shall be released and discharged from all indebtedness, liabilities and obligations under the DIP Facility, the DIP Loan Agreement and all other documents and instruments delivered in connection therewith;
 - (b) all encumbrances in favour of the DIP Lender against the Applicant or its Property (including the Real Property, as defined in the DIP Loan Agreement) shall be released, deleted and discharged; and

- (c) the Applicant is hereby authorized and directed to effect the discharge of any and all registrations and filings made in favour of the DIP Lender in respect of the Applicant under any registry system,

provided that, for greater certainty, nothing in this Order shall release or discharge any obligations owing to, or encumbrances or registrations in favour of His Majesty the King in right of Ontario as represented by the Minister of Colleges and Universities in its capacity as Lender under the Exit Financing Documentation or in any capacity other than DIP Lender.

6. **THIS COURT ORDERS** that, (a) upon the registration or recordation of this Order in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) in the form prescribed in the *Land Titles Act* or the *Land Registration Reform Act*, as applicable, and (b) upon the Effective Time on the Plan Implementation Date occurring, as evidenced by the issuance of the Monitor's Certificate, the Land Registrar is hereby directed to discharge, delete and expunge from title the instruments listed on Schedule "A" hereto.

GENERAL

THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, land registrar, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



Chief Justice G.B. Morawetz

SCHEDULE "A"
INSTRUMENTS TO BE DISCHARGED

PIN	Legal Description	Registered Encumbrance
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY	Instrument No. SD334951 registered April 27, 2017, being a Construction Lien by 1033803 Ontario Inc.
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY	Instrument No. SD337638 registered June 14, 2017, being a Certificate by 1033803 Ontario Inc.
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY	Instrument No. SD63098 registered October 23, 2006, being a Construction Lien by Corfab Company Ltd.
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1, 2, 3, 4, 5 & 6 EXPROP PL D49 & SW OF PT 2, 3, 7, 9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1, 2, 3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY	Instrument No. SD414050 registered February 3, 2021, being a Construction Lien by Cladco Limited
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1, 2, 3, 4, 5 & 6 EXPROP PL D49 & SW OF PT 2, 3, 7, 9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1, 2, 3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694;	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.

	EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY	
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158 159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00 00878, IF ENFORCEABLE; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 153R6379; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920; 2NDLY: PT LT 3CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF	Instrument No. SD414794 registered February 12, 2021

	BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY	being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195AS IN SD246792	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION145, PT 1 SR1028; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.

**ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY**

	ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto
	ORDER (Exit Financing)
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	D.J. Miller (LSO# 344393P) Email: djmiller@tgf.ca
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	Tel: 416-304-1616 Fax: 416-304-1313
	Lawyers for the Applicant

This is Exhibit “L” referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

Properties

PIN	73584 - 0678	LT	Interest/Estate	Fee Simple
Description	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY			
Address	SUDBURY			
PIN	73584 - 0804	LT	Interest/Estate	Fee Simple
Description	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY			
Address	SUDBURY			
PIN	73585 - 1167	LT	Interest/Estate	Fee Simple
Description	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0084	LT	Interest/Estate	Fee Simple
Description	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0426	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0427	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195 AS IN SD246792			
Address	SUDBURY			
PIN	73593 - 0063	LT	Interest/Estate	Fee Simple
Description	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0406	LT	Interest/Estate	Fee Simple
Description	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0446	LT	Interest/Estate	Fee Simple
Description	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0465	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 8 53R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY			
Address	SUDBURY			

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name

LAURENTIAN UNIVERSITY OF SUDBURY

The applicant(s) hereby applies to the Land Registrar.

Chargor(s)

Address for Service 935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

A person or persons with authority to bind the corporation has/have consented to the registration of this document.
This document is not authorized under Power of Attorney by this party.

Chargee(s)	<i>Capacity</i>	<i>Share</i>
-------------------	-----------------	--------------

Name HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF COLLEGES
AND UNIVERSITIES

Address for Service c/o Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Statements

Schedule: See Schedules

Provisions

Principal	\$50,000,000.00	Currency	CDN
Calculation Period			
Balance Due Date	ON DEMAND		
Interest Rate	25.00		
Payments			
Interest Adjustment Date			
Payment Date			
First Payment Date			
Last Payment Date			
Standard Charge Terms			
Insurance Amount	Full insurable value		
Guarantor			

Additional Provisions

See Schedule

Signed By

Elisabetta Nicoletta	Bay Adelaide Centre 333 Bay Street Suite 3400 Toronto M5H 2S7	acting for Chargor(s)	Signed	2022 11 24
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Tel 416-979-2211

Fax 416-979-1234

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

GOODMANS LLP	Bay Adelaide Centre 333 Bay Street Suite 3400 Toronto M5H 2S7	2022 11 24
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Tel 416-979-2211

Fax 416-979-1234

Fees/Taxes/Payment

Statutory Registration Fee	\$69.00
Total Paid	\$69.00

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF COLLEGES AND UNIVERSITIES
as Holder**

- and -

**LAURENTIAN UNIVERSITY OF SUDBURY
as Debtor**

DEMAND DEBENTURE

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DEMAND DEBENTURE

DATE OF DEBENTURE: November 24, 2022

ISSUED TO: **HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF COLLEGES AND UNIVERSITIES** (the “**Holder**”)

ISSUED BY: **LAURENTIAN UNIVERSITY OF SUDBURY** (the “**Debtor**”)

PRINCIPAL SUM: \$50,000,000.00

INTEREST: 25.00% per annum

RECITALS:

- A. Pursuant to that certain loan agreement dated as of October 21, 2022 by and among, the Debtor, as borrower and the Holder, as lender (as said loan agreement is amended, restated, amended and restated, supplemented, extended, renewed, altered, assigned, modified, refinanced and/or replaced from time to time, being collectively, the “**Loan Agreement**”), the Holder has agreed to make financial accommodations and extensions of credit to and for the benefit of the Debtor.
- B. As ongoing security for its obligations under the Loan Agreement and the other Loan Documents from time to time, the Debtor has agreed to grant a security interest and an assignment, mortgage, hypothecation, pledge and charge of and in all of the Mortgaged Property (as defined below) as provided herein in order to secure the performance of the Secured Obligations (as defined below).

ARTICLE 1 PROMISE TO PAY

1.1 Promise to Pay

The Debtor, a university established pursuant to *The Laurentian University of Sudbury Act, 1960*, for value received, hereby acknowledges itself indebted and promises to pay to or to the order of the Holder at such place as the Holder may direct at any time and from time to time, upon demand by the Holder, the principal sum of \$50,000,000.00 together with interest thereon from time to at the rate of 25.00% per annum. Such interest shall be calculated monthly, not in advance, commencing from the date hereof until all amounts owing hereunder shall be paid in full, with interest payable after as well as before demand, default and judgment, together with interest on overdue interest at the same rate.

ARTICLE 2 INTERPRETATION

2.1 Definitions

Capitalized or defined terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Loan Agreement from time to time. Terms used herein and defined in the PPSA shall, unless otherwise defined herein, have the meanings given to such terms in the PPSA. In this Debenture, the following terms shall have the following meanings:

“**Accounts**” has the meaning set out in Section 3.1(f).

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada).

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**Contracts**” has the meaning set out in Section 3.1(g).

“**Contractual Rights**” has the meaning set out in Section 3.6.

“**Debenture**” means this Debenture and all schedules hereto, as assigned, extended, renewed, altered, modified, amended, supplemented, restated and/or replaced from time to time and any agreement or instrument supplemental or ancillary hereto or in the implementation hereof. Expressions such as “**Article**” and “**Section**” followed by a number mean and refer to the specified article or section of this Debenture.

“**Deposits and Receivables**” has the meaning set out in Section 3.1(i).

“**Equipment**” has the meaning set out in Section 3.1(d).

“**Expropriation**” has the meaning set out in Section 3.1(c)(i).

“**Expropriation Awards**” has the meaning set out in Section 3.1(c).

“**Governmental Authority**” means the government of Canada or any other nation, or of any political subdivision thereof, whether provincial, territorial, state or local, and any agency, authority, instrumentality regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

“**Intangibles**” has the meaning set out in Section 3.1(j).

“**Inventory**” has the meaning set out in Section 3.1(e).

“**Landlord Leases**” has the meaning set out in Section 3.1(a)(ii).

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“**Leasehold Real Estate**” has the meaning set out in Section 3.1(b)(i).

“**Licences**” has the meaning set out in Section 3.1(k).

“**Limitations Act**” means the *Limitations Act, 2002* (Ontario).

“**Loan Agreement**” has the meaning set out in Recital A.

“**Loan Documents**” means this Debenture, the Loan Agreement, and any other undertaking, instrument, document and/or security delivered on account of the Secured Obligations or otherwise in connection with the Loan Agreement from time to time.

“**Mortgaged Property**” has the meaning set out in Section 3.3.

“**Notice**” has the meaning set out in Section 7.2.

“**Owned Real Estate**” has the meaning set out in Section 3.1(a)(i).

“**PPSA**” means the *Personal Property Security Act* (Ontario); *provided, however*, if attachment, perfection or priority of the liens in any Mortgaged Property are governed by the personal property security laws of any Canadian jurisdiction other than Ontario, “**PPSA**” shall mean those personal property security laws in such other jurisdiction for the purposes of the provisions of this Debenture relating to such attachment, perfection or priority and for the definitions related to such provisions.

“**Proceeds**” has the meaning set out in Section 3.1(o).

“**Real Estate**” has the meaning set out in Section 3.1(b)(i).

“**Receiver**” means any of a liquidator, interim-receiver, receiver, agent, monitor, manager, receiver-manager and receiver and manager and/or any combination thereof.

“**Receiver’s Certificates**” has the meaning set out in Section 5.2(j)(xi).

“**Records**” has the meaning set out in Section 3.1(m).

“**Registered Liens**” means those Liens registered on title to the Real Estate as of the Facility Advance Date that are listed on Schedule “C” hereto.

“**Secured Obligations**” means all Obligations.

“**Security Interest**” has the meaning set out in Section 3.3.

“**Software**” has the meaning set out in Section 3.1(l).

“**Sole Discretion**” means, in each instance, discretion exercised by the relevant party in its sole subjective and unfettered discretion which discretion may be exercised unreasonably and/or arbitrarily.

“**Subagent**” has the meaning set out in Section 5.14.

“**Substitute Property**” has the meaning set out in Section 3.1(n).

“**Tenant Leases**” has the meaning set out in Section 3.1(b)(ii).

2.2 Interpretation

In this Debenture:

- (a) **Time** – Time is of the essence in and of this Debenture and every part hereof in the performance of the parties’ respective obligations. Any extension, waiver or variation of any provision of this Debenture shall not be deemed to affect this provision and there shall be no implied waiver of this provision.
- (b) **Calculation of Time** – 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. Where the last day of any such time period is not a Business Day, such time period shall be extended to the next Business Day following the day on which it would otherwise end.
- (c) **Business Days** – Whenever any action to be taken or payment to be made pursuant to this Debenture would otherwise be required to be made on a day that is not a Business Day, such action shall be taken or such payment shall be made on the first Business Day following such day.
- (d) **Currency** – Unless otherwise specified, all references to amounts of money in this Debenture refer to the lawful currency of Canada.
- (e) **Headings** – The descriptive headings preceding Articles and Sections of this Debenture are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content of such Articles or Sections. The division of this Debenture into Articles and Sections shall not affect the interpretation of this Debenture.
- (f) **Including** – Where the word “including” or “includes” is used in this Debenture, it means “including without limitation” or “includes without limitation”.
- (g) **Plurals and Gender** – The use of words in the singular or plural, or referring to a particular gender, shall not limit the scope or exclude the application of any provision of this Debenture to such persons or circumstances as the context otherwise permits.
- (h) **Aggregate** – The expressions “the aggregate”, “the total”, “the sum” and expressions of similar meaning shall mean “the aggregate (or total or sum) without duplication”.
- (i) **Defined Terms** – Any defined term or other provision incorporated herein by reference to the Loan Agreement or the other Loan Documents shall continue to apply and be effective notwithstanding any full or partial release, termination,

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assignment, extension, renewal, alteration, modification, amendment, supplement, restatement, replacement or discharge of such other document or any security constituted thereby.

- (j) **No Strict Construction** – The language used in this Debenture is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.
- (k) **Liability** – If more than one person is named as or otherwise becomes or assumes the obligations and liabilities of the Debtor, then all such obligations and liabilities of such person shall be joint and several.
- (l) **Full Force and Effect** – All provisions of this Debenture shall have full force and effect notwithstanding any applicable law to the contrary unless and only to the extent specifically provided by such applicable law.
- (m) **Deemed Covenants** – All of the obligations of the Debtor herein are deemed to be covenants by the Debtor in favour of the Holder.
- (n) **References** – All references to a document, instrument and/or an agreement herein includes that document, instrument and/or agreement as assigned, extended, renewed, altered, modified, amended, supplemented, restated and/or replaced from time to time.
- (o) **Statutory References** – Any reference to a statute shall mean the statute in force as at the date of this Debenture (together with all regulations promulgated under it), as the same may be amended, re-enacted, consolidated or replaced from time to time, and any successor statute thereto, unless otherwise expressly provided.

2.3 Amendment

No amendment of any provision of this Debenture shall be effective unless the same shall be in writing and signed by each of the Debtor and the Holder.

2.4 Severability

If any provision of this Debenture is or becomes illegal, invalid or unenforceable, such provision shall be severed from this Debenture and be ineffective to the extent of such illegality, invalidity or unenforceability. The remaining provisions hereof shall be unaffected by such provision and shall continue to be valid and enforceable.

2.5 Governing Law

This Debenture and the rights and obligations of the parties hereunder shall be governed by and be construed in accordance with the laws of the Province of Ontario. There shall be no application of any principle of conflicts of laws which may result in any laws other than laws in force in Ontario applying to this Debenture, the security created or to be created hereby or pursuant hereto, the income therefrom and the enforcement of the security hereby created. Each of the Debtor and the Holder hereby submit and attorn to the non-exclusive

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jurisdiction of the Courts of Ontario for all matters relating to this Debenture, save and except for the enforcement of any security created by this Debenture with respect to the Real Estate for which each of the Debtor and the Holder hereby submit and attorn to the non-exclusive jurisdiction of the Courts of the Province or Territory in which the Real Estate is located.

2.6 Survival

All covenants, agreements, warranties and representations set forth herein or in any certificate or other instrument or document delivered by or on behalf of the Debtor pursuant hereto shall be deemed to have been relied upon by the Holder notwithstanding any investigations heretofore or hereafter made by the Holder and shall survive the execution and delivery of this Debenture and continue in full force and effect in accordance with the terms of this Debenture until the due, prompt and complete payment, performance and satisfaction of all of the Secured Obligations.

2.7 Schedules

The following schedules attached hereto shall, for all purposes hereof, be incorporated in and form an integral part of this Debenture:

Schedule A	Real Estate
Schedule B	St. Joseph's Leasehold Property
Schedule C	Registered Liens

2.8 Paramountcy

This Debenture is given in accordance with the terms and provisions of the Loan Agreement. If a conflict or inconsistency exists between a provision of this Debenture and a provision of the Loan Agreement, then the provisions of the Loan Agreement shall prevail. Notwithstanding the foregoing or anything else contained herein or elsewhere, the Debtor acknowledges and agrees that if there exists any additional term, covenant, indemnity, liability, obligation, indebtedness or agreement of the Debtor and/or any right, power or remedy in favour of the Holder set out in this Debenture or any part hereof which is not set out or provided for in the Loan Agreement, such additional term, covenant, indemnity, liability, obligation, indebtedness, agreement, right, power or remedy shall not constitute a conflict, ambiguity or inconsistency.

ARTICLE 3 SECURITY

3.1 Creation of Security

As continuing security for the payment and performance of the Secured Obligations and the performance and payment by the Debtor of all its terms, covenants, liabilities obligations and indebtedness and agreements hereunder, but subject to Sections 3.5 and 3.6, the Debtor hereby grants, assigns, transfers, mortgages, pledges, subleases, charges, demises, grants a security interest in and hypothecates, as and by way of a fixed and specific mortgage, pledge, sublease, charge, assignment, transfer and security interest to and in favour of the Holder, all the

right, title, interest and benefit of the Debtor in, to, under or in respect of all of its undertaking, property and assets, real and personal, tangible and intangible, of whatsoever nature and kind, present and future and every interest therein which the Debtor now has or hereafter acquires, including:

- (a) (i) all real property and all pertinent interests in connection therewith from time to time owned by the Debtor, together with all buildings, erections and improvements thereon and fixtures forming a part thereof, including all of the real property described in Schedule A hereto and all pertinent interests in connection therewith from time to time together with all buildings, erections and improvements thereon and fixtures forming a part thereof (collectively, the “**Owned Real Estate**”);
- (ii) all leases, subleases, offers to lease or sublease, letter agreements, occupancy or tenancy agreements, lease or sublease proposals and lease or sublease amending agreements relating to the Owned Real Estate, and all amendments thereto, renewals, extensions or replacements thereof and substitutions therefor from time to time (collectively, the “**Landlord Leases**”), together with all deposits, security, income, revenues, profits, benefits, advantages and powers to be derived under the Landlord Leases with full power and authority to demand, sue for, recover, receive and give receipts for all rents and all other monies payable thereunder and otherwise to enforce the rights, powers and remedies of the Debtor thereunder;
- (iii) all surveys, certificates of location, title opinions, insurance policies and reports, rights and easements, rights of way, Licences, rights and options and other real property interests appurtenant or relating to the Owned Real Estate and all amendments thereto, renewals and replacements thereof and substitutions therefor from time to time;
- (iv) all Licences, permits, approvals, certificates and agreements with or from any Governmental Authority relating directly or indirectly to the ownership, use, development, operation and maintenance of the Owned Real Estate or the alteration or renovation or construction of improvements on the Owned Real Estate;
- (v) all options, contracts, subcontracts, agreements, service agreements, warranties and purchase orders executed by or on behalf of the Debtor or which have been assigned to the Debtor; and
- (vi) the benefit of all guarantees and indemnities with respect to any Landlord Lease and the performance of any obligations of any tenant thereunder;
- (b) (i) all leasehold and subleasehold property leased or subleased by the Debtor, together with all buildings, erections and improvements thereon and fixtures forming a part thereof and all pertinent interests in connection therewith from time to time including all leasehold and subleasehold

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property described in Schedule A, together with all buildings, erections and improvements thereon and fixtures forming a part thereof and all pertinent interests in connection therewith from time to time (collectively, the “**Leasehold Real Estate**” and together with the Owned Real Estate, being collectively, the “**Real Estate**”);

- (ii) all leases, subleases, offers to lease or sublease, letter agreements, occupancy or tenancy agreements, lease or sublease proposals and lease or sublease amending agreements relating to any Leasehold Real Estate, and all amendments thereto, renewals, extensions or replacements thereof and substitutions therefor from time to time (collectively, the “**Tenant Leases**” and individually a “**Tenant Lease**”), and any right or option to renew or extend and any option or right of first refusal or offer to lease or to purchase that may be contained therein, any rights, powers and remedies acquired in connection therewith and all rights, benefits, agreements and privileges appurtenant or appertaining thereto;
 - (iii) all surveys, certificates of location, title opinions, insurance policies and reports, rights and easements, rights of way, Licences, rights and options and other real property interests appurtenant or relating to the Leasehold Real Estate and all amendments thereto, renewals and replacements thereof and substitutions therefor from time to time;
 - (iv) all Licences, permits, approvals, certificates and agreements with or from any Governmental Authority relating directly or indirectly to the ownership, use, development, operation and maintenance of the Leasehold Real Estate or the alteration or renovation or construction of improvements on the Leasehold Real Estate;
 - (v) all options, contracts, subcontracts, agreements, service agreements, warranties and purchase orders executed by or on behalf of the Debtor or which have been assigned to the Debtor; and
 - (vi) the benefit of all deposits, guarantees and indemnities with respect to any Tenant Lease and the performance of any obligations of any landlord thereunder;
- (c) any and all expropriation awards or payments (collectively, the “**Expropriation Awards**”) including interest thereon, and the right to receive the same which may be made with respect to the Real Estate and/or operations thereon, or any part thereof, as a result of:
- (i) any expropriation, compulsory taking or like procedure (an “**Expropriation**”), partial or complete, or the alteration of the area or width of any street including any sidewalk or lane;

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- (ii) the imposition, and enforcement, of any restriction, regulation or condition to meet any building or development guideline for development or restriction of or by any municipal or other Governmental Authority; or
 - (iii) any other material injury to or decrease in the value of the Real Estate and/or operations thereon by any lawful regulation or any Governmental Authority having jurisdiction;
- (d) all tools, machinery, appliances, equipment and supplies (installed or uninstalled) not included in Inventory below from time to time, owned by the Debtor, including furniture, chattels, motor vehicles and accessories, and any other equipment of the Debtor used in connection with the Debtor's business or otherwise owned by the Debtor (collectively, the "**Equipment**");
- (e) all inventory owned by the Debtor, including (i) finished goods, work in process, raw materials, goods in transit, new and unused production, packing and shipping materials; (ii) all new and unused maintenance items; and (iii) all other materials and supplies on hand to be used or consumed, in connection with the manufacture, packing, shipping, advertising, selling or furnishing of goods and services (collectively, the "**Inventory**");
- (f) all right to payment for goods sold or leased or for services rendered, whether or not earned by performance, and including all agreements with and sums due from customers and other persons (collectively, the "**Accounts**");
- (g) all contracts and leases to which the Debtor is a party, including construction contracts, management agreements, rights-of-way, easements, development agreements, supplier agreements and other agreements, whether now existing or hereafter arising, and including lease agreements for personal property and other contracts and contractual rights, remedies or provisions now existing or hereafter arising in favour of the Debtor (collectively, the "**Contracts**");
- (h) all securities, shares, stock, warrants, deeds, debentures, debenture stock, notes, bonds, bills of exchange and all other documents owned by the Debtor, which constitute evidence of a share, participation or other equity interests of the Debtor in property or in an enterprise, or which constitute evidence of an obligation of the issuer thereof (collectively, the "**Negotiable Collateral**");
- (i) all money, as defined in the PPSA, and any deposit accounts or investments or similar holdings or interests, in which such money is deposited or invested to the extent not otherwise described in this Section 3.1 and all debts, demands, receivables and *choses in action* which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Debtor and all claims therefor at any time which the Debtor now has or may hereafter have (collectively, the "**Deposits and Receivables**");
- (j) all general intangibles owned by the Debtor (collectively, the "**Intangibles**"), including: (i) goodwill, chattel paper (including tangible chattel paper and

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- electronic chattel paper), (ii) insurance claims; (iii) intellectual property and (iv) all related property, both tangible and intangible;
- (k) all franchises, licences, quotas, exclusivity rights, territorial rights, authorizations, approvals, permits and operating rights authorizing or relating to the Debtor's rights to operate its business (collectively, the "**Licences**");
 - (l) all computer programs and databases of the Debtor in whatever form and on whatever medium whose programs or databases might be expressed, fixed, embodied or stored from time to time, including the object code and source code versions thereof and all corrections, updates, enhancements, translations, modifications, derivations and new versions thereof, together with both the media upon or in which such software and databases are expressed, fixed, embodied or stored (such as disks, diskettes, tapes and semi-conductor chips) and all flowcharts, manuals, instructions, documentation and other material relating thereto (collectively, the "**Software**");
 - (m) all books, accounts, invoices, letters, papers, documents, ownership certificates, manuals, publications, statements of account, bills, invoices and other documents or records in any form whatsoever (including computer records) evidencing or relating to the property described in Sections 3.1(a) to 3.1(l) inclusive and Sections 3.1(n) and 3.1(o) (collectively, the "**Records**");
 - (n) any substitutions and replacements of, and increases, additions and, where applicable, accessions to the property described in Sections 3.1(a) to 3.1(m) inclusive (collectively, the "**Substitute Property**"); and
 - (o) all proceeds in any form now or hereafter derived from the sale, lease or other disposition of any of the property and assets of the Debtor subject to, or intended to be subject to, the Security Interest (as defined herein), including, in the case of the intellectual property, all licence royalties and proceeds of suits relating to intellectual property (collectively, the "**Proceeds**").

3.2 Floating Charge

The Debtor hereby grants, assigns, transfers, mortgages, pledges, subleases and charges, demises, grants a security interest in and hypothecates as and by way of a floating charge, to and in favour of the Holder, all the right, title, interest and benefit of the Debtor in, to, under or in respect of, all of its undertaking, property and assets, real and personal, both present and future, now owned or hereafter acquired by it, of whatsoever nature and kind and wheresoever situate (other than such property and assets as are effectively and validly subject to the fixed and specific grant, assignment, transfer, mortgage, pledge, charge and/or security interest contained in Section 3.1 hereof).

3.3 Mortgaged Property and Security Interest

The property subject to the Security Interest, including the Real Estate, Expropriation Awards, Equipment, Inventory, Accounts, Contracts, Deposits and Receivables,

Intangibles, Licences, Software, Records, Substitute Property and Proceeds from time to time, is herein collectively referred to as the “**Mortgaged Property**”. The grants, assignments, transfers, mortgages, pledges, subleases, charges, demises, security interests and hypothecs granted hereby secure payment of the Secured Obligations and are herein collectively referred to as the “**Security Interest**”.

TO HAVE AND TO HOLD the Mortgaged Property and all rights hereby conferred unto the Holder, its successors and assigns, forever for the use and purposes and with the powers and authorities but subject to the terms and conditions herein set forth.

3.4 Location of Mortgaged Property

For greater certainty and notwithstanding anything else herein or elsewhere to the contrary, the security constituted hereby shall extend to and the Mortgaged Property shall include, and the Debtor hereby grants the Holder a security interest in, to the extent not already included, all present and future acquired personal property (as such terms are defined in the PPSA) of the Debtor.

3.5 Exception for Last Day of Leases

The last day of the term reserved by any lease or sub-lease, oral or written, or any agreement therefor now held or hereafter acquired by the Debtor is hereby excepted out of the Security Interest and does not and shall not form part of the Mortgaged Property, but the Debtor shall stand possessed of such last day in trust to assign the same as the Holder shall direct upon the sale of any leasehold or subleasehold interest on any part thereof in the course of the enforcement by the Holder of the Security Interest.

3.6 Exception for Contractual Rights

The security created hereby does not and shall not extend to, and Mortgaged Property shall not include, any Contract or Licence (the “**Contractual Rights**”) to which the Debtor is a party or of which the Debtor has the benefit, to the extent that the creation of the security therein would constitute a breach of the terms of or permit any person to terminate the Contractual Rights, but the Debtor shall hold its interest therein in trust for the Holder until such time as the consent of the other party to such Contractual Rights is obtained and the Debtor covenants and agrees to use its commercially reasonable efforts to obtain said consent of the other party to such Contractual Rights in such form and manner as pre-approved by the Holder.

3.7 Enforcement of Contractual Rights

Upon this Debenture becoming enforceable, in order that the full value of the beneficial interest in the Contractual Rights not assigned to the Holder pursuant to this Debenture but held in trust for them pursuant to Sections 3.5 and 3.6 hereof, may be realized for the benefit of the Holder, the Debtor shall, at the request and under the direction of the Holder and at no cost or expense to the Holder, in the name of the Debtor, take all such action and do or cause to be done all such things as are desirable in order that the obligations of the Debtor under such Contractual Rights may be performed in such manner that the beneficial interest in such Contractual Rights shall be preserved and shall enure to the benefit of the Holder or as the

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Holder may direct in writing and the collection of any monies due and payable and to become due and payable shall be facilitated and the Debtor will promptly pay over to the Holder or as the Holder may direct in writing all monies collected by or paid to the Debtor in respect of the beneficial interest in every such Contractual Right.

3.8 St. Joseph's Leasehold Property

Notwithstanding the foregoing, the Security Interest granted hereunder shall not attach to the Owned Real Estate described in Schedule B (the "**SJ Property**") until the earlier of: (a) March 31, 2024 (the "**Outside Date**"); and (b) the date on which Instrument No. LT948541Z is no longer in full force and effect. On such earlier date (the "**Attachment Date**"), the Security Interest will automatically attach. The Debtor hereby covenants and agrees, within thirty (30) days of becoming aware that the Attachment Date has occurred, and in any event no later than thirty (30) days following the Outside Date, to: (x) register this Debenture on title to the SJ Property; and (y) provide a registered copy to the Holder along with an updated title insurance policy in the form previously approved by the Holder that adds the SJ Property, in each case, at the sole cost and expense of the Debtor. The Debtor certifies to the Holder that the Debtor does not have any interests in any lands abutting the SJ Property or any part thereof.

3.9 Attachment

- (a) The Debtor hereby acknowledges and agrees that: (i) value has been given; (ii) the Debtor has rights in the Mortgaged Property (other than Mortgaged Property acquired after the date hereof); and (iii) except as expressly set out in Section 3.8 above, it has not agreed to postpone the time for attachment of the Security Interest which shall, except in the case of the property set out in Section 3.8, attach upon the execution and delivery of this Debenture and, in the case of Mortgaged Property acquired after the date hereof, when the Debtor has rights therein.
- (b) The Debtor hereby agrees to promptly inform the Holder in writing of the acquisition by the Debtor of any property which is intended to constitute Mortgaged Property, whether real or personal, or which is not adequately described herein, and the Debtor agrees to execute and deliver at its own cost and expense from time to time amendments to this Debenture or the Schedules hereto or additional security or schedules as may be required by the Holder in order that the Security Interest shall be properly registered, recorded and perfected and attach to such property.

3.10 Licences and Contracts

The Holder will not be deemed in any manner to have assumed any obligation of the Debtor under any of the Licences or Contracts, and the Holder shall not be liable to any Governmental Authority or other person by reason of any default by any person under the Licences or Contracts. The Debtor agrees to indemnify and hold the Holder harmless of and from any and all loss which it may incur by reason of any claim or demand against any of them based on their alleged assumption, by virtue of the execution and delivery of this Debenture and

the creation of the Security Interest, of the Debtor's duty and obligation to perform and discharge the terms, covenants and agreements in the Licences and Contracts.

3.11 After-Acquired Property

The Security Interest is intended to, and shall, automatically attach: (a) to Mortgaged Property existing upon the execution and delivery of this Debenture; and (b) to Mortgaged Property subsequently acquired by the Debtor, upon the Debtor acquiring any rights therein.

3.12 Charge Valid Irrespective of Advances

The Security Interest hereby created shall be and be deemed to be effective and shall have effect whether or not the moneys hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Debenture or before or after or upon the date of the execution and delivery of this Debenture. Neither the execution nor delivery of this Debenture shall obligate the Holder to advance any funds, or otherwise make or continue to make any credit available, to the Debtor.

3.13 Merger or Amalgamation

If the Debtor amalgamates or merges with any other person, or all or substantially all of the property of the Debtor becomes the property of another person, the Secured Obligations and the Security Interest shall extend to the present and future undertaking, property and assets of the amalgamated or merged person as if the amalgamated or merged person had executed this Debenture as the Debtor.

3.14 Satisfaction of Obligations

Payment in full of the Secured Obligations from time to time shall not be deemed to be payment in full of all principal and interest from time to time due under this Debenture, provided that upon final satisfaction in full of the Secured Obligations and the termination of all commitments of the Holder under the Loan Agreement and the other Loan Documents, the Holder shall, at the request and expense of the Debtor, deliver this Debenture to the Debtor for cancellation or assign this Debenture (without recourse to the Holder) to such other person as the Debtor may direct. Notwithstanding anything to the contrary contained herein, the Debtor shall not be obligated to pay any amounts in excess of the Secured Obligations, the Debtor shall not be obligated to pay any greater amount of interest under this Debenture than the highest rate of interest payable by the Debtor under the Loan Agreement in respect of the Secured Obligations.

3.15 Higher Estate

The Debtor agrees that if it shall acquire a freehold interest or any other higher interest in Real Estate for which it already holds a leasehold interest, then, to the extent that the leasehold interest and freehold interest or other higher interest shall merge, the security constituted by this Debenture shall automatically attach to and secure the Debtor's freehold interest or other higher interest in such Real Estate.

ARTICLE 4
REPRESENTATIONS, WARRANTIES AND
COVENANTS OF THE DEBTOR

4.1 Representations, Warranties and Covenants

The Debtor hereby repeats in favour of the Holder, and acknowledges and confirms, and agrees to perform and otherwise comply with, the representations, warranties and covenants made in respect of the Debtor and the Mortgaged Property in the Loan Documents as if such representations, warranties and covenants were stated in their entirety herein.

4.2 Dealings with Mortgaged Property

- (a) The Debtor shall not create or suffer to exist any liens upon the Mortgaged Property or any part thereof, or interest therein, save and except for the Permitted Liens. The Permitted Liens include the Registered Liens set out on Schedule C hereto.
- (b) The Debtor shall not permit any assignment, transfer, sale, lease, sublease or other disposition of the whole or any part of the Mortgaged Property or any rights or interest therein (including any sale and leaseback arrangement) except and only to the extent specifically permitted pursuant to the Loan Agreement.

4.3 Indemnification

The Debtor will protect, indemnify and save harmless the Holder from and against any and all loss imposed upon, incurred by or asserted against the Holder from time to time, by reason of: (a) its interest in the Mortgaged Property or its receipt of any rents or other sums therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Mortgaged Property; (c) any use, non-use or condition of the Mortgaged Property; (d) any failure on the part of the Debtor to perform or comply with any of the terms and/or conditions of this Debenture; (e) the performance of any labour or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; and/or (f) any breaches of applicable law alleged by any Governmental Authority involving the Mortgaged Property. In case any action, suit or proceeding is brought against the Holder by reason of any such occurrence, the Debtor will upon the request of the Holder at the Debtor's sole cost and expense, resist and defend the same by counsel designated by the Debtor and pre-approved in writing by the Holder, provided that such acceptance shall not be required in the case of any defence by counsel designated by any insurance policy. The obligations of the Debtor under this Section 4.3 shall survive any discharge, termination or satisfaction of this Debenture.

ARTICLE 5 ENFORCEMENT

5.1 Enforcement

The Security Interest shall immediately become enforceable against the Debtor if and when an Event of Default has occurred and for so long as it is continuing.

5.2 Remedies

Upon the Security Interest becoming enforceable in accordance with Section 5.1, the Holder may, in its Sole Discretion and in addition to and without derogating from or prejudicing any rights, powers and remedies the Holder has at law, in equity, hereunder, under the Loan Agreement or the other Loan Documents and/or otherwise from time to time, realize upon all or any part of the Mortgaged Property and exercise any one or more of the following rights, powers and remedies, which rights, powers or remedies may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights, powers and remedies the Holder may have at law, under the Loan Agreement or the other Loan Documents, or otherwise:

- (a) take possession of all or any part of the Mortgaged Property, with power to exclude the Debtor and its officers, employees and agents therefrom;
- (b) take all such steps as the Holder may consider necessary or desirable for the purposes of preserving, maintaining, completing and insuring all or any part of the Mortgaged Property, and making such replacements thereof and improvements and additions thereto as the Holder may, in its Sole Discretion, consider necessary or desirable;
- (c) carry on all or any part of the business of the Debtor relating to the Mortgaged Property and use all or any part of the Mortgaged Property directly in carrying on the Debtor's business or as security for loans or advances to enable the Holder to carry on the Debtor's business or otherwise, for such time as the Holder requires, in its Sole Discretion, to facilitate the realization of the Mortgaged Property, free of charge, and the Holder will not be liable to the Debtor in so doing except for any loss arising from the gross negligence or wilful misconduct of the Holder;
- (d) receive the rents, incomes, profits and proceeds of any kind whatsoever from the Mortgaged Property and pay therefrom:
 - (i) any expenses of preserving, maintaining, completing and insuring the Mortgaged Property, and of making such repairs and replacements thereof and improvements and additions thereto, as the Holder may, in its Sole Discretion, consider necessary or desirable, and of carrying on all or any part of the Debtor's business relating to the Mortgaged Property; and
 - (ii) any encumbrance, lien, claim or charge that validly exists or has been threatened against any of the Mortgaged Property ranking in priority to or *pari passu* with the Security Interest (including liens permitted under the

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provisions governing the Secured Obligations) or the payment of which may be necessary or desirable to preserve or protect all or any part of the Mortgaged Property or the interest of the Holder therein;

and any such payment or payments, together with any costs, charges and expenses incurred by the Holder (including legal fees and disbursements on a full indemnity basis), shall be added to the Secured Obligations and shall bear interest at the rate herein provided;

- (e) lease all or any part of the Mortgaged Property and renew from time to time all or any of the leases relating to the Real Estate or the Leasehold Real Estate on such terms and conditions as the Holder may, in its Sole Discretion, determine;
- (f) with or without taking possession, take any action or proceedings to enforce the performance of any covenant contained in any of the leases relating to the Real Estate or the Leasehold Real Estate;
- (g) enjoy and exercise such of the powers of the Debtor as the Holder considers necessary or desirable for the exercise of any and all of the remedies of the Holder provided for herein, including to make any arrangement or compromise on behalf and in the name of the Debtor that the Holder considers necessary or desirable, to purchase on credit and borrow money on behalf and in the name of the Debtor and to advance their own moneys to the Debtor, all at such rates of interest as the Holder may consider reasonable, and to enter into contracts and undertake obligations on behalf of and in the name of the Debtor for any and all of the foregoing purposes or which the Holder considers necessary or desirable for the exercise of any of the rights, powers and remedies of the Holder provided for herein, all of which borrowings, advances and obligations, together with interest thereon, shall, at the Sole Discretion of the Holder, be secured on the security of the Mortgaged Property and entitled to payment in priority to the payment of the Secured Obligations;
- (h) whether or not the Holder has taken possession or control of the Mortgaged Property or any part thereof, sell, lease, assign, transfer, sublease or otherwise dispose of, or concur in selling, transferring, assigning, leasing, subleasing or otherwise disposing of, all or any part of the Mortgaged Property by any means, including: (i) by way of public auction, power of sale, foreclosure, public tender or private contract; (ii) either for cash, on credit or for other consideration; and (iii) on such terms and conditions as the Holder shall, in its Sole Discretion, determine, without being answerable for any loss occasioned thereby, and the Holder may execute and deliver to any purchaser of the Mortgaged Property or any part thereof good and sufficient deeds and documents for the same, all without notice to the Debtor of any of the foregoing except, in each case, as otherwise required by applicable law;
- (i) apply to a court of competent jurisdiction for the appointment of a Receiver to take possession of all or such part of the Mortgaged Property as the Holder shall

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designate, with such duties, powers and obligations as the court making the appointment shall confer;

- (j) whether or not the Holder has taken possession or control of the Mortgaged Property or any part thereof, appoint a Receiver of all or any part of the Mortgaged Property by instrument in writing executed by the Holder in accordance with the provisions of this Debenture and with or without security for the performance of the Receiver's obligations, and at any time by notice in writing to the Debtor and to any such Receiver remove such Receiver (or any successor thereof) and appoint another in its stead. Upon the appointment of any such Receiver (or any successor thereof) from time to time, the following provisions shall, subject to applicable law, apply:
 - (i) any Receiver appointed by the Holder shall be vested with the rights, powers and remedies that could have been exercised by the Holder in respect of the Debtor or the Mortgaged Property and such other powers and discretions as are granted in the instrument of appointment and any instrument or instruments supplemental thereto;
 - (ii) the identity of the Receiver (or any successor thereof) shall be within the Sole Discretion of the Holder;
 - (iii) the Holder may, from time to time and in its Sole Discretion, fix the remuneration of such Receiver and such Receiver shall be entitled to deduct the same out of the income from the Mortgaged Property or the proceeds of disposition of the Mortgaged Property;
 - (iv) any Receiver appointed by the Holder shall act as agent for the Holder solely for the purposes of conveying the Mortgaged Property, but otherwise and for all other purposes as agent for the Debtor, including for the collection of all amounts owing or earned in respect of the Mortgaged Property or any part thereof;
 - (v) the Debtor agrees to indemnify the Receiver in respect of all actions of the Receiver, acting as agent for the Debtor;
 - (vi) the appointment of the Receiver by the Holder shall not, to the extent permitted by law, create or result in any liability on the part of the Holder to the Receiver in any respect and such appointment or anything that may be done by any such Receiver or the removal of such Receiver or the termination of any such receivership shall not have the effect of constituting the Holder a mortgagee in possession in respect of the Mortgaged Property or any part thereof;
 - (vii) the Receiver shall have full power to fully manage, develop, operate, lease, deal with, construct, complete, repair, renovate, alter or improve the Mortgaged Property or any part thereof as agent for the Debtor and to take all such actions as are required in the exercise of such powers, including,

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without limitation, entering into, renewing, amending, supplementing and terminating such contracts and other agreements relating to the Mortgaged Property as are, in the Receiver's Sole Discretion, necessary or desirable. The aforementioned power shall include the power to borrow money in the name of and on the credit of the Debtor for all such purposes (which borrowings may be secured by the Mortgaged Property, or any part thereof, and which security shall have such priority as the Receiver deems appropriate);

- (viii) the Receiver shall not be liable to the Debtor to account for monies other than monies actually received from or in respect of the Mortgaged Property or any part thereof and out of such monies so received, the Receiver shall, subject to the further direction of the Holder, in the following order pay:
 - (A) the Receiver's fees and expenses;
 - (B) all payments made or expenses incurred by the Receiver in connection with the management, development, operation, construction, completion, lease, repair, renovation, alteration or other dealing with the Mortgaged Property or any part thereof in accordance with the provisions thereof;
 - (C) payments of interest, principal and other monies which may, from time to time, be or become charged upon the Mortgaged Property in priority to this Debenture and all taxes, insurance premiums and every other proper expenditure made or incurred by the Receiver in respect of the Mortgaged Property or any part thereof and in payment of all interest, fees and other similar amounts due or falling due hereunder;
 - (D) the Secured Obligations;
 - (E) at the Sole Discretion of the Receiver, interest, principal and other monies which may from time to time constitute an encumbrance on the Mortgaged Property subsequent or subordinate to this Debenture;
- (ix) the Receiver may, in its Sole Discretion, retain reasonable reserves to pay accruing amounts and anticipated payments in connection with any of the foregoing, and any surplus remaining in the hands of the Receiver after payment made as aforesaid shall be accountable to the Debtor, and upon termination of the receivership the Receiver shall pay such surplus to the Debtor or pay it into court, as the Receiver may elect;
- (x) the Receiver may, in the Sole Discretion of the Holder, be vested with all or any of the rights, powers and discretion of the Holder under this Debenture, including pursuant to Section 5.2(h) hereof, and carry out all

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actions and do all things that the Holder may do under this Debenture as if it were the Holder (it being agreed that such powers are not in any way limited by the foregoing provisions of this Section 5.2(j)); and/or

- (xi) the Receiver may, in the Sole Discretion of the Holder, borrow money for the purpose of maintaining, protecting and/or preserving the Mortgaged Property or any part thereof from time to time and/or for the purpose of carrying on the business of the Debtor. In that regard, the Receiver may issue certificates (hereinafter referred to as the “**Receiver’s Certificates**”) from time to time for such sums as will in the Sole Discretion of the Holder, be deemed sufficient by the Holder for obtaining security upon the Mortgaged Property or any part thereof for those amounts from time to time so required by the Receiver and such Receiver’s Certificate may be payable either to order or to bearer and may be payable at such time or times, and shall bear such interest as the Holder may approve and the Receiver may sell, pledge or otherwise dispose of the Receiver’s Certificates in such manner and may pay such commission on the sale, pledge or other disposition thereof, as the Holder may consider reasonable and the amounts payable by virtue of such Receiver’s Certificates from time to time shall form a charge upon the Mortgaged Property in priority to the amounts secured under this Debenture;
- (k) demand, commence, continue or defend any judicial or administrative proceedings in any court of competent jurisdiction for the purpose of selling, assigning, leasing, subleasing, foreclosing, disposing of, transferring, protecting, seizing, collecting, realizing or obtaining possession or control or payment of the Mortgaged Property, and give valid and effectual receipts and discharges therefor and compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Debtor;
- (l) make and pursue an application to a court of competent jurisdiction pursuant to the provisions of the CCAA, the BIA, or similar provisions of applicable insolvency, restructuring and debtor/creditor legislation, whether in Canada or elsewhere;
- (m) take any steps or proceedings of any kind permitted by law or in equity, or otherwise to enforce payment and performance of the Secured Obligations or performance of any other term, covenant, liability, obligation, indebtedness or agreement of the Debtor contained herein or in the other Loan Documents, and exercise all rights, powers and remedies of a secured party under the PPSA or other applicable statute that governs the rights, powers and remedies of a secured party;
- (n) enter into, rescind, suspend, disclaim, repudiate, compromise, reject, vary, assign, extend, renew, alter, modify, amend, negotiate, terminate, supplement, restate or replace any Contracts or any agreement of sale, lease, transfer or sublease in respect of all or part of the Mortgaged Property;

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- (o) execute and prosecute all suits, proceedings and actions in the name of the Debtor or otherwise, defend all suits, proceedings and actions against the Debtor or the Holder, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action which the Holder considers necessary for the protection of the Mortgaged Property;
- (p) engage and retain accountants, agents, consultants, appraisers, assistants, lawyers, managers and experts, including inspectors or agents to inspect, audit and report upon the value, state and condition of the Mortgaged Property, or to monitor the business, activities and operations of the Debtor, and any fees or expenses of such persons so paid by the Holder, together with any costs, charges and expenses incurred by the Holder in connection therewith (including legal fees and disbursements on a full indemnity basis), shall be added to the Secured Obligations and shall bear interest at the rate herein provided;
- (q) charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered in connection with the exercise of the rights, powers and remedies of the Holder hereunder, including reasonable legal, Receiver and accounting fees and expenses, and in every such case the amounts so paid, together with all costs, charges and expenses incurred in connection therewith, will be added to and form part of the Secured Obligations and will accrue interest at the rate herein provided; and/or
- (r) exercise any or all of the rights, powers and remedies available to the Holder under the Loan Documents.

5.3 Remedies Cumulative and Waiver

The rights, powers and remedies hereunder of the Holder are cumulative and are in addition to and not in substitution for any other rights, powers and remedies provided by law or by equity or under any other Loan Document. Any single or partial exercise by the Holder of any right or remedy in respect of a default or breach of any term, covenant or condition contained herein shall not be deemed to be a waiver thereof or to alter, affect or prejudice any other right or remedy hereunder or other rights, powers or remedies to which the Holder may be lawfully entitled, for such default or breach. The Holder shall at all times have the right to proceed against all or any portion of the Mortgaged Property or any other security in such order and in such manner as it shall determine without waiving any rights, powers or remedies which the Holder may have with respect to this Debenture or any other security or at law, in equity or otherwise. No grant of an extension of time by the Holder, and no delay or omission by the Holder in exercising any right, power or remedy hereunder, shall operate as a waiver thereof or of any other right, power or remedy. Any waiver by the Holder of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained and any indulgence granted, either expressly or by course of conduct, by the Holder shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights, powers and remedies of the Holder hereunder as a result of any other default or breach hereunder. No consent or waiver by the Holder shall be effective unless made in writing and signed by an authorized officer of the Holder.

5.4 Appointment of Attorney

The Debtor hereby irrevocably and unconditionally constitutes and appoints the Holder and any delegate thereof as its true and lawful attorney in fact and agent in the name and on behalf of the Debtor with full power of substitution, coupled with an interest, to carry out any assignment, conveyance, transfer, sale, lease, surrender, sublease or other disposition of the Mortgaged Property or any part thereof from time to time, by assigning, conveying, selling, leasing, surrendering, subleasing or otherwise disposing of the same in the name and on behalf of the Debtor, as the case may be, and any assignment, conveyance, sale, lease, surrender, sublease, disposition, deed, transfer or other document signed by the Holder or any delegate thereof, as the case may be, pursuant hereto shall have the same effect as if it had been executed and delivered under the common seal of the Debtor in the presence of the Debtor's duly authorized officers in that behalf, and for the purposes hereof the Debtor hereby irrevocably and unconditionally appoints the Holder and any delegate thereof as authorized signatory of the Debtor. All acts of any such attorney and agent are hereby ratified and approved, and such attorney and agent shall not be liable for any act, failure to act or any other matter or thing in connection therewith. Such appointment and power of substitution, given for consideration and being coupled with an interest, is unconditional and irrevocable until all of the Secured Obligations are paid and performed in full and shall not be revoked or affected by the liquidation, reorganization, compromise, arrangement, dissolution, winding-up, insolvency, bankruptcy or similar proceedings involving or affecting the Debtor.

5.5 Holder has no Duty

Any powers conferred on the Holder hereunder are solely to protect its right, title and interest in the Mortgaged Property and shall not impose any duty on it to exercise any such powers. Except for reasonable care of any Mortgaged Property in its possession and the accounting for moneys actually received by it hereunder, the Holder shall, subject to applicable law, have no duty as to any Mortgaged Property, including, but not limited to any responsibility for:

- (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to the Mortgaged Property, whether or not the Holder has or is deemed to have knowledge of such matters;
- (b) taking any action with respect to sending notices, performing any services, voting, exercising any options or making any elections with respect to, or paying any taxes or charges associated with the Holder; or
- (c) taking any steps (and the Debtor shall in each case duly take all such steps) necessary to perfect and otherwise preserve against all other parties (including, without limitation, other shareholders and prior parties) all rights of the Debtor and the Holder in the Mortgaged Property.

5.6 Surrender by the Debtor

Upon demand by the Holder, the Debtor will yield up vacant possession of the Real Estate to the Holder or to the Receiver upon demand in writing and agrees to put no

obstacle in the way of, but to facilitate by all means, the action of the Holder or the Receiver hereunder and not to interfere with the carrying out of the powers hereby granted by the Debtor. The Debtor hereby binds itself in the event of the appointment of a Receiver to consent to any petition or application presented to a court of competent jurisdiction by the Holder or the Receiver in order to effect the intent of this Debenture, and the Debtor shall not, after receiving notice from the Holder or the Receiver that it has taken possession or control of the Mortgaged Property, continue in possession or control thereof, unless with the express written consent and authority of the Holder or the Receiver, and shall forthwith, by and through the directors and officers of the Debtor, execute such documents and transfers as may be necessary to place the Holder or the Receiver, as the case may be, in possession or control of the Mortgaged Property and to evidence same. After giving effect to the foregoing, all of the rights, powers, privileges and functions of each of the directors and officers of the Debtor shall cease and determine with respect to the Mortgaged Property unless specifically continued in writing by the Holder or the Receiver, or unless the same shall have been restored to the Debtor by the Holder or the Receiver.

5.7 Dealing with the Mortgaged Property and the Security Interest

- (a) The Holder shall not be obliged to exhaust its recourse against the Debtor or any other person or persons or against any other security the Holder may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Mortgaged Property in such manner as it may, in its Sole Discretion, consider necessary or desirable.
- (b) The Holder may grant extensions or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Debtor and with other parties, sureties or securities as it sees fit without prejudice to the Secured Obligations or the rights of the Holder in respect of the Mortgaged Property.
- (c) Unless otherwise required by applicable law, the Holder shall not be: (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Mortgaged Property; (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Mortgaged Property or for the purpose of preserving any rights of the Holder, the Debtor or any other person in respect thereof; (iii) responsible for any loss occasioned by any sale or other dealing with the Mortgaged Property or by the retention of or failure to sell or otherwise deal therewith; or (iv) bound to protect the Mortgaged Property from depreciating in value or becoming worthless.
- (d) The Holder may, but shall never be obligated to: (i) pay all liens and/or charges (including, liens for realty taxes and/or utility charges), now and/or hereafter existing against the Mortgaged Property; (ii) pay all costs, charges and/or expenses (including, solicitors' fees on a full indemnity basis) incurred in taking, recovering and/or maintaining possession of the Mortgaged Property; (iii) pay all costs, charges and/or expenses incurred in protecting, repairing, restoring and/or preserving the Mortgaged Property; (iv) pay all costs, charges and/or expenses incurred in any proceeding or steps of any nature whatsoever taken in connection

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with realizing the security held by the Holder; and/or (v) pay all costs, charges and/or expenses incurred in collecting all overdue principal, interest, insurance premiums and/or other monies payable by the Debtor hereunder and/or in connection with the Mortgaged Property, whether any action or judicial proceeding to enforce such payments has been taken or not. The amount so paid by the Holder shall be added to the principal sum, shall be secured hereunder, shall be payable forthwith and accrue interest thereon at the rate and in the manner provided for herein for interest arrears on the principal sum. In the event that the Holder pays any such lien or charge, either from monies advanced hereunder or otherwise, the Holder shall be entitled to all of the rights, equities and securities of the person so paid.

5.8 Standard of Sale

Subject to applicable law, and without prejudice to the ability of the Holder or a Receiver, as the case may be, to dispose of the Mortgaged Property in any manner that in the Holder's and/or the Receiver's Sole Discretion, commercially reasonable, in the circumstances, the Debtor acknowledges that a disposition of Mortgaged Property by the Holder or a Receiver that takes place in accordance with the following provisions in all material respects, is and shall be deemed to be, commercially reasonable:

- (a) Mortgaged Property may be disposed of in whole or in part;
- (b) Mortgaged Property may be disposed of in any manner contemplated hereunder, including pursuant to Section 5.2(h);
- (c) any purchaser or lessee of such Mortgaged Property may be a customer of the Holder, provided that any such transaction shall be *bona fide*; and
- (d) the Holder may establish an upset or reserve bid or price in respect of the Mortgaged Property.

5.9 Dealings by Third Parties

No person dealing with the Holder or its agent or a Receiver shall be required to:

- (a) determine whether the Security Interest has become enforceable;
- (b) determine whether the powers which the Holder or its agent is purporting to exercise have been exercisable;
- (c) determine whether any money remains due to the Holder by the Debtor;
- (d) determine the necessity or expediency of the stipulations and conditions subject to which any sale or lease shall be made;
- (e) determine the propriety or regularity of any sale or any other dealing by the Holder with the Mortgaged Property; or

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- (f) see to the application of any money paid to the Holder.

5.10 Debtor Liable for the Deficiency

In the case of any judicial or other steps or proceedings to enforce the Security Interest and to realize upon the Mortgaged Property, and without limiting any right of the Holder to obtain judgment for any greater amount, the Debtor shall remain liable to the Holder for any amount which may remain due in respect of the Secured Obligations after application to the payment thereof of the proceeds of any sale, lease or other disposition of the Mortgaged Property or any part thereof.

5.11 Notice to the Debtor

Unless required by applicable law, neither the Holder nor a Receiver appointed by it shall be required to give the Debtor notice of any step, action or proceeding, or the exercise of any right, power or remedy, pursuant to any provision of this Article 5, including, without limitation, any notice of sale, lease or other disposition of the Mortgaged Property or any part thereof or the date after which any private disposition of Mortgaged Property or any part thereof is to be made.

5.12 Trust Monies

All monies collected or received by or on behalf of the Debtor, following demand, that are income from or proceeds of the disposition of the whole or any part of the Mortgaged Property shall be received by the Debtor in trust for the Holder and shall be segregated and forthwith paid to the Holder.

5.13 Limitations Act, 2002 (Ontario)

The Debtor acknowledges and agrees that the Holder may demand payment in accordance with the terms of this Debenture and commence proceedings against the Debtor in respect of any claim pursuant to this Debenture at any time while any of the Secured Obligations remain unpaid, notwithstanding any limitation period under the Limitations Act and/or any other applicable law and, to the fullest extent permitted by law, all limitation periods under the Limitations Act or other applicable law are hereby expressly excluded. For greater certainty, the Debtor acknowledges that this Debenture is a “business agreement” within the meaning of the Limitations Act.

5.14 Delegation of Duties

In addition to and without derogating from or prejudicing any rights, powers and remedies the Holder has at law, in equity or hereunder from time to time, the Holder may, in its Sole Discretion, execute any of its rights, powers, remedies, privileges and/or duties under this Debenture (including for purposes of holding or enforcing this Debenture on the Mortgaged Property (or any portion thereof)) by or through agents, employees or attorneys-in-fact. The Holder may also from time to time, when the Holder deems it to be necessary or desirable, in its Sole Discretion, appoint one (1) or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “**Subagent**”) with respect to all or any part of the Mortgaged Property and/or this Debenture; provided that no such Subagent shall be authorized to

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take any action with respect to the Mortgaged Property or any part thereof and/or this Debenture unless and except to the extent expressly authorized in writing by the Holder. Should any instrument in writing from the Debtor be required by the Holder and/or any Subagent so appointed by the Holder to more fully or certainly vest in and confirm to such Subagent such rights, powers, remedies, privileges and/or duties, the Debtor shall forthwith execute, acknowledge and deliver any and all such instruments promptly upon demand by the Holder and/or the Subagent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, remedies, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Holder until the appointment of a new Subagent designated by the Holder in writing. Notwithstanding the foregoing, the Holder shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent unless and only to the extent it is determined by a final and non-appealable judgment or court order binding on the Holder that the losses were the direct result of the Holder's acts or omissions constituting gross negligence or wilful misconduct.

ARTICLE 6 APPLICATION OF MONEYS

6.1 Application of Moneys

The moneys arising from the enforcement of the Security Interest as a result of the possession by the Holder or the Receiver of the Mortgaged Property or any part thereof or from any sale, lease or other disposition of, or realization of security on, the Mortgaged Property or any part thereof (except following foreclosure or other acceptance of the Mortgaged Property or part thereof in satisfaction of the Secured Obligations) shall be applied to the Secured Obligations by the Holder or the Receiver in the manner designated by the Holder in its Sole Discretion, except to the extent otherwise required by applicable law.

6.2 Payment Into Court

Where there is a question as to any person who is entitled to receive payment under Section 6.1, the Holder or the Receiver may elect, in its Sole Discretion, to: (a) pay the moneys referred to therein into a court of competent jurisdiction; or (b) exercise any rights that it may have at law under applicable legislation or rules of procedure to commence an application for advice and direction from a court of competent.

ARTICLE 7 MISCELLANEOUS

7.1 Disclaimers

- (a) The relationship of the Debtor and the Holder under this Debenture is, and shall at all times remain, solely that of obligor and obligee, and the Holder does not undertake or assume any responsibility or duty to the Debtor or to any third party with respect to the Mortgaged Property. Notwithstanding any other provisions of this Debenture or any other document: (i) the Holder is not, and shall not be

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construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of the Debtor, and the Holder does not assume and does not intend to ever assume, such status; and (ii) the Holder shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Debtor.

- (b) The Holder shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising, from any construction on, or occupancy or use of, the Mortgaged Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility thereon; (ii) any act or omission of the Debtor or any of the Debtor's employees, contractors, licencees, agents, representatives or invitees; (iii) any accident in or on the Mortgaged Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of the Debtor or any of the Debtor's licencees, employees, invitees, agents, contractors or representatives to maintain the Mortgaged Property in a safe condition; or (v) any nuisance made or suffered on any part of the Mortgaged Property.
- (c) The Debtor acknowledges and agrees that the Mortgaged Property, and the grants, assignments, transfers, demises, subleases, mortgages, pledges, subleases, charges and security interests created or granted hereunder and all rights hereby conferred upon the Holder, its successors and assigns, are held by the Holder for the benefit of the Holder pursuant to this Debenture and the other Loan Documents, and its successors and assigns from time to time pursuant thereto.

7.2 Notice

All notices, requests, demands or other communications required or permitted to be given by one party to another under this Debenture (each, a “**Notice**”) shall be given in the form and delivered in accordance with the requirements under the Loan Agreement.

7.3 Expenses

The Debtor shall pay to the Holder on demand all of the Holder's costs, charges and expenses (including legal fees on a full indemnity basis and Receiver's fees and expenses) in connection with the preparation, registration or amendment of this Debenture, the perfection or preservation of the Security Interest, the enforcement by any means of any provisions hereof or the exercise of any rights, powers or remedies hereunder.

7.4 Assignment

The Holder may sell, assign, transfer or otherwise dispose of all or any of the Secured Obligations and, in such event, each and every immediate and successive assignee, transferee or holder of all or any of the Secured Obligations, shall have, in respect of the rights or obligations sold, assigned, transferred or otherwise disposed of to it, the full benefit hereof to the

same extent as if it were an original party to the Secured Obligations or the part thereof so sold, assigned, transferred or otherwise disposed of.

7.5 Releases

The Holder may, from time to time, release any part of the Mortgaged Property or any other security either with or without any sufficient consideration therefor, without thereby releasing any other part of the Mortgaged Property or any other security or any person from the Security Interest or from any of the covenants herein contained. Each and every portion into which the Mortgaged Property is or may hereafter be divided does and shall stay charged with the Secured Obligations. No person shall have the right to require the Secured Obligations to be apportioned.

7.6 Discharge of Debenture

After the Secured Obligations have been paid indefeasibly in full and all commitments of the Holder under the Loan Agreement have been terminated, the Holder shall, at the written request and expense of the Debtor, cancel and discharge this Debenture and execute and deliver to the Debtor such instruments as shall be reasonably necessary to discharge this Debenture and to release or reconvey to the Debtor any property and assets subject to the Security Interest.

7.7 Pledge of Debenture

This Debenture at any time and from time to time may be assigned, transferred, pledged, hypothecated, lodged, deposited or delivered by the Debtor to the Holder as security for advances or loans to or for indebtedness or other obligations or liabilities of the Debtor to the Holder and/or such other parties as the Debtor and the Holder may in writing agree and in such event this Debenture shall not be deemed to have been discharged or redeemed or the amounts payable hereunder to have been satisfied or reduced by reason of the account of the Debtor having ceased to be in debt while this Debenture remained so assigned, transferred, pledged, hypothecated, lodged, deposited or delivered.

7.8 No Merger

- (a) There shall not be deemed to be any merger of this Debenture, or of the rights and interests of the Holder hereunder, with the estate in the Real Estate or with the reversion or rights and interests of the Debtor or the Holder under any instrument affecting the Mortgaged Property by reason only of the fact that the same person may own or acquire, directly or indirectly, two or more estates, rights or interests in the Mortgaged Property until all persons having any interest under this Debenture, in the estate in the Real Estate or in the reversion or rights and interests of the Debtor or the Holder under any instrument affecting the Mortgaged Property, by an appropriate instrument, so declare and provide.
- (b) This Debenture shall not operate to merge any of the Secured Obligations and no judgment recovered by the Holder shall operate to merge or in any way affect the security constituted by this Debenture, which is held in addition to and not in

substitution for any other security now or hereafter held or acquired by the Holder.

7.9 No Obligation to Advance

Neither the issue nor delivery of this Debenture shall obligate the Holder to advance any funds, or otherwise make or continue to make any credit available, to the Debtor.

7.10 Real Property Provisions

With respect to the Mortgaged Property situated in the Province of Ontario, the following provisions apply:

- (a) the implied covenants deemed to be included in a charge pursuant to subsection 7(1) of the Land Registration Reform Act (Ontario) shall be in addition to and not in substitution of the covenants contained herein which are covenants by the Debtor for itself and its successors and assigns to and for the benefit of the Holder and its successors and assigns; and
- (b) if any of the forms of words contained herein are substantially in the forms of words contained in Column One of Schedule "B" of the *Short Forms of Mortgages Act* (Ontario) and distinguished by a number therein, this charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule "B" of said Act distinguished by the same number, and this charge shall be interpreted as if such Act was still in force and effect.

7.11 Exclusion of Rights

The Secured Obligations will be paid and performed by the Debtor without regard to any equities between any of the Debtor and the Holder or any other person or any right of set-off, deduction or counterclaim or equities between the Debtor and the Holder or any other person.

7.12 Benefit of the Debenture

This Debenture shall enure to the benefit of the Holder and its successors and assigns and be binding upon the Debtor and its successors and assigns. The Holder's interest in this Debenture and the benefit hereof as well as the right to receive the principal sum, all interest thereon and other monies due under this Debenture or the other Loan Documents from time to time and the right to require performance by the Debtor of all obligations hereunder and/or under the other Loan Documents shall be transferable in whole or in part by the Holder without notice or consent and free from any right of set-off, deduction, counterclaim or equities between the Debtor and the Holder or any other person.

7.13 Deposit of Debenture

This Debenture may but need not be deposited by the Debtor to the Holder as additional security for the Secured Obligations or any part or parts thereof.

7.14 Copy Received

- (a) The Debtor acknowledges having received a signed copy of this Debenture and copies of the financing statements registered under any applicable provincial or state statute or statutes in respect of the Security Interest.
- (b) To the extent not prohibited by applicable law, the Debtor hereby waives its right under any personal property security legislation pursuant to which notice of the Security Interest is required to obtain: (i) a copy of any financing statement (including any financing change statement, renewal or discharge) registered by the Holder against the Debtor or with respect to the Security Interest; and (ii) a copy of the verification statement issued by the registry under any personal property security legislation to confirm registration of any financing statement (including any financing change statement, renewal or discharge).

7.15 Registrations/Further Assurances

- (a) The Holder may, at the expense of the Debtor, register, deposit, file and/or record this Debenture or notices in respect of this Debenture in all offices where such registration, deposit, filing or recording is, in the opinion of the Holder or its counsel, necessary or of advantage to the creation, perfection and/or preservation of the security interests arising pursuant to this Debenture. The Holder may also, at the Debtor's expense, renew and/or extend such registrations, deposits, filings and/or recordings from time to time as and when deemed necessary or advisable by the Holder to keep them in full force and effect.
- (b) The Debtor shall from time to time hereafter and upon demand of the Holder, forthwith execute and deliver and make or cause to be made all such further acts, deeds, assurances, registrations, deposits, filings, recordings and things as may be required or deemed necessary by the Holder to more effectively implement and carry out the true intent and meaning of this Debenture.

7.16 Counterparts; Electronic Execution

This Debenture and any subsequent notices and/or agreements in connection herewith from time to time may be executed by email (PDF) and/or in one or more counterparts, and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same debenture, notice and/or agreement, and which shall become effective when one or more counterparts have been signed by each of the parties and delivered (by email (PDF) or otherwise) to the other parties.

[Signature page follows]

IN WITNESS WHEREOF the Debtor has caused this Debenture to be executed and delivered under seal as of the date first written above.

LAURENTIAN UNIVERSITY OF SUDBURY

By: 

Name: Jeff Bangs

Title: Chair of the Board of Governors

By: 

Name: Tammy Eger

Title: Interim President, Vice Chancellor and
Vice President Research

I/We have authority to bind the University

**SCHEDULE A
REAL ESTATE**

PIN	Legal Description
73593-0465 (LT)	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 8 53R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY
73593-0446 (LT)	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0406 (LT)	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0063 (LT)	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73592-0427 (LT)	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195 AS IN SD246792
73592-0426 (LT)	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0084 (LT)	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73585-1167 (LT)	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73584-0804 (LT)	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73584-0678 (LT)	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY

SCHEDULE B
ST. JOSEPH'S LEASEHOLD PROPERTY

PIN 73592-0412(LT)

**SCHEDULE C
REGISTERED LIENS**

PIN 73584-0678(LT)

1. Instrument No. S61148Z registered November 14, 1969 being a Transfer re restriction to height and location of construction
2. Instrument No. S85088 registered January 11, 1984 being a Bylaw
3. Instrument No. S106762 registered April 5, 1993 being a Bylaw
4. Instrument No. S116012 registered November 8, 2000 being a Bylaw

PIN 73585-1167(LT)

5. Instrument No. S116429 registered May 1, 2001 being an electrical distribution vault agreement with Greater Sudbury Hydro Inc.
6. Instrument No. SD225472 registered May 10, 2012 being a Transfer of Easement in favour of Greater Sudbury Hydro Inc.
7. Instrument No. SD225678 registered May 14, 2012 being a Transfer of Easement in favour of Bell Canada
8. Instrument No. SD239534 registered November 6, 2012 being a Transfer of Easement in favour of City of Greater Sudbury
9. Instrument No. SD272059 registered May 1, 2014 being a Notice re Site Plan Control Agreement

PIN 73592-0412(LT)

10. Instrument No. LT908773 registered March 1, 2001 being a Notice of Lease between University and St. Joseph's Health Centre of Sudbury ("**St. Joseph's**")
11. Instrument No. LT947401 registered March 28, 2003 being a Notice of Lease Amendment between University and St. Joseph's
12. Instrument No. LT930319 registered May 24, 2002 being a Notice re Site Plan Control Agreement
13. Instrument No. LT947673 registered April 3, 2003 being a Notice of Charge of Lease in favour of Royal Bank of Canada re LT908773 and LT947401
14. Instrument No. LT948541Z registered April 25, 2003 being an Application to Annex Restrictive Covenants
15. Instrument No. LT959909 registered October 23, 2003 being a Notice of Charge of Lease in favour of Royal Trust Corporation of Canada re LT908773 and LT947401

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16. Instrument No. LT970593 registered April 29, 2004 being a Notice re Licence Agreement between University, St. Joseph's and Union Gas Limited
17. Instrument No. SD111457 registered April 25, 2008 being a Notice re Site Plan Amending Agreement
18. Instrument No. SD121704 registered August 5, 2008 being a Notice re Site Plan Control Agreement
19. Instrument No. SD246793 registered March 14, 2013 being a Transfer of Easement in favour of Greater Sudbury Hydro Inc.
20. Instrument No. SD357814 registered June 20, 2018 being a Notice of Sublease re LT908773 between St. Joseph's and Maison De Soins Palliatifs De Sudbury Hospice consented to by University
21. Instrument No. SD364293 registered October 4, 2018 being a Notice re Site Plan Control Amending Agreement

PIN 73592-0426(LT)

22. Instrument No. LT394500 registered February 11, 1976 being a Notice re Development Agreement
23. Instrument No. LT891690 registered January 11, 2000 being a Notice re Agreement for daycare facilities
24. Instrument No. LT972049 registered May 20, 2004 being a Notice re Site Plan Control Agreement

PIN 73592-0427(LT)

25. Instrument No. LT394500 registered February 11, 1976 being a Notice re Development Agreement
26. Instrument No. LT622331 registered May 26, 1988 being a Transfer of Easement in favour of Bell Canada for telecommunications
27. Instrument No. LT891690 registered January 11, 2000 being a Notice re Agreement for daycare facilities
28. Instrument No. LT972049 registered May 20, 2004 being a Notice re Site Plan Control Agreement
29. Instrument No. SD153735 registered August 25, 2009 being a Notice re Site Plan Control Agreement
30. Instrument No. SD246792 registered March 14, 2013 being a Transfer of Easement in favour of Greater Sudbury Hydro Inc.

PIN 73593-0063(LT)

31. Instrument No. LT972049 registered May 20, 2004 being a Notice re Site Plan Control Agreement

PIN 73593-0406(LT)

32. Instrument No. LT264533 registered January 30, 1969 being an Agreement with University and the Crown

PIN 73593-0446(LT)

33. Instrument No. LT394500 registered February 11, 1976 being a Notice re Development Agreement

34. Instrument No. LT947397 registered May 28, 2003 being Bylaw

PIN 73593-0465(LT)

35. Instrument No. LT25019 registered October 2, 1926 being a Transfer of Easement in favour of The International Nickel Company of Canada, Limited

36. Instrument No. LT32862 registered May 9, 1931 being a Transfer of Easement in favour of The International Nickel Company of Canada, Limited

37. Instrument No. LT119418 registered January 25, 1956 being a Transfer of Easement in favour of The International Nickel Company of Canada Limited

38. Instrument No. LT213378 registered July 10, 1964 being a Notice of Lease between University and Huntington University

39. Instrument No. LT217228 registered November 13, 1964 being a Notice of Lease between University and Thorneloe University

40. Instrument No. LT223242 registered June 29, 1965 being a Notice of Lease between University and The University of Sudbury

41. Instrument No. LT233153 registered June 21, 1966 being a Transfer of Easement in favour of Northern and Central Gas Company

42. Instrument No. LT287236 registered August 6, 1970 being a Notice of Lease between University and Ontario Student Housing Corp.

43. Instrument No. LT353270 registered December 24, 1973 being a Notice of Lease between University and Ontario Student Housing Corp.

44. Instrument No. LT394500 registered February 11, 1976 being a Notice re Development Agreement

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45. Instrument No. LT436834 registered January 20, 1978 being a Transfer of Easement in favour of The Corporation of the City of Sudbury for track (known as Laurentian Track) maintenance purposes
46. Instrument No. LT741984 registered September 3, 1992 being a Notice re Site Plan Control Agreement
47. Instrument No. LT748126 registered November 13, 1992 being a Transfer of Easement in favour of Centra Gas Ontario Inc.
48. Instrument No. LT804581 registered May 10, 1995 being a Notice of Lease between University and Her Majesty the Queen in right of Ontario as represented by the Chair of the Management Board of Cabinet
49. Instrument No. LT842126 registered March 11, 1997 being a Transfer of Easement in favour of Centra Gas Ontario Inc.
50. Instrument No. LT891690 registered January 11, 2000 being a Notice re Notice re Agreement for daycare facilities
51. Instrument No. LT972049 registered May 20, 2004 being a Notice re Site Plan Control Agreement
52. Instrument No. SD34616 registered November 17, 2005 being a Notice re Site Plan Control Agreement
53. Instrument No. SD72326 registered February 16, 2007 being a Notice re Site Plan Control Agreement
54. Instrument No. SD74049 registered March 14, 2007 being a Notice of Lease between University and Fido Solutions Inc.
55. Instrument No. SD231406 registered July 24, 2012 being an Application (General) re: extension of lease SD74049
56. Instrument No. SD305761 registered November 13, 2015 being an Application (General) re amending and extension of lease SD74049
57. Instrument No. SD75681 registered April 5, 2007 being a Notice re Site Plan Control Agreement
58. Instrument No. SD201116 registered June 16, 2011 being a Notice re Site Plan Control Agreement
59. Instrument No. SD261440 registered October 21, 2013 being a Transfer of Easement in favour of Greater Sudbury Hydro Inc.
60. Instrument No. SD317507 registered June 23, 2016 being a Transfer of Easement in favour of Union Gas Limited

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61. Instrument No. SD349223 registered December 14, 2017 being a Notice re Site Plan Control Agreement
62. Instrument No. SD353369 registered March 23, 2018 being a Transfer of Easement in favour of Union Gas Limited
63. Instrument No. SD361769 registered August 27, 2018 being a Notice re Site Plan Control Agreement
64. Instrument No. SD371949 registered February 28, 2019 being a partial Transfer Release and Abandonment of Easement re LT233153 from Enbridge Gas Inc.
65. Instrument No. SD465887 registered November 22, 2022 being a Notice of Lease Amendment between University and Huntington University, re Notice of Lease registered as Instrument No. LT213378 on July 10, 1964
66. Lease between Her Majesty the Queen in Right of Ontario as Represented by the Minister of Government and Consumer Services and the Debtor dated January 1, 2020

This is Exhibit "M" referred to in the Affidavit of Pierre Fontaine sworn by Pierre Fontaine of the City of Greater Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 11th day of January, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

DEREK HARLAND

Properties

PIN	73593 - 0465	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 8 53R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY			
Address	SUDBURY			
PIN	73584 - 0678	LT	Interest/Estate	Fee Simple
Description	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY			
Address	SUDBURY			
PIN	73584 - 0804	LT	Interest/Estate	Fee Simple
Description	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY			
Address	SUDBURY			
PIN	73585 - 1167	LT	Interest/Estate	Fee Simple
Description	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0084	LT	Interest/Estate	Fee Simple
Description	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0412	LT	Interest/Estate	Fee Simple
Description	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920: 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793			
Address	SUDBURY			
PIN	73592 - 0426	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY			
Address	SUDBURY			
PIN	73592 - 0427	LT	Interest/Estate	Fee Simple
Description	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195 AS IN SD246792			
Address	SUDBURY			
PIN	73593 - 0063	LT	Interest/Estate	Fee Simple
Description	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0406	LT	Interest/Estate	Fee Simple
Description	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY			
Address	SUDBURY			
PIN	73593 - 0446	LT	Interest/Estate	Fee Simple
Description	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY			
Address	SUDBURY			

Party From(s)

Name

ONTARIO SUPERIOR COURT OF JUSTICE

Address for Service

393 University Avenue

Toronto, Ontario

M5G 1E6

Applicant(s)	Capacity	Share
--------------	----------	-------

Name

LAURENTIAN UNIVERSITY OF SUDBURY

Address for Service

935 Ramsey Lake Road

Sudbury, Ontario

P3E 2C6

Statements

The applicant who is authorized by court order See Schedules which is still in full force and effect, applies to have the register amended as follows: the Land Registrar is hereby directed to discharge, delete and expunge from title the Application to Register Court Order registered as Instrument No. SD414794 from all parcel registers identified in this document.

Signed By

Esme Rose Cragg

77 King Street West, Suite 400

Toronto

M5K 0A1

acting for

Signed

2022 12 15

Applicant(s)

Tel

416-863-4511

Fax

416-863-4592

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

DENTONS CANADA LLP

77 King Street West, Suite 400

Toronto

M5K 0A1

2022 12 15

Tel

416-863-4511

Fax

416-863-4592

Fees/Taxes/Payment

Statutory Registration Fee	\$69.00
Total Paid	\$69.00

File Number

Applicant Client File Number :

590633-3



Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

TUESDAY, THE 1ST

)

JUSTICE MORAWETZ

)

DAY OF NOVEMBER, 2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

**ORDER
(Exit Financing)**

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, authorizing the Applicant to enter into an exit financing loan agreement dated October 21, 2022 (the "**Exit Financing Agreement**") between the Applicant and His Majesty the King in right of Ontario, as represented by the Minister of Colleges and Universities (the "**Lender**") and granting related relief was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn October 25, 2022 and the Exhibits thereto (the "**Haché Affidavit**") and the Eighteenth Report of Ernst & Young Inc. (the "**Monitor**") dated October 27, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the participant sheet, no one else appearing although duly served as appears from the Affidavit of Service of Derek Harland sworn October 26, 2022:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that this Motion is properly returnable today.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Amended Plan of Compromise and Arrangement of the Applicant dated September 9, 2022 (the "**Plan**") or the Exit Financing Agreement.

EXIT FINANCING

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute, deliver and perform its obligations under the Exit Financing Agreement and the Security Documentation together with any other instruments and documents (collectively, and together with the Exit Financing Agreement and the Security Documentation, the "**Exit Financing Documentation**"), as are contemplated by the Exit Financing Agreement or as may be reasonably required by the Lender pursuant to the terms of the Exit Financing Agreement.
4. **THIS COURT ORDERS AND DIRECTS** the Applicant to utilize the proceeds of the Advance to repay in full and discharge the indebtedness and obligations owing by the Applicant under the DIP Facility.
5. **THIS COURT ORDERS** that, at the Effective Time on the Plan Implementation Date, upon the proceeds of the advance under the Exit Financing Agreement having been applied in repayment of the DIP Facility and all DIP Obligations (as defined in the DIP Loan Agreement) having been paid in full:
 - (a) the Applicant and the Property (as defined in the Amended and Restated Initial Order, dated February 11, 2021) shall be released and discharged from all indebtedness, liabilities and obligations under the DIP Facility, the DIP Loan Agreement and all other documents and instruments delivered in connection therewith;
 - (b) all encumbrances in favour of the DIP Lender against the Applicant or its Property (including the Real Property, as defined in the DIP Loan Agreement) shall be released, deleted and discharged; and

- (c) the Applicant is hereby authorized and directed to effect the discharge of any and all registrations and filings made in favour of the DIP Lender in respect of the Applicant under any registry system,

provided that, for greater certainty, nothing in this Order shall release or discharge any obligations owing to, or encumbrances or registrations in favour of His Majesty the King in right of Ontario as represented by the Minister of Colleges and Universities in its capacity as Lender under the Exit Financing Documentation or in any capacity other than DIP Lender.

6. **THIS COURT ORDERS** that, (a) upon the registration or recordation of this Order in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) in the form prescribed in the *Land Titles Act* or the *Land Registration Reform Act*, as applicable, and (b) upon the Effective Time on the Plan Implementation Date occurring, as evidenced by the issuance of the Monitor's Certificate, the Land Registrar is hereby directed to discharge, delete and expunge from title the instruments listed on Schedule "A" hereto.

GENERAL

THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, land registrar, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



Chief Justice G.B. Morawetz

SCHEDULE "A"
INSTRUMENTS TO BE DISCHARGED

PIN	Legal Description	Registered Encumbrance
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY	Instrument No. SD334951 registered April 27, 2017, being a Construction Lien by 1033803 Ontario Inc.
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY	Instrument No. SD337638 registered June 14, 2017, being a Certificate by 1033803 Ontario Inc.
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY	Instrument No. SD63098 registered October 23, 2006, being a Construction Lien by Corfab Company Ltd.
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1, 2, 3, 4, 5 & 6 EXPROP PL D49 & SW OF PT 2, 3, 7, 9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1, 2, 3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY	Instrument No. SD414050 registered February 3, 2021, being a Construction Lien by Cladco Limited
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1, 2, 3, 4, 5 & 6 EXPROP PL D49 & SW OF PT 2, 3, 7, 9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1, 2, 3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694;	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.

	EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY	
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158 159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00 00878, IF ENFORCEABLE; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 153R6379; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920; 2NDLY: PT LT 3CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF	Instrument No. SD414794 registered February 12, 2021

	BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY	being Application re Court Order by Firm Capital Mortgage Fund Inc.
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT1 53R19195AS IN SD246792	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION145, PT 1 SR1028; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY	Instrument No. SD414794 registered February 12, 2021 being Application re Court Order by Firm Capital Mortgage Fund Inc.

**ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY**

	ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto
	ORDER (Exit Financing)
	THORNTON GROUT FINNIGAN LLP 3200 – 100 Wellington Street West TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7
	D.J. Miller (LSO# 344393P) Email: djmiller@tgf.ca
	Mitchell W. Grossell (LSO# 699931) Email: mgrossell@tgf.ca
	Andrew Hanrahan (LSO# 78003K) Email: ahanrahan@tgf.ca
	Derek Harland (LSO# 79504N) Email: dharland@tgf.ca
	Tel: 416-304-1616 Fax: 416-304-1313
	Lawyers for the Applicant

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. CV-21-00656040-00CL

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

Proceedings commenced at Toronto

**AFFIDAVIT OF PIERRE FONTAINE
(Vesting Order)**

THORNTON GROUT FINNIGAN LLP

3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

D.J. Miller (LSO# 344393P)

Email: djmiller@tgf.ca

Mitchell W. Grossell (LSO# 69993I)

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Andrew Hanrahan (LSO# 78003K)

Email: ahanrahan@tgf.ca

Derek Harland (LSO# 79504N)

Email: धारland@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

TAB 3

Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF)	WEDNESDAY, THE 25th
)	
JUSTICE MORAWETZ)	DAY OF JANUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

VESTING ORDER

THIS MOTION, made by Laurentian University of Sudbury (the “**Applicant**”) for an order vesting in James Crispo and Dominique Ansell (together, the “**Purchasers**”) the Applicant’s right, title and interest, if any, in and to the real property described at Schedule “A” hereto on an “as-is, where-is” basis (the “**Subject Property**”), was heard this day by Zoom judicial video conference in accordance with the *Guidelines to Determine Mode of Proceeding in Civil*, effective April 19, 2022.

ON READING the Applicant’s Motion Record dated January 11, 2023 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and such other counsel that appeared on the motion, and on being satisfied that all known parties who could be affected by or who may have an interest in the transfer of the Subject Property to the Purchasers have received proper notice and have been served with the Motion Record herein, no one appearing for any other person entitled to receive notice of this motion, although properly served as appears from the affidavit of service of [●] sworn [●], filed;

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

2. **THIS COURT ORDERS** that, upon the registration by the Applicant of an entered copy of this Vesting Order on title to the Subject Property in accordance with paragraph 3 herein, all of the Applicant's right, title and interest, if any, in and to the Subject Property shall vest in the Purchasers.

3. **THIS COURT ORDERS** that upon the registration by the Applicant in the Land Title Division for the Land Registry Office No. 53 for Sudbury (the "**Land Registry Office**") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and attaching an entered copy of this Vesting Order, the Land Registrar for the Land Registry Office is hereby directed to enter the Purchasers as the registered owners of the Subject Property identified and described in Schedule "A" hereto in fee simple and open the appropriate Property Identifier Number for the Subject Property in the name of the Purchasers, subject only to the instruments identified and described in Schedule "B", and is hereby directed to delete and expunge from title to the Subject Property all of the instruments listed in Schedule "C" hereto, such that those instruments shall not appear on the Property Identifier Number opened by the Land Registrar for the Subject Property.

4. **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 Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Subject Property in the Purchasers pursuant to this Vesting Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall

not be void or voidable by creditors of the Applicant, 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.

Chief Justice G.B. Morawetz

Part of Parcel 34100, Section SES being Part Broken Lot 1, Concession 1 MCKIM Location 145 designated as Part 1 on Reference Plan 53R21719; Greater Sudbury

Being Part of PIN 73593-0406(LT)

Schedule “B” – Instruments to Remain registered on title to the Subject Property

1. LT264521 Crown Patent registered January 29, 1969
2. LT264533 Notice Agreement registered January 30, 1969
3. 53R21719 Plan Reference deposited September 13, 2022

Schedule “C” – Instruments to be deleted and expunged from title to the Subject Property

1. SD414794 Application to Register Court Order registered February 12, 2021
2. SD442590 Application to Register Court Order registered January 28, 2022
3. SD466093 Charge registered November 24, 2022
4. SD467679 Application to Amend based on Court Order registered December 15, 2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. CV-21-00656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

VESTING ORDER

THORNTON GROUT FINNIGAN LLP

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Lawyers for the Applicant

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

Court File No.: CV-21-656040-00CL

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

Proceedings commenced at Toronto

**MOTION RECORD
(Vesting Order)
(Returnable January 25, 2023)**

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

D.J. Miller (LSO# 344393P)
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Lawyers for the Applicant