Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

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

B E T W E E N:

1000688136 ONTARIO INC.

Applicant

and

20 CALDARI DEVELOPMENT INC.

Respondent

MOTION RECORD
(RETURNABLE MAY 31, 2024)

VOLUME I OF II

May 16, 2024

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852

Lawyers for the Applicant,

TO: SERVICE LIST (attached)

SERVICE LIST

TO: **MINISTRY OF FINANCE (ONTARIO)**
Legal Services Branch
33 King Street West, 6th Floor
Oshawa ON L1H 8H5
Email: insolvency.unit@ontario.ca

AND TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto ON M5X 1K6

Diane Winters
Email: dianewinters@justice.gc.ca

AND TO: **AKASH AURORA**
61 Beckenridge Drive
Markham ON L3S 2V3
Email: akash@aurora-group.ca

AND TO: **THE AURORA HOTEL GROUP INC.**
c/o Akash Aurora, President
Unit# 2, 20 Caldari Road
Vaughan, ON L4K 4N8
Email: akash@aurora-group.ca
Tel: 416.824.7507

AND TO: **RAVI AURORA, CEO**
Unit# 2, 20 Caldari Road
Vaughan, ON L4K 4N8
Email: ravi@aurora-group.ca
Tel: 416-824-6190

AND TO: **NAKUL (NICK) AURORA**
Unit# 2, 20 Caldari Road
Vaughan, ON L4K 4N8
Email: nick@aurora-group.ca
Tel: 647-986-2859

AND TO: **ERNST & YOUNG INC.**
EY Tower, 100 Adelaide Street West
PO Box 1,
Toronto, ON, M5H 0B3

Allen Yao
Email: Allen.Yao@parthenon.ey.com

AND TO: **DICKSON WRIGHT LLP**
Suite 2200 Box 447, 199 Bay Street
Toronto, ON M5L 1G4

LISA S. CORNE
Email: lcorne@dicksonwright.com

Lawyers for the CWB

AND TO: **Kagan Shastri DeMelo Winer Park LLP**
188 Avenue Road
Toronto, ON M5R 2J1

Rahul Shastri
Email: rshastri@ksllp.ca

Lawyers for Akash Aurora, The Aurora Hotel Group Inc., Ravi Aurora, and Nakul Aurora

Email Addresses:

insolvency.unit@ontario.ca; dianewinters@justice.gc.ca; akash@aurora-group.ca; ravi@aurora-group.ca; nick@aurora-group.ca; Allen.Yao@parthenon.ey.com; vdare@foglers.com; cskipper@foglers.com; rshastri@ksllp.ca

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

1000688136 ONTARIO INC.

Applicant

and

20 CALDARI DEVELOPMENT INC.

Respondent

I-N-D-E-X

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

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

B E T W E E N:

1000688136 ONTARIO INC.

Applicant

and

20 CALDARI DEVELOPMENT INC.

Respondent

NOTICE OF MOTION

The Applicant, 1000688136 Ontario Inc. will make a Motion to the court on May 31, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard *(choose appropriate option)*

[ ] In writing under subrule 37.12.1(1) because it is [insert on consent, unopposed or made without notice];

[ ] In writing as an opposed motion under subrule 37.12.1(4);

[ ] In person;

[ ] By telephone conference;

[X] By video conference.

at the following location

7755 Hurontario Street
Brampton, Ontario

THE MOTION IS FOR *(State here the precise relief sought)*

(a) An Order approving the accounts of the Receiver, Ernst & Young Inc ("the Receiver") and the accounts of its counsel, Dickinson Wright LLP to May 31, 2024;

(b) An Order discharging the Receiver;

(c) An Order approving the resolution of litigation in Action Nos. CV-21-00003633, CV-22-00001381, CV-22-00692176 and CV-23-00004340;and

(d) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE *(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on).*

(a) The Receiver was appointed by Application of the Canadian Western Bank ("CWB") in respect of a mortgage in default **("the Mortgage")** between the CWB and the Respondent, 20 Caldari Development Inc. ("the

Company") pursuant to the Order of the Honourable Justice Tzimas on December 7, 2023 **("the Receivership Order")**;

(b) The first report of the Receiver and the Receiver's Accounts were approved by this Court on March 8, 2024

(c) On March 11, 2024, the Mortgage of the CWB was assigned to 1000688136 Ontario Inc., and the Assignment was registered on title to the subject property as Instrument YR3655690.

(d) An Order to Continue in this action was issued by the Brampton Court on April 24, 2024, and served on the parties.

(e) At the time of the Receivership Order, the shareholders of the Company were in litigation in respect of the Company by reason of an oppression remedy action, being action no. CV-22-00692176, **("the Oppression Remedy Action")**, commenced by Jay Khanna, the 50% shareholder in the Company against Nakul (Nick) Aurora, the other 50% shareholder of 20 Caldari;

(f) An action between J.I.S. Contract Furniture Inc., a company of Jay Khanna, and Aurora Hotel Group Inc., action no. CV-21-00003633 **("the Promissory Note Action")**, was extant in respect of a claim for recovery of funds under certain promissory notes of the Aurora Hotel Group Inc.

(g) A further action between Jay Khanna as Plaintiff, and the Aurora Hotel Group, Ravi Aurora and Shaun Aurora, action no. CV-22-00001381 in respect of alleged fraud **("the Barrie Hotel Action")**;

(h) The parties to the Oppression Remedy Action, the Promissory Note Action, the Barrie Hotel Action, and this action, for enforcement of the Mortgage, have reached a conditional global resolution of all four proceedings **("the Global Resolution")**;

(i) The Global Resolution is conditional, *inter alia*, upon the (i) discharge of the Receiver, (ii) the delivery of an amended Mortgage commitment; (iii) the registration of a second mortgage; (iii) delivery of new leases for AHG and a related party; (iv) delivery of a Business Operating Agreement, and (v) a Discontinuance of the three other actions;

(j) It is a pre-condition of the implementation of the Global Resolution that the Receivership of the Company be terminated and the Receiver be discharged;

(k) The documentation in respect to the Global Resolution has been executed and is being held in escrow pending this motion. (The documentation is contained in Volume II of this Motion Record).

(l) The assignee Applicant, the new mortgagee, consents to the Order discharging the Receiver and lifting the Receivership, and the implementation of the Global Resolution;

(m) The Receiver does not oppose the Order sought;

(n) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion: *(List the affidavits or other documentary evidence to be relied on).*

(a) Affidavit of Jay Khanna, sworn May 16, 2024;

(b) The Consent of the Mortgagee, 1000688136 Ontario Inc.; and

(c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 16, 2024

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852

Lawyers for Jay Khanna

TO: SERVICE LIST (attached)

SERVICE LIST

TO: **MINISTRY OF FINANCE (ONTARIO**
Legal Services Branch
33 King Street West, 6th Floor
Oshawa ON L1H 8H5
Email: insolvency.unit@ontario.ca

AND TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto ON M5X 1K6

Diane Winters
Email: dianewinters@justice.gc.ca

AND TO: **AKASH AURORA**
61 Beckenridge Drive
Markham ON L3S 2V3
Email: akash@aurora-group.ca

AND TO: **THE AURORA HOTEL GROUP INC.**
c/o Akash Aurora, President
Unit# 2, 20 Caldari Road
Vaughan, ON L4K 4N8
Email: akash@aurora-group.caTel:
416.824.7507

AND TO: **RAVI AURORA, CEO**
Unit# 2, 20 Caldari Road
Vaughan, ON L4K 4N8
Email: ravi@aurora-group.ca
Tel: 416-824-6190

AND TO: **NAKUL (NICK) AURORA**
Unit# 2, 20 Caldari Road
Vaughan, ON L4K 4N8
Email: nick@aurora-group.ca
Tel: 647-986-2859

AND TO: **ERNST & YOUNG INC.**
EY Tower, 100 Adelaide Street West
PO Box 1,
Toronto, ON, M5H 0B3

Allen Yao
Email: Allen.Yao@parthenon.ey.com

AND TO: **DICKSON WRIGHT LLP**
Suite 2200 Box 447, 199 Bay Street
Toronto, ON M5L 1G4

LISA S. CORNE
Email: lcorne@dicksonwright.com

Lawyers for the CWB

AND TO: **Kagan Shastri DeMelo Winer Park LLP**
188 Avenue Road
Toronto, ON M5R 2J1

Rahul Shastri
Email: rshastri@ksllp.ca

Lawyers for Akash Aurora, The Aurora Hotel Group Inc., Ravi Aurora, and Nakul Aurora

Email Addresses:

insolvency.unit@ontario.ca; dianewinters@justice.gc.ca; akash@aurora-group.ca; ravi@aurora-group.ca; nick@aurora-group.ca; Allen.Yao@parthenon.ey.com;
vdare@foglers.com; cskipper@foglers.com; rshastri@ksllp.ca

1000688136 ONTARIO INC.
Applicant

-and-

20 CALDARI DEVELOPMENT INC.
Respondent

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

NOTICE OF MOTION

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852

Lawyers for Jay Khanna

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

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

B E T W E E N:

1000688136 ONTARIO INC.

Applicant

and

20 CALDARI DEVELOPMENT INC.

Respondent

AFFIDAVIT OF JAY KHANNA

I, Jay Khanna, businessman, of the City of Mississauga, in the Regional Municipality of Peel, Province of Ontario, MAKE OATH AND SAY:

1. I am, *inter alia*, one of two 50% shareholders of 20 Caldari Development Inc., the respondent in this proceeding, and, as such, have knowledge of the matters contained in this Affidavit. I am also the principal of J.I.S. Contract Furniture Inc., which is also a party involved in the Global Resolution which is hereinafter described. Where I have received information from other parties, I state the source of that information and believe it to be true.

The Outstanding Litigation

2. I had lent approximately $4.6 million to the three Aurora brothers, Ravi Aurora, Akash Aurora and Nick Aurora in the Fall of 2020 for the purchase of a hotel property, located at 20 Fairview Road, in Barrie, Ontario, for which I subsequently received several promissory notes signed by Akash Aurora, on behalf of the Aurora Hotel Group Inc. ("AHG"). These promissory notes went into default and an action was commenced for recovery of the promissory notes issued as Action No. CV-21-00003633, from the Brampton Court ("the Promissory Note Action). A true copy of the Statement of Claim in that action is attached as **Exhibit "A".**

3. Subsequently, I commenced a second action in respect of the hotel and property, wherein that action sought a Certificate of Pending Litigation by reason of resulting trust or, alternatively, an equitable mortgage, in respect of the 20 Fairview property in Barrie. This action was commenced as Action No. CV-22-00001381-0000 in Barrie, Ontario. ("the Barrie Hotel Action"), a true copy of which Statement of Claim is attached as **Exhibit "B"**.

4. A motion for a Certificate of Pending Litigation was resolved on an interim basis by an Undertaking filed with the Court pursuant to a Court Order of Justice S.T. Bale, dated January 31, 2023. A true copy of that Order is annexed hereto and marked as **Exhibit "C"**.

5. I had also invested further monies with the Aurora brothers in respect of the property and company involved in this action, being the Respondent, 20 Caldari

Development Inc. ("the Company). As stated above, I am a 50% shareholder of the Company.

6. On December 22, 2022, I commenced an Application in my capacity as shareholder of the Company for relief under the oppression remedy provisions under the *Ontario Business Corporation's Act*. ("the Oppression Remedy Action"). The Oppression Remedy Action sought relief, *inter alia,* which included the appointment of a Receiver and the sale of the principal asset of the Company, being 20 Caldari Road, in Vaughan. A true copy of the Notice of Application in respect of the Oppression Remedy Action issued December 22, 2023 is annexed hereto to this my Affidavit and attached as **Exhibit "D"**.

7. With respect to the Oppression Remedy Action, the Promissory Note Action and the Barrie Hotel Action, I agreed to partake in a mediation with the Aurora brothers, which took place on April 4 and April 6, 2023 with Mr. Gavin McKenzie, Q.C. CSM, acting as mediator between the parties, but no resolution was achieved.

8. The Company, which was already in default of the Canadian Western Bank ("CWB") mortgage on the 20 Caldari Road property, continued to be in default of the CWB mortgage through 2023, until it was placed into Receivership by the CWB by Order of the Honourable Justice Tzimas on December 7, 2023 ("the Receivership Order"). A true copy of the Receivership Order is annexed hereto and attached as **Exhibit "E"**.

9. The Receivership Order has been in effect since December, 2023, and the Receiver has previously reported to this Court. The Receiver's First Report was approved by the Court on March 8, 2024.

Progress on Resolution

10. Throughout the Receivership, I have been in contact with the Aurora brothers. My counsel has continued to be in contact with litigation counsel acting on behalf of the Aurora brothers, AHG, and the Company, Mr. Rahul Shastri, for the purposes of attempting to resolve the four pieces of litigation in which I, (and companies I am associated with), and the Aurora brothers (and companies they were associated with), were embroiled.

11. On March 11, 2024, a new company, 1000688136 Ontario Inc., was incorporated. Rick Sousa is the president and director of 1000688136 Ontario Inc. The new company is associated with my company, J.I.S. Contract Furniture Inc. 1000688136 Ontario Inc. took an assignment of the CWB mortgage, and the assignment was registered on title to the Property at 20 Caldari Road as Instrument No. YR3655690.

12. On April 24, 2024, an Order to Continue for 1000688136 Ontario Inc., in place of CWB, was issued by the Brampton Court and served on all parties to this action.

13. The registered assignment and transfer of the CWB Mortgage and the Order to Continue, are contained in the **Closing Book for the Global Resolution, which is incorporated to this my Affidavit, and filed as Volume II to this Motion Record**.

The Pending Global Resolution

14. Through counsel, the parties to the Promissory Note Action, the Barrie Hotel Action, the Oppression Remedy Action, and this mortgage enforcement action have

negotiated and "papered" a business resolution of all four extant actions ("the Global Resolution").

15. The Global Resolution has a number of elements to it, which I generally describe below:

(a) A resolution of the Promissory Note Action and the Barrie Hotel Action, whereby the claim to an interest in the Barrie Hotel property and the monies which I lent for the purpose of the purchase of that property will be crystalized in an Amended and Restated Promissory Note, which will in turn be secured by a Debenture and registered as a second mortgage against the 20 Caldari Road property. The documents relating to this element of the Global Resolution are found at Tabs 1 through 10 of the Closing Book re Global Resolution; (Volume II to Motion Record)

(b) A resolution of the within action, and the assigned mortgage, whereby the terms of the mortgage will be amended by an Amendment to the Commitment Letter, a Mortgage Amending Agreement, and capitalization of the outstanding unpaid interest into the principal of the mortgage. The documents relating to this element of the Global Resolution are found at Tabs 11 through 17 of the Closing Book re Global Resolution.

(c) A resolution of my 50% share interest in the Company at issue in the Oppression Remedy Action, will be resolved by an option to purchase my 50% share interest via an Option Agreement with the other 50%

shareholder, Nakul Aurora, at an agreed value. The documents relating to this element of the Global Resolution are found at Tabs 18 through 20 of the Closing Book re Global Resolution;

(d) A resolution of the business operations of the Company, and the occupation of 20 Caldari Road by AHG and Countertop Solutions Inc., (a related company of the Aurora brothers), being dealt with by two new one-year Leases for the space to be occupied by these two companies, together with a simple Business Operating Agreement to ensure rental revenues from tenants of the Property are used to service the mortgage and property taxes. The documents relating to this element of the Global Resolution are found at Tabs 21 through 23 of the Closing Book re Global Resolution;

(e) A resolution of the outstanding litigation as described earlier in this Affidavit, being the Promissory Note Action, the Barrie Hotel Action and the Oppression Remedy Action, being resolved by Notices of Discontinuance of those actions, and an Order removing the undertaking given in respect of the CPL motion in the Barrie Hotel Action. The documents relating to this element of the Global Resolution are found at Tabs 24 through 29 of the Closing Book re Global Resolution.

16. As the Receivership Order restricts the ability of the Company to deal with its affairs, and deal with the Property, the Receivership Order must be lifted before the Global Resolution can be made effective. In short, it is a pre-condition for the Global Resolution

to be implemented that the Receivership of the Company be terminated and that the Receiver be discharged.

17. I note that as of the date of this Affidavit, I take no issue with the conduct and administration of the Receiver, Mr. Allen Yao of Ernst & Young LLP, during the Receivership.

18. I further acknowledge that the relief requested in the Notice of Motion is subject to a final report and accounting of the Receiver to this Court for approval.

19. I make this Affidavit in support of the relief sought in the Notice of Motion, including, an Order for the discharge of the Receiver, effective May 31, 2024, and the approval by this Court of the Global Resolution as set out herein and in the Closing Book re Global Resolution, Volume II of this Motion Record.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on May 16, 2024

Commissioner for Taking Affidavits
(or as may be)

Charles W. Skipper

JAY KHANNA

1000688136 ONTARIO INC.
Applicant

-and-

20 CALDARI DEVELOPMENT INC.
Respondent

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

AFFIDAVIT OF JAY KHANNA
SWORN MAY 16, 2024

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852

Lawyers for Jay Khanna

Electronically issued
Délivré par voie électronique : 08-Oct-2021
Brampton

Court File No./N° du dossier du greffe: CV-21-00003633-0000

This is Exhibit "A" referred to in the Affidavit of Jay Khanna sworn before me, this 16th day of May 2024

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

J.I.S. CONTRACT FURNITURE INC. and IVK INC.

Plaintiffs

and

AURORA HOTEL GROUP INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

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 $1,000 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 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 ____________________ Issued by ______________________________
Local Registrar

Address of court office: 7755 Hurontario Street
Brampton, Ontario
L6W 4T1

TO: **Aurora Hotel Group Inc.**

20 Caldari Road
Concord, Ontario
L4K 4N8

8820 Jane Street, Suite 4
Vaughan, Ontario
L4K 2M9

CLAIM

1. The Plaintiffs claim: *(State here the precise relief claimed.)*

   (a) the sum of $5,590,513.93;

   (b) prejudgment and postjudgment interest at a rate of 8.00% per annum;

   (c) in the alternative, prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

   (d) the costs of this proceeding, plus all applicable taxes; and

   (e) such further and other Relief as to this Honourable Court may seem just.

The Parties

2. The Plaintiff, J.I.S. Contract Furniture Inc. ("**JIS**"), is a corporation incorporated pursuant to the laws of the Province of Ontario, and is headquartered in the City of Mississauga, in the Regional Municipality of Peel.

3. The Plaintiff, IVK Inc. ("**IVK**" and collectively with JIS, the "**Plaintiffs**"), is a corporation incorporated pursuant to the laws of the Province of Ontario, and is headquartered in the City of Mississauga, in the Regional Municipality of Peel.

4. The Defendant, Aurora Hotel Group Inc. (the "**Defendant**"), is a corporation incorporated pursuant to the laws of the Province of Ontario, and is headquartered in the City of Vaughan, in the Regional Municipality of York.

The Loan and Promissory Notes

5. Between September and November 2020, the Plaintiffs loaned to the Defendant the sum of $5,062,000.00, as follows:

(a) On or around September 10, 2020, the Plaintiffs advanced to the Defendant the sum of $400,000.00;

(b) On or around October 8, 2020, the Plaintiffs advanced to the Defendant the sum of $150,000.00;

(c) On or around October 14, 2020, the Plaintiffs advanced to the Defendant the sum of $150,000.00; and

(d) On or around November 2, 2020, the Plaintiffs advanced to the Defendant the sum of $4,362,000.00 (collectively, the "**Funds Advanced**")

6. In connection with the Funds Advanced, the Defendant executed a series of promissory notes, in favour of the Plaintiffs, as follows:

(a) The Defendant executed a Promissory Note, dated September 4, 2020, in which the Defendant agreed to pay to the Plaintiff the principal sum of $400,000.00;

(b) The Defendant executed a Promissory Note, dated September 15, 2020, in which the Defendant agreed to pay to the Plaintiff the principal sum of $651,308.00;

(c) The Defendant executed a Promissory Note, dated October 8, 2020, in which the Defendant agreed to pay to the Plaintiff the principal sum of $150,000.00;

(d) The Defendant executed a Promissory Note, dated October 13, 2020, in which the Defendant agreed to pay to the Plaintiff the principal sum of $150,000.00; and

(e) The Defendant executed a Promissory Note, dated November 2, 2020, in which the Defendant agreed to pay to the Plaintiff the principal sum of $4,512,000.00 (collectively, the "**Promissory Notes**").

7. The total principal owing from the Defendant to the Plaintiff, pursuant to the Promissory Notes, was $5,863,308.00 (hereinafter, the "**Principal Balance**").

8. The parties agreed that the Principal Balance was subject to interest at a rate of 8.00% per annum.

9. The Promissory Notes provide that any fees or expenses incurred by the Plaintiff as a result of a missed payment, NSF cheque, or other, shall be due and payable by the Defendant.

10. Upon mutual agreement of the parties, the deadline for the Defendant's payment of the Principal Balance was extended until August 8, 2021 (the "**Payment Deadline**").

11. As of the date of this Statement of Claim, the Defendant has paid the sum of $651,308.00 towards the Principal Balance.

12. The principal sum of $5,590,513.93 (the "**Outstanding Balance**") remains due and owing from the Defendant to the Plaintiff under the Promissory Notes. The Defendant failed to pay the Outstanding Balance as at the Payment Deadline, or at any time thereafter.

13. The Defendant has repeatedly assured the Plaintiffs that payment in forthcoming. Notwithstanding the Plaintiffs' repeated demands and the Defendant's promises to pay, as of the date of this Statement of Claim, the Defendant has failed and/or refused to pay Outstanding Balance.

14. The Plaintiffs claim as against the Defendant for the Outstanding Balance, together with interest at a rate of 8.00% per annum.

15. The Plaintiffs propose that this action be tried at the City of Brampton, in the Province of Ontario.

(Date of issue)

THOMPSON, MACCOLL & STACY LLP
Barristers and Solicitors
1020 Matheson Boulevard East, Suite 5
Mississauga, Ontario
L4W 4J9

Julia A. Cecchetto (76941U)
jcecchetto@tmslaw.com
Tel: (905) 625-5591

Lawyers for the Plaintiffs

J.I.S. CONTRACT FURNITURE INC. et al.
Plaintiffs

-and-

AURORA HOTEL GROUP INC.
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

STATEMENT OF CLAIM

THOMPSON, MACCOLL & STACY LLP
Barristers and Solicitors
1020 Matheson Boulevard East, Suite 5
Mississauga, Ontario
L4W 4J9

Julia A. Cecchetto (76941U)
jcecchetto@tmslaw.com
Tel: (905) 625-5591 ext. 237

Lawyers for the Plaintiffs

RCP-F 4C (September 1, 2020)

This is Exhibit "B" referred to in the Affidavit of Jay Khanna sworn before me, this 16th day of May 2024

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

J.I.S. CONTRACT FURNITURE INC. and 2107307 ONTARIO INC.

Plaintiffs

and

AURORA GROUP OF COMPANIES INC., AURORA HOTEL GROUP INC., 2782736 ONTARIO INC., AKASH AURORA a.k.a. SHAWN AURORA, and RAVI AURORA

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.

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 ______________________ Issued by ____
Local Registrar

Address of court office: 75 Mulcaster Street
Barrie, ON
L4M 3P2

TO: **AURORA GROUP OF COMPANIES INC.**
20 Caldari Road
Concord, ON
L4K 4N8

AND TO: **AURORA HOTEL GROUP INC.**
20 Caldari Road
Concord, ON
L4K 4N8

AND TO: **2782736 ONTARIO INC.**
20 Caldari Road
Concord, ON
L4K 4N8

AND TO: **AKASH AURORA a.k.a. SHAWN AURORA**
20 Caldari Road
Concord, ON
L4K 4N8

AND TO: **RAVI AURORA**
20 Caldari Road
Concord, ON
L4K 4N8

CLAIM

1. The Plaintiffs, J.I.S. Contract Furniture Inc. ("**J.I.S**") and 2107307 Ontario Inc. ("**2107307**") (collectively, the "**Plaintiffs**") make claim for the following relief:

(a) A declaration that the Plaintiffs are the beneficiaries of a resulting trust, or alternatively, a constructive trust in respect of the Fairview Property (hereinafter defined);

(b) A declaration, by reason of the resulting trust, the constructive trust, or unjust enrichment, that the Plaintiffs are the beneficial owners of the Fairview Property by reason of their advancing all or substantially all of the funds used to purchase the Fairview Property;

(c) Alternatively, a declaration that the Plaintiffs are the beneficiaries of an equitable mortgage in respect of the Advanced Funds (hereinafter defined) used by the Defendants to acquire the Fairview Property ("**Equitable Mortgage**");

(d) An order determining the terms and conditions of the Equitable Mortgage, and further orders and directions to effect the registration of the Equitable Mortgage on title to the Fairview Property;

(e) An Order determining and directing the priorities of the other encumbrances and mortgages, including the Equitable Mortgage, in respect of the Fairview Property;

(f) As against the personal Defendants, Ravi Aurora and Akash Aurora a.k.a. Shawn Aurora, punitive and exemplary damages in the amount of $500,000.00 by reason of Ravi and Shawn Aurora's deceit to obtain a benefit for themselves and corporations in their power or control;

(g) As against Shawn Aurora, punitive and exemplary damages in the amount of $250,000.00 for deceit and the unauthorized practice of law in the Province of Ontario;

(h) Such further and other relief, directions, declarations, and orders as are necessary to secure the legal and equitable interest of the Plaintiffs in the Fairview Property.

Interim Relief:

(i) A tracing order regarding the Advanced Funds delivered to Aurora Hotel Group Inc., Bank of Montreal Account #1968092 to determine the ultimate recipients of the Advanced Funds, and the amounts so received;

(j) An interim and interlocutory order enjoining the Defendants from selling, transferring, encumbering or otherwise disposing of the Fairview Property pending the determination of the rights, obligations, liabilities, and claims of the Plaintiffs and parties herein;

(k) Additionally or alternatively, an interim and interlocutory order enjoining the Defendants from transferring or disposing of any proceeds from the sale of the Fairview Property;

(l) An Order granting leave to issue a Certificate of Pending Litigation (CPL) against the lands set forth in Schedule "A" to this Statement of Claim, and identified as the Fairview Property, in respect of the interest in the Fairview Property claimed by the Plaintiffs;

(m) An order directing service of the Order granting the CPL upon those parties with a registered interest in the Fairview Property;

(n) The costs of this proceeding, plus all applicable taxes; and

(o) Such further and other orders, directions, declarations, orders for accounting, and other relief as to this Honourable Court may deem just.

A. The Parties

2. J.I.S. is a corporation established pursuant to the laws of Ontario, with its registered head office located in the City of Mississauga, in the Regional Municipality of Peel.

3. 2107307 is a corporation established pursuant to the laws of Ontario, with its registered head office located in the City of Toronto, in the Province of Ontario.

4. Jay Khanna ("Mr. Khanna") is a principal of both J.I.S. and 2107307.

5. The Defendant, Aurora Group of Companies Inc. ("**Aurora Group of Companies**") is a corporation established pursuant to the laws of Ontario, with its registered head office located in the City of Vaughan, in the Regional Municipality of York.

6. The Defendant, Aurora Hotel Group Inc. ("**Aurora Hotel Group**") is a corporation established pursuant to the laws of Ontario, with its registered head office located in the City of Vaughan, in the Regional Municipality of York (the Aurora Hotel Group and the Aurora Group of Companies are collectively referred to as the "**Aurora Group**").

7. The Defendant, 2782736 Ontario Inc. ("**2782736**") is a corporation established pursuant to the laws of Ontario, with its registered head office located in the City of Vaughan, in the Regional Municipality of York. 2782736 is the registered owner of the Fairview Property from which it operates the "Allure Hotel & Conference Centre" under the "Choice Hotels" franchise brand.

8. The Defendant, Akash Aurora a.k.a. Shawn Aurora ("**Shawn Aurora**"), is an individual ordinarily resident in Ontario. Shawn Aurora is the registered director and officer of 2782736, and also holds himself out as being the President of the Aurora Group of Companies and Aurora Hotel Group, as well as a person possessing a Bachelor of Laws degree, and capable of providing legal advice.

9. The Defendant, Ravi Aurora, is an individual ordinarily resident in Ontario. Ravi Aurora holds himself out as being the Chief Executive Officer of the Aurora Group of Companies.

10. Ravi and Shawn Aurora are brothers. Ravi and Shawn, together with the remaining Defendants, collectively operate a number of hotel properties and businesses together under name of the "Aurora Group", an unregistered business style.

11. Ravi and Shawn Aurora are the directing and controlling minds of the corporate Defendants.

B. Factual Background

12. On September 28, 2020, Mr. Khanna was approached by Ravi Aurora and Shawn Aurora to finance the purchase of a hotel property municipally known as 20 Fairview Road, Barrie, ON, L4N 4P3, and more particularly and legally described in Schedule "A" to this Statement of Claim (the "**Fairview Property**").

13. Ravi Aurora and/or Shawn Aurora made the following representations to Mr. Khanna regarding the purchase of the Fairview Property:

(a) The Fairview Property consisted of a 161-room hotel which was located on a 7-acre parcel of land;

(b) The purchaser of the Fairview Property was the Aurora Hotel Group;

(c) The purchase price of the Fairview Property was approximately $15.5 million, plus legal fees and land transfer tax;

(d) A first mortgage for the Aurora Group transaction would be an $11 million vendor take-back mortgage by the seller of the Fairview Property, Crestview Investment Corporation ("**Crestview**");

(e) Ravi Aurora had delivered a $250,000.00 deposit for the purchase of the Fairview Property;

(f) The closing date for the Fairview Property was November 2, 2020;

(g) The Aurora Group had already agreed to resell the Fairview Property on November 5, 2020 for $20 million to a third party, and had entered into an agreement of purchase and sale with the third party for the resale of the Fairview Property; and

(h) The third party purchaser of the Fairview Property had agreed to provide a $450,000.00 deposit, to be held in escrow, which became non-refundable as of October 15, 2020, and would be forfeited in the event that the resale transaction failed to close on November 5, 2020.

14. Ravi Aurora and Shawn Aurora requested that Mr. Khanna advance funds to finance the purchase of the Fairview Property for three days; with the expressed intention that the Plaintiffs would repaid in three days when the Fairview Property would be resold to the third party.

15. Prior to the advancement of funds, Mr. Khanna requested that his advance of money to fund the purchase of the Fairview Property be formally memorialized in

writing. At Shawn Aurora's suggestion, Shawn drafted and presented promissory notes to Mr. Khanna which would evidence the Advanced Funds used to purchase the Fairview Property. Mr. Khanna understood that Shawn Aurora held a law degree, and Shawn Aurora held himself out as being capable of preparing documentation which would secure and protect the Plaintiffs' interest upon delivery of the Advanced Funds.

16. On October 7, 2020, Ravi Aurora informed Mr. Khanna that the Aurora Group required $150,000.00 from Mr. Khanna in order to pay the land transfer tax for the purchase of the Fairview Property prior to closing so as to avoid the value of the land transfer tax being shown on title to the Fairview Property.

17. On October 8, 2020, J.I.S. delivered $150,000.00 to the Aurora Hotel Group by way of bank wire transfer. At or around the same time, Mr. Khanna repeated his request to Ravi and Shawn Aurora that any money advanced to the Aurora Hotel Group be evidenced in writing, and which Shawn Aurora agreed to prepare.

18. On October 13, 2020, Ravi Aurora wrote to Mr. Khanna advising that an additional $150,000.00 was required to pay the remainder of the deposit money for the Fairview Property, and requested that Mr. Khanna transfer $150,000.00 to the Aurora Hotel Group.

19. The following day on October 14, 2020, Mr. Khanna transferred the additional $150,000.00 to the Aurora Hotel Group by way of bank wire transfer.

20. On November 2, 2020, at the request of Ravi and Shawn Aurora, the Plaintiffs caused the following transfers to be made to the Aurora Hotel Group to close the purchase of the Fairview Property:

(a) $262,000.00 transferred by 2107307;

(b) $2,750,000.00 transferred by J.I.S.;

(c) $700,000.00 transferred by J.I.S.; and

(d) $650,000.00 transferred by 2107307;

21. In total, J.I.S. and 2107307 transferred $3,750,000.00 and $912,000.00 respectively to Aurora Hotel Group, Bank of Montreal Account #1968092, totalling $4,662,000.00 (collectively referred to as the "**Advanced Funds**").

22. The Plaintiffs were induced to advance the funds on the basis of the representations made in paragraph 13, to wit, the Advanced Funds were going to be used until November 5, 2020, and would then be repaid to the Plaintiffs when the third party purchaser would close on the Fairview Property.

23. The Advanced Funds represented all, or substantially all, of the funds utilized by the Defendants to acquire the Fairview Property. All of the equity in the Fairview Property was provided by the Advanced Funds.

24. The Advanced Funds were evidenced by way of three promissory notes prepared by Shawn Aurora, dated October 8, 13, and November 2, 2020 (the

"**Promissory Notes**"). Because the Advanced Funds were to be only used for three days, Shawn Aurora did not provide for any interest to be paid to the Plaintiffs under the Promissory Notes.

25. The transaction for the purchase of the Fairview Property closed in escrow on November 2, 2020. Ravi Aurora advised Mr. Khanna that title to the Fairview Property would pass the following day on November 3, 2020. At all material times, J.I.S. and 2107307 understood that the Advanced Funds would be used to purchase the Fairview Property by the Aurora Hotel Group.

26. Contrary to what Mr. Khanna was advised by Ravi and Shawn Aurora, the Fairview Property was not resold to a third party purchaser on November 5, 2020. In fact, to the knowledge of Ravi and Shawn Aurora, since on or about October 15, 2020, the third party purchaser had not confirmed the purchase of the Fairview Property, and had received back its $450,000.00 deposit. Ravi and Shawn Aurora did not disclose these material facts to Mr. Khanna. Rather, Ravi and Shawn Aurora continued to represent to Mr. Khanna that there was a third party purchaser for the Fairview Property, and induced Mr. Khanna to provide the Advanced Funds as pleaded above.

27. At the time that the transaction closed on November 2, 2020, the Plaintiffs were oblivious to the material changes of the circumstances under which they had been persuaded to provide funds for the purchase of the Fairview Property; and oblivious that 2782736 – a new company under the control of Shawn Aurora – had taken title to the Fairview Property.

Events Subsequent to the Acquisition of the Fairview Property

28. Subsequent to the acquisition of the Fairview Property on November 2, 2020, and when the anticipated transaction to the third party purchaser did not close on November 5, 2020, on or about November 8, 2020, Ravi and Shawn Aurora advised Mr. Khanna that the third party purchaser had not closed, but was still interested in purchasing the Fairview Property, although was "*being a little difficult*".

29. The promised resale of the Fairview Property on November 5, 2020, or afterwards, never materialized. The Plaintiffs were unpaid on any amounts under the Promissory Notes. The Advanced Funds used to purchase the Fairview Property by the Defendants remained outstanding in the amount of $4,662,000.00.

30. In early December 2020, Mr. Khanna requested that the Advanced Funds be secured by a mortgage on the Fairview Property. The personal Defendants, Ravi and Shawn Aurora, prevaricated regarding the issue of securing the Plaintiffs' interest. Ravi and Shawn Aurora advised Mr. Khanna that a second mortgage on the Fairview Property would not be permitted by the first mortgagee, Crestview.

31. Ravi and Shawn Aurora did not disclose that they, through 2782736, were using the Fairview Property to secure a second mortgage.

32. When Mr. Khanna and the Plaintiffs learned that another party was placing a second mortgage on the Fairview Property, Ravi and Shawn Aurora stated to Mr. Khanna that the funds obtained from the second mortgage would be used to repay the

Advanced Funds. Mr. Khanna was not advised of the particulars of the second mortgage.

33. On January 6, 2021, the second mortgage was placed on the Fairview Property, in the amount of $2.8 million to Zaherali Visram ("**Second Mortgage**").

34. After the Second Mortgage was placed on the Fairview Property, Mr. Khanna was again advised that the Plaintiffs would receive the funds from the Second Mortgage to repay the Advanced Funds.

35. None of the funds obtained by the Defendants from the Second Mortgage were used to repay the Advanced Funds, nor to make any payments on the inadequate Promissory Notes (bearing no interest) being held by the Plaintiffs.

36. Several demands for repayment of the Advanced Funds were made by Mr. Khanna on behalf of the Plaintiffs, but no repayments were ever made.

37. In or around October 2021, Mr. Khanna discovered that the Aurora Group were not the owners of the Fairview Property. Mr. Khanna discovered for the first time that 2782736 was in fact the registered title holder to the property.

38. On October 31, 2022, Mr. Khanna discovered that 2782736 had further mortgaged the Fairview Property on October 7, 2022 for an additional $1 million to two entities: Neemtree Investments Ltd. and 2665731 Ontario Inc. ("**Third Mortgage**"), without his knowledge. No payments to the Plaintiffs for the Advanced Funds were made from the funds received under the Third Mortgage.

C. Fraudulent Misrepresentations and Deceit

39. The Plaintiffs plead that the personal Defendants, Ravi and Shawn Aurora, secured the benefit of receiving the Advanced Funds for 2782736 to purchase the Fairview Property by the following deceits, omissions of material facts, and misrepresentations:

(a) Aurora Hotel Group did not receive a non-refundable $450,000.00 deposit for the purchase of the Fairview Property by a third party;

(b) Aurora Hotel Group was not the party to the agreement of purchase and sale for the Fairview Property, and was never intended to be the purchaser;

(c) 2782736 was not disclosed as to its existence, that 2782736 was the purchaser, and that 2782736 obtained and held title to the Fairview Property;

(d) That the corporate Defendants, through 2782736, were acquiring the Fairview Property to operate the Property, and obtain a revenue stream;

(e) That the Defendants could not secure the Plaintiffs' interest in the Fairview Property by a mortgage;

(f) That the Second Mortgage was placed on the Fairview Property for the purpose of repaying the Advanced Funds;

(g) That the Plaintiffs would receive the funds under the Second Mortgage after the Second Mortgage was placed;

(h) That the proceeds of the Second Mortgage were being held to repay the Advanced Funds; and

(i) That the Defendants proceeded to further mortgage the Fairview Property a third time without advising the Plaintiffs, or providing the Plaintiffs with the funds from the Third Mortgage.

40. The Plaintiffs further state that the Promissory Notes are void or voidable by reason of the facts that:

(a) the obligee of the Promissory Notes was the Aurora Hotel Group and not 278276, the party that received the Advanced Funds;

(b) the Aurora Hotel Group did not own the asset the Advanced Funds were used to purchase;

(c) the Promissory Notes were prepared by Shawn Aurora acting, or purporting to act, in a legal capacity for the Aurora Hotel Group and the Plaintiffs when those parties were in conflict, and when he was not licensed to practice law in the Province of Ontario;

(d) the Promissory Notes were drafted by Shawn Aurora with no interest payable on the Advanced Funds, and are worthless as legal obligations to secure a repayment of $4.6 million; and

(e) no independent legal advice was obtained by the Plaintiffs, or their principal, Mr. Khanna, in respect of the Promissory Notes.

D. The Plaintiffs' Interest in the Fairview Property

Resulting Trust

41. The Plaintiffs plead that by virtue of providing the Advanced Funds for the purchase of the Fairview Property, they are entitled to a resulting trust over the Fairview Property. The Advanced Funds were:

(a) provided by the Plaintiffs to the Defendants, at their request, for the purchase of the Fairview Property;

(b) the personal Defendants had made the requests for the Advanced Funds on behalf of corporate entities over which they had ownership and control;

(c) title to the Fairview Property was taken by 2782736, a corporate entity undisclosed to the Plaintiffs at the time the Advanced Funds were provided;

(d) the Defendants deceived the Plaintiffs in respect of the facts set out in paragraph 13, above; and

(e) 2782736 has title to, and use of, the Fairview Property by reason of the Advanced Funds.

42. The Plaintiffs plead that they are the beneficiaries of a resulting trust in the Fairview Property, and further plead that they have an interest in the lands comprising the Fairview Property.

Constructive Trust

43. In the alternative, the Plaintiffs plead that by virtue of providing the Advanced Funds for the purchase by 2782736 of the Fairview Property, they are entitled to a constructive trust over the Fairview Property. The Advanced Funds were received by 2782736 for the purchase of the Fairview Property and no juristic reason exists for the advancement, receipt, or use or benefit of the Advanced Funds by 2782736 for the purchase of the Fairview Property, or for any reason; and the Plaintiffs have been deprived of the Advanced Funds.

44. The Plaintiffs plead that by operation of a constructive trust, the Plaintiffs have an interest in the Fairview Property.

Equitable Mortgage

45. In the alternative, by operation of a resulting trust, a constructive trust, or by unjust enrichment, the Plaintiffs state that they are entitled to an equitable mortgage against the interests of 2782736 in the Fairview Property.

46. The Plaintiffs plead that they are entitled to a final Order of the Court directing the registration of the Equitable Mortgage on title to the Fairview Property, directing the terms and conditions, including the payment and discharge conditions of the Equitable

Mortgage, and an Order declaring any default in the Equitable Mortgage and the rights and remedies of the Plaintiffs in respect of the Equitable Mortgage and the Fairview Property.

47. The Plaintiffs further state that the Fairview Property has significantly increased in value since the Advanced Funds were provided, and the transaction closed on November 2, 2020.

48. The Advanced Funds represented all, or substantially all, of the funds utilized by the Defendants to acquire the Fairview Property. All of the equity in the Fairview Property of 2782736 – now owned, but not disclosed to the Plaintiffs as the owner – was provided by the Plaintiffs through the Advanced Funds.

49. The Plaintiffs further plead that the Defendants were unjustly enriched, the Plaintiffs suffered a corresponding deprivation, and there is no juristic reason for the enrichment and deprivation.

50. By operation of a resulting trust or a constructive trust, or by operation of equitable relief through unjust enrichment, the Plaintiffs are the beneficial owners of the Fairview Property. Although 2782736, through the acts of the Defendants, is the legal owner of the Fairview Property, the Plaintiffs provided all of the funds supporting the equity of 2782736 in the Fairview Property.

E. Punitive and Exemplary Damages

51. The Plaintiffs state that all of the misrepresentations, material omissions, and deceits of the corporate Defendants were committed by the corporate Defendants' officers, directors, and operating minds, Ravi Aurora and Shawn Aurora. By reason of the misrepresentations, material omissions, and deceits of Ravi Aurora and Shawn Aurora pleaded in paragraphs 39 herein and perpetrated upon the Plaintiffs and the Plaintiffs' principal, Mr. Khanna, the personal Defendants received the benefit of the Advanced Funds for themselves and for the corporate Defendants under their ownership and control.

52. The Plaintiffs state that the acts of Ravi Aurora and Shawn Aurora are deserving of censure by the Court, and deserving of the assessment and imposition of punitive or exemplary damages in the amount of $500,000.00.

53. The Plaintiffs state that the acts of Shawn Aurora in recommending, drafting, and presenting the Promissory Notes to Mr. Khanna and the Plaintiffs in respect of the Advanced Funds in light of the misrepresentations, material omissions, and deceits; and when the Promissory Notes were wholly inadequate to protect and secure the $4.6 million of the Advanced Funds; and when the Advanced Funds were utilized by Shawn Aurora for the benefit of the 2782736, a corporation incorporated by him of which he was the President and directing mind of; and when Shawn Aurora was not licensed or insured in the practice of law, in the Province of Ontario, are acts deserving of additional punitive or exemplary damages in the amount of $250,000.00.

F. Interim Relief: Certificate of Pending Litigation (CPL) and Tracing Order

54. The Plaintiffs plead that the Plaintiffs receive an Order permitting the registration of a CPL as against the Fairview Property, which is legally described in the attached Schedule "A"; such CPL to remain on title to the Fairview Property until the Plaintiffs' interest in the Fairview Property by resulting trust, constructive trust, unjust enrichment, or equitable mortgage, has been heard, determined, and adjudicated.

55. By reason of the facts pleaded herein, the Plaintiffs request a tracing order in respect of the Advanced Funds of $4,662,000.00 delivered to Aurora Hotel Group, Bank Account #1968092, to determine the ultimate recipients, whether the Defendants or other recipients, of the Advanced Funds.

56. The Plaintiffs state that the Advanced Funds represent essentially all of the equity that 2782736 has in the Fairview Property, and that the Defendants, through the Second Mortgage and the Third Mortgage, are depleting all of the equity in the Fairview Property. The Plaintiffs plead that the principles of equitable relief demand the Plaintiffs receive relief by way of a declaration that the Plaintiffs are in fact the beneficial owners of the Fairview Property, and that the interim relief requested in paragraphs 1(i) through to and inclusive of 1(m) be granted.

57. The Plaintiffs propose that this action be tried at Barrie, Ontario.

58. The Promissory Notes are the subject matter of an extant action between J.I.S. as Plaintiff, and Aurora Hotel Group, as Defendant, bearing Court File No. CV-21-00003633-0000 commenced in Brampton, Ontario ("**Promissory Note Action**"). The

Plaintiffs request that the Promissory Note Action be transferred to Barrie, and consolidated or tried together with this action.

November 1, 2022

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO#33481I)
Tel: 416.941.8821
Fax: 416.941.8852
cskipper@foglers.com

Marko Petrovic (LSO# 77778F)
Tel: 416.849.4104
Fax: 416.941.8852
mpetrovic@foglers.com

Lawyers for the Plaintiffs

SCHEDULE "A"

LANDS UPON WHICH A CERTIFICATE OF PENDING LITIGATION IS TO BE REGISTERED

MUNICIPAL ADDRESS

20 Fairview Road, Barrie, ON, L4N 4P3

LEGAL DESCRIPTION

PIN: 58759-0222(LT)

PROPERTY DESCRIPTION: PT BLKS A & D, PL 1551, DESIGNATED AS PTS 26-31 & 40-44, PL 51R-42568; S/T AN EASEMENT OVER PTS 26, 27 & 43, PL 51R-42568 AS IN RO289815; S/T AN EASEMENT OVER PTS 27 & 43, PL 51R-42568 AS IN RO1138013; S/T AN EASEMENT OVER PTS 29, 31, 40 & 42, PL 51R-42568 AS IN RO1138014; S/T AN EASEMENT OVER PT 26, PL 51R-42568 AS IN RO303517; BARRIE; SUBJECT TO AN EASEMENT OVER PARTS 41-44 51R42568 IN FAVOUR OF PART BLKS A & D PLAN 1551,PARTS 32-35 51R42568 AS IN SC1710076.

Described in the Statement of Claim as the "Fairview Property".

J.I.S. CONTRACT FURNITURE INC. et al.
Plaintiffs

-and-

AURORA GROUP OF COMPANIES INC. et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BARRIE

STATEMENT OF CLAIM

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO#33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852

Marko Petrovic (LSO# 77778F)
mpetrovic@foglers.com
Tel: 416.849.4104
Fax: 416.941.8852

Lawyers for the Plaintiffs

Court File No. CV-22-00001381-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	TUESDAY, THE 31ST DAY
MR. JUSTICE S.T. BALE	)	OF JANUARY, 2023

This is Exhibit "C" referred to in the Affidavit of Jay Khanna sworn before me, this 16th day of May 2024

A COMMISSIONER FOR TAKING AFFIDAVITS

B E T W E E N:

SUPERIOR COURT OF JUSTICE ★ COUR SUPÉRIEURE DE JUSTICE ★

J.I.S. CONTRACT FURNITURE INC. and 2107307 ONTARIO INC.

Plaintiffs

\- and -

AURORA GROUP OF COMPANIES INC., AURORA HOTEL GROUP INC., 2782736 ONTARIO INC., AKASH AURORA, a.k.a. SHAWN AURORA and RAVI AURORA

Defendants

ORDER

THIS MOTION, made by the Plaintiffs, for an order granting them leave to register a Certificate of Pending Litigation against the property municipally known as 20 Fairview Road, Barrie, ON, L4N 4P3 (the "Fairview Property"), was heard this day at Barrie, by video conference.

ON READING the Motion Record of the Plaintiffs dated December 12, 2022, the Undertaking of Akash Aurora, Nakul Aurora, Ravi Aurora, and 2782736 Ontario Inc. directed to the Plaintiffs and the Ontario Superior Court of Justice, dated January 30, 2023 ("Undertaking", attached as Schedule "A" to this Order), and on hearing the submissions of the lawyers for the parties,

1. **THIS COURT ORDERS** that the Undertaking attached to this Order as Schedule "A" be filed with the Ontario Superior Court of Justice.

2. **THIS COURT ORDERS** that this motion be adjourned to a date to be set by the trial coordinator.

3. **THIS COURT ORDERS** that any party may proceed to reschedule the hearing of this motion on five days' notice to the other party.

Judge, Superior Court of Justice

SCHEDULE "A"

UNDERTAKING

TO: J.I.S CONTRACT FURNITURE and 2107307 ONTARIO INC. (the "**Plaintiffs**);

AND TO: The Ontario Superior Court of Justice

RE: *J.I.S. Contract Furniture Inc. et al. v. Aurora Group of Companies Inc. et al.* Court File No. CV-22-00001381-0000 (the "Action")

RE: Motion of Plaintiff for Certificate of Pending Litigation ("CPL") on the "Property" known as 20 Fairview Road, Barrie, Ontario, as more particularly described in Schedule "A" attached hereto.

THE UNDERSIGNED HEREBY UNDERTAKE AND AGREE not to sell, transfer, option, further encumber, pledge as security or collateral, or otherwise dispose of (i) the Property (as described herein) or (ii) the shares of 2782736 Ontario Inc., the registered owner of the Property. Notwithstanding the foregoing, this Undertaking shall not prevent the undersigned from renewing or replacing the current mortgage debt on the Property, such that the total principal debt on the Property as of the date of this Undertaking, as detailed in the PIN for the Property, which PIN is attached hereto as Schedule "B", shall not be increased upon any such renewal or replacement. The undersigned, through counsel, shall provide copies of all relevant transactional documentation relating to such renewal or replacement of the mortgage debt to counsel for the Plaintiffs.

THE PARTIES AGREE that this Undertaking is Without Prejudice to the rights of the parties in the CPL motion or the Action.

Initials AA, RA, NA

THIS UNDERTAKING shall remain in place and in force until: (i) The hearing and determination of the CPL motion in the Action, including any appeal from such decision on the CPL motion or the expiry of any appeal; (ii) The consent of the parties to extinguish or otherwise vary the Undertaking; or (iii) An Order of the Superior Court of Justice in respect of the Undertaking.

DATED at Toronto, Ontario this _____ day of January, 2023.

SIGNED, SEALED AND DELIVERED
in the presence of

Witness Satish Aurora — Akash Aurora

SIGNED, SEALED AND DELIVERED
in the presence of

Witness Satish Aurora — Nakul Aurora

SIGNED, SEALED AND DELIVERED
in the presence of

Witness Satish Aurora — Ravi Aurora

2782736 ONTARIO INC.

Name: Akash Aurora
Title: President
I have authority to bind the Corporation

Initials AA, NA, RA

UNDERTAKING

SCHEDULE "A"

PIN	58759-0222 (LT)	Interest/Estate	Fee Simple

Description

PT BLKS A & D, PL 1551, DESIGNATED AS PTS 26-31 & 40-44, PL 51R-42568; S/T AN EASEMENT OVER PTS 26, 27 & 43, PL 51R-42568 AS IN RO289815; S/T AN EASEMENT OVER PTS 27 & 43, PL 51R-42568 AS IN RO1138013; S/T AN EASEMENT OVER PTS 29, 31, 40 & 42, PL 51R-42568 AS IN RO1138014; S/T AN EASEMENT OVER PT 26, PL 51R-42568 AS IN RO303517; BARRIE; SUBJECT TO AN EASEMENT OVER PARTS 41-44 51R42568 IN FAVOUR OF PART BLKS A & D PLAN 1551,PARTS 32-35 51R42568 AS IN SC1710076

Address 20 Fairview Road, Barrie, Ontario, L4N 4P3

Initials AA, RA, NA

UNDERTAKING

SCHEDULE "B"

PIN for Property

PROPERTY DESCRIPTION: PT BLKS A & D, PL 1551, DESIGNATED AS PTS 26-31 & 40-44, PL 51R-42568; S/T AN EASEMENT OVER PTS 26, 27 & 43, PL 51R-42568 AS IN RO289815; S/T AN EASEMENT OVER PTS 27 & 43, PL 51R-42568 AS IN RO1138013; S/T AN EASEMENT OVER PTS 29, 31, 40 & 42, PL 51R-42568 AS IN RO1138014; S/T AN EASEMENT OVER PT 26, PL 51R-42568 AS IN RO303517; BARRIE; SUBJECT TO AN EASEMENT OVER PARTS 41-44 51R42568 IN FAVOUR OF PART BLKS A & D PLAN 1551,PARTS 32-35 51R42568 AS IN SC1710076

PROPERTY REMARKS: PLANNING ACT CONSENT IN DOCUMENT SC1710076. PLANNING ACT CONSENT IN DOCUMENT SC1710077. PLANNING ACT CONSENT IN DOCUMENT SC1710078.

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
DIVISION FROM 58759-0147

PIN CREATION DATE:
2020/10/04

OWNERS' NAMES
2782736 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2020/10/04 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO						
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES: 1998/05/25 **						
RO96991	1959/04/14	BYLAW				C
PL1551	1969/01/07	PLAN SUBDIVISION				C
RO289815	1969/02/03	TRANSFER EASEMENT			THE CORPORATION OF THE CITY OF BARRIE	C
REMARKS: PLAN ATTACHED						
RO303293	1969/07/08	AGR SUBDIVISION			THE CORPORATION OF THE CITY OF BARRIE	C
REMARKS: PLAN ATTACHED						
RO303517	1969/07/10	TRANSFER EASEMENT			THE BELL TELEPHONE COMPANY OF CANADA	C
REMARKS: PLAN ATTACHED						
RO310665	1969/09/23	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY ***	COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED	

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
RO310666	1969/09/23	ASSIGNMENT LEASE		*** DELETED AGAINST THIS PROPERTY ***	THE ONTARIO LOAN AND DEBENTURE COMPANY	
RO496840	1974/10/17	LEASE		*** DELETED AGAINST THIS PROPERTY ***	HER MAJESTY THE QUEEN REPRESENTED BY MINISTER OF GOVERNMENT SERVICES FOR ONTARIO	
RO498959	1974/11/06	LEASE		*** DELETED AGAINST THIS PROPERTY ***	HER MAJESTY THE QUEEN REPRESENTED BY MINISTER IN CONTROL OF THE ROYAL CANADIAN MOUNTED POLICE	
RO725636	1981/01/07	AGREEMENT		*** DELETED AGAINST THIS PROPERTY ***		
RO888924	1985/12/23	AGREEMENT		*** DELETED AGAINST THIS PROPERTY ***		
	REMARKS: RO496840					
RO916593	1986/08/27	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY ***	COMMONWEALTH HOLIDAY INNS OF CANADA LTD.	
	REMARKS: CHATTELS, RO310665					
51R16570	1987/12/17	PLAN REFERENCE				C
RO1102913	1990/03/15	AGREEMENT			CITY OF BARRIE	C
RO1128951	1990/10/23	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY ***	H.M. THE QUEEN (ONTARIO)	
51R21712	1991/01/03	PLAN REFERENCE				C
RO1138013	1991/01/18	TRANSFER EASEMENT			THE CITY OF BARRIE	C
RO1138014	1991/01/18	TRANSFER EASEMENT			THE CITY OF BARRIE	C
RO1140437	1991/02/14	NO SURR LEASE (R)		*** DELETED AGAINST THIS PROPERTY ***		
	REMARKS: RO310665					
RO1198511	1992/09/03	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY ***	COMMONWEALTH HOSPITALITY LTD.	
RO1213078	1993/02/01	ASSIGNMENT LEASE		*** DELETED AGAINST THIS PROPERTY ***		

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
					ONTARIO MUNICIPAL EMPLOYEES RETIREMENT BOARD	
REMARKS: RO1162622, RO1198511						
RO1222039	1993/05/25	AGREEMENT		*** DELETED AGAINST THIS PROPERTY ***		
RO1239121	1993/11/17	NOTICE		*** DELETED AGAINST THIS PROPERTY ***		
51R24508	1994/03/09	PLAN REFERENCE				C
RO1250517	1994/04/07	AGREEMENT			THE CITY OF BARRIE	C
RO1260171	1994/07/18	TRANSFER EASEMENT			THE CITY OF BARRIE	C
RO1297609	1995/10/31	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY ***	THE WENDECAM GROUP, INC.	
RO1312210	1996/05/21	AGREEMENT		*** DELETED AGAINST THIS PROPERTY ***		
RO1318479	1996/07/25	AGREEMENT			CITY OF BARRIE	C
RO1329760	1996/11/21	NO ASSG LESSEE INT		*** DELETED AGAINST THIS PROPERTY ***	TORBA RESTAURANTS INC.	
REMARKS: RO1297609						
RO1376469	1998/04/06	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY ***	THE FRIENDLY GREEK CORPORATION	
LT376232	1999/01/27	NOTICE		*** DELETED AGAINST THIS PROPERTY *** THE CONSUMERS' GAS COMPANY LTD.		
REMARKS: LEASE OF CHATTELS						
SC7192	2002/03/21	NOTICE AGREEMENT		BARRIESIM DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BARRIE	C
REMARKS: DEVELOPMENT AGREEMENT						
SC71205	2002/11/12	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY *** BARRIESIM DEVELOPMENTS LIMITED	COMMONWEALTH HOSPITALITY LTD.	
SC74105	2002/11/22	NO ASSG LESSEE INT		*** DELETED AGAINST THIS PROPERTY *** COMMONWEALTH HOSPITALITY LTD.	BARRIE CHL INC.	
REMARKS: SC71205						

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.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SC343187	2005/06/30	NO ASSG LESSEE INT		*** DELETED AGAINST THIS PROPERTY *** BARRIE CHL INC.	INNVEST NOMINEE V LTD.	
REMARKS: SC71205, SC74105						
SC1165547	2014/10/07	APL (GENERAL)		*** DELETED AGAINST THIS PROPERTY *** CRESTVIEW INVESTMENT CORPORATION	THE TDL GROUP CO. THE TDL GROUP CORP.	
REMARKS: AMENDS LEASE RO1239121 PURSUANT TO SECTION 116(6) OF LAND TITLES ACT						
SC1593780	2019/05/15	NOTICE	$2	THE CORPORATION OF THE CITY OF BARRIE		C
REMARKS: SITE PLAN AGREEMENT						
51R42416	2020/03/11	PLAN REFERENCE				C
51R42568	2020/07/31	PLAN REFERENCE				C
SC1710076	2020/09/14	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** CRESTVIEW INVESTMENT CORPORATION	CRESTVIEW INVESTMENT CORPORATION	
SC1722330	2020/10/23	APL (GENERAL)		*** COMPLETELY DELETED *** CRESTVIEW INVESTMENT CORPORATION		
REMARKS: DELETES RO310665, RO310666, RO916593, RO1140437, RO496840, RO725636, RO888924, RO1128951, RO498959, RO1196511, RO1213078, RO1222039, RO1239121, RO1312210, SC1165547, RO1297609, RO1329760, RO1376469, LT376232						
SC1725926	2020/11/03	TRANSFER	$2	CRESTVIEW INVESTMENT CORPORATION	2782736 ONTARIO INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SC1725927	2020/11/03	CHARGE	$11,000,000	2782736 ONTARIO INC.	CRESTVIEW INVESTMENT CORPORATION	C
SC1726095	2020/11/03	APL (GENERAL)		*** COMPLETELY DELETED *** 2782736 ONTARIO INC.		
SC1743811	2021/01/06	CHARGE	$2,800,000	2782736 ONTARIO INC.	VISRAM, ZAHERALI	C
SC1743812	2021/01/06	NO ASSGN RENT GEN		2782736 ONTARIO INC.	VISRAM, ZAHERALI	C
REMARKS: SC1743811						
SC1935813	2022/10/07	CHARGE	$1,000,000	2782736 ONTARIO INC.	NEEMTREE INVESTMENTS LTD. 2665731 ONTARIO INC.	C
SC1935886	2022/10/07	NO ASSGN RENT GEN		2782736 ONTARIO INC.	NEEMTREE INVESTMENTS LTD. 2665731 ONTARIO INC.	C

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
REMARKS: SC1935813						

J.I.S. CONTRACT FURNITURE INC. et al.
Plaintiffs

-and-

AURORA GROUP OF COMPANIES INC. et al.
Defendants

Court File No. CV-22-00001381-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BARRIE

ORDER

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852
Marko Petrovic (LSO# 77778F)
mpetrovic@foglers.com
Tel: 416.849.4104
Fax: 416.941.8852

Lawyers for the Plaintiffs

This is Exhibit "D" referred to in the Affidavit of Jay Khanna sworn before me, this 16th day of May 2024

A COMMISSIONER FOR TAKING AFFIDAVITS

CV-22-00692176-0000

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the Ontario *Business Corporations Act,* R.S.O. 199, B.16

B E T W E E N:

(Court Seal)

JAY KHANNA

Applicant

and

20 CALDARI DEVELOPMENT INC. and
NAKUL AURORA (AKA NICK AURORA)

Respondents

APPLICATION UNDER SECTIONS 207 AND 248 OF THE ONTARIO *BUSINESS CORPORATIONS ACT,* R.S.O. 199, B.16

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- ☐ In writing
- ☒ In person
- ☐ By telephone conference
- ☐ By video conference

at the following location:

330 University Avenue, Toronto ON M5G 1R7

On a date to be set by the registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 22, 2022 Issued by Lynetta Aversa Digitally signed by Lynetta Aversa Date: 2022.12.23 10:33:27 -05'00'

Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: 20 CALDARI DEVELOPMENT INC.
20 Caldari Road
Concord, Ontario
L4K 4N8

AND TO: NAKUL AURORA
61 Beckenridge Drive
Markham, Ontario
L3S 2V3

APPLICATION

THE APPLICANT, Jay Khanna, makes application for the following relief under the Ontario *Business Corporations Act,* Part XII (Audit and Financial Statements), Part XVI (Liquidation and Dissolution) and XVII (Oppression), R.S.O. 1990, C. B-16 ("*OBCA*").

PART I – INTERIM RELIEF

1. **Audited Financial Statements**

(a) an Order appointing an independent auditor (the "Auditor") of 20 Caldari Development Inc. ("Caldari" or the "Company") for the purposes of conducting an audit and preparing audited financial statements for the fiscal years ending for 2020, 2021 and 2022, of the Company (the "Audited Financial Statements");

(b) an Order directing the Respondent and President/Director of the Company, Nakul Aurora (a.k.a. Nick Aurora) ("Nakul Aurora"), to provide a full accounting of the business and affairs of the Company from 2020 to present, including, without limiting the generality of the foregoing, full and unrestricted access to all books and records of the Company, bank statements, corporate tax returns, activity statements, investment reports, general ledgers, minute books, and papers to the Auditor for the purposes of conducting an audit, and preparing the Audited Financial Statements;

(c) an Order directing the time for delivery of the Audited Financial Statements to the Applicant;

(d) an Order directing the Company to pay for the conduct of the audit and the preparation of the Audited Financial Statements;

(e) an Order suspending the holding or conducting of any shareholders' meetings or annual general meeting ("AGM") of the shareholders of the Company until after the audit and Audited Financial Statements are completed and provided to the Applicant;

(f) a mandatory order requiring the Company, by their directors, officers or designated agents to bring all corporate filings into good standing as required by the *OBCA*; and

(g) such further and other incidental orders and directions pursuant to Section 248, Part XII of the *OBCA* as are necessary to give interim relief to the Applicant to provide for the Audited Financial Statements and financial disclosure of the Company.

2. **Caution**

(a) An order directing the Registrar to maintain a Caution under the *Land Titles Act,* R.S.O. 1990, c. L.5 registered on the Caldari Property (defined herein, and as more particularly described in Schedule "A" to this Notice of Application) until such time as the relief set out in this Application, including a wind up and a receivership order for sale of the Caldari Property, has been determined; or

(b) Alternatively, an interim order directing that no steps will be taken by the Company to effect a sale, mortgaging, encumbrancing, or refinancing of the Caldari Property, except with the consent of the Applicant or order of the Court, until such time as the relief set out in the Application has been determined.

3. **Interim Costs under Section 248 of the *OBCA***

(a) an Order for costs, by way of retainer, to be paid to the Applicant for the purposes of engaging an independent Certified Real Estate Appraiser (the "Appraiser") for the purposes of providing a valuation of the Caldari Property or, alternatively, an Order from the Court directing the Company to engage an independent Appraiser to be appointed by the Court for the aforesaid purposes.

PART II – RELIEF UNDER THE *OBCA*

4. **Oppression Relief**

(a) a declaration that the Respondents have caused the affairs of the Company to be carried on or conducted in a manner that is

(i) oppressive;

(ii) unfairly disregards; and/or

(iii) is prejudicial to the Applicant, contrary to Section 248 of the *OBCA*.

(b) an Order, if necessary, directing trial of the issue of oppressive conduct of the Respondents;

(c) an Order, if necessary, directing a trial of the issue of determining the Fair Market Value of the Caldari Property;

(d) an Order compensating the Applicant for the oppressive conduct of the Respondents, including indemnification to the Applicant for (i) repayment of $400,000.00 plus interest being monies unpaid to the Applicant in respect of the investment and acquisition in the Caldari Property; (ii) compensating the Applicant in respect of unpaid rent of the Aurora Hotel Group (hereinafter defined) for the Caldari Property; and (iii) the legal costs of this Application in an amount to be determined; and

(e) an Order for the Company and Nakul Aurora, as director, to otherwise comply with the financial disclosure to shareholders as required under Section 248, Park XIV of the OBCA;

5. **Winding Up Under Part XVI of the *OBCA***

(a) A declaration that it is just and equitable that the Company be wound up pursuant to Section 207 of the *OBCA*;

(b) An order appointing a receiver of the Company pursuant to the standard-form Commercial List receivership order, as attached to this Notice of Application as

Schedule “B” (the "Receiver"), and as modified by the Court to effect the purposes of the Receiver under Section 207, and as set out below:

(i) Conduct a sale of the principal asset of the Company, being the Caldari Property;

(ii) Terminate the lease of Aurora Hotel Group in respect of the Caldari Property, by reason, *inter alia*, of non-payment of approximately $700,000 in rent;

(iii) Distribute the proceeds of sale of the Caldari Property as follows:

(1) Paying all costs of disposition including real estate commission, legal fees and disbursements;

(2) Paying all encumbrances registered up to the date of this Notice of Application, including any mortgages and secured lines of credit;

(3) Paying any closing adjustments if necessary; and

(4) Paying any liens, taxes, utilities, debts, or other liabilities;

(iv) Hold the balance of any funds from the sale of the Caldari Property for payment or distribution to the two shareholders of the Company, being the Applicant and Nakul Aurora, as the Court shall direct; and

(v) Wind up and dissolve the Company under the supervision of the Court.

6. **Derivative Action Relief**

(a) An order, if necessary, under Section 246 of the *OBCA*, granting leave to the Applicant, or the Receiver appointed by the Court, to commence action in the name of the Company (20 Caldari Development Inc.) against the Aurora Hotel Group for the recovery of the non-payment of approximately $700,000 in unpaid rent to the Company in respect of the lease for the Caldari Property.

THE GROUNDS OF THE APPLICATION ARE:

7. The Applicant, Jay Khanna, is the legal and beneficial owner of 50% of the shares of the Company, and is technically a Director and the Secretary of the Company.

8. The Respondent, Nakul Aurora, is the legal and/or beneficial owner of the other 50% the Company; and is also the Company's other director, as well as the President of the Company.

9. There is no Shareholder Agreement which governs the conduct of its shareholders.

10. There has never been a meeting of the shareholders, nor has there been an AGM since the Applicant became a shareholder.

11. The Applicant became involved with the Company and acquired his shares in concert with, and contemporaneous with, his investment of approximately $1.2 million and the Company's purchase of the property located at 20 Caldari Road, Vaughan, Ontario, L4K 4N8, as more particularly described in Schedule "A" to this Notice of Application (the "Caldari Property").

12. Presently, the Applicant and Nakul Aurora are unable to agree, participate, or work together in the management of the Caldari Property (or by extension, the Company). The inability to work together includes making decisions surrounding the disposition of the Caldari Property.

13. There has been an irretrievable breakdown in trust between the Applicant on the one hand, and Nakul Aurora on the other. This makes it impractical for the parties to continue a business relationship via the Company.

14. Thus, as beneficial owners of the Caldari Property and shareholders in the Company, neither the Applicant, nor Nakul Aurora, are able to properly enjoy their beneficial interests, and the benefits which should generally accrue to each of them as owner and shareholder respectively.

15. The Applicant, as 50% shareholder, had the following reasonable expectations in respect of his equity in the Company at the time of his investment;

(a) that the Company would be run and governed like a partnership between two equal partners;

(b) that he would participate in the business affairs and management of the Company while a shareholder of it;

(c) that there would be full disclosure to him regarding the business affairs and conduct of the Company;

(d) that he would be consulted, or at least advised, regarding the business affairs and conduct of the Company;

(e) that the Aurora Hotel Group Inc. ("Aurora Hotel Group"), an entity related to and operated by Nakul Aurora and his two brothers, Ravi Aurora and Akash Aurora, would occupy a significant portion of the Caldari Property, and remit annual rent to the Company in the approximate amount of $380,000; and

(f) that the Company, acting as an investment vehicle for the purchasing and holding of the Caldari Property, would sell the property to realize upon its anticipated increase in value (and in fact, the Caldari Property has increased in value by approximately $6 million).

Audited Financial Statements

16. The Company has never had an annual shareholders' meeting; nor has the Company ever appointed an auditor or prepared audited financial statements as required under the *OBCA* since the Applicant has been a shareholder, and the Company's inception in September 2020. In addition, there has never been a

shareholders' resolution of the Company dispensing with the requirement to prepare annual audited financial statements since the Applicant became a shareholder in 2020.

17. The Applicant has not been receiving, nor has access to the sales, revenue, and expense information, or quarterly financial reports of the Company.

18. The Applicant has no effective participation in the management and operation of the Company.

19. Nakul Aurora (principally through his brother, Akash Aurora), has control of the financial information of and available to the Company, and has neglected to provide access to the Applicant to such information.

20. As a result, the Applicant requires the Court to appoint an independent Auditor of the Company to audit its books and records and provide Audited Financial Statements for 2020 to December 31, 2022, pursuant to Section 248, Part XII of the *OBCA*.

Oppressive Conduct

(a) No rent from Aurora Hotel Group

21. The Applicant states that:

(a) the Aurora Hotel Group is the single largest tenant at the Caldari Property, occupying approximately 18,200 square feet of space;

(b) as the largest tenant, the Company was able to obtain an owner/operator classification for the mortgage registered on title to the Caldari Property in favour of Canadian Western Bank; and

(c) the Company has not received any payment of rent from the Aurora Hotel Group for occupying the Caldari Property since the property was acquired in September 2020, the estimated annual fair market rent which is approximately $380,000 per year.

(b) Banking irregularities

22. The Applicant states that:

(a) he does not have any insight into the Company's financial transactions;

(b) the Applicant has not received any information or explanation from Nakul or Akash Aurora regarding the significant transfers to and from the Company's operating bank account, which are unrelated to the Company's daily operations as a landlord and real-estate holding company;

(c) there are significant sums of money being "washed" through the Company bank account on behalf of the Aurora Hotel Group and its related entities operated by the Aurora brothers, including Countertop Solutions Inc.; and

(d) the Company is using its banking overdraft to fund and secure the financial operations of other Aurora Hotel Group companies unrelated to the Company.

(c) No financial statements

23. The Applicant states that:

(a) Akash Aurora, Nakul Aurora's brother, who is not an accountant, has been and continues to act as the de facto accountant or Chief Financial Officer for the Company;

(b) by virtue of the fact that Akash Aurora is also the Chief Financial Officer for the Aurora Hotel Group (the principal tenant of the Caldari Property) and other related companies, there is no independent oversight of the Company;

(c) since the Company was incorporated, no financial statements have been finalized and approved by the Board of Directors of the Company (save and except for draft, incomplete, notice to reader financial statements with significant irregularities for the Company year-end 2020); and

(d) audited financial statements are required by the *OBCA* and in the circumstances of the Company, and there has been no resolution or other agreement dispensing with the requirement to prepare audited financial statements.

(d) Subtenants

24. The Applicant states that:

(a) two law firms, operating as Segreto Law and Basile Criminal Law, both unknown to the Applicant, have taken tenancy and possession of a unit of the Caldari Property since November 2021 without the Applicant being informed;

(b) he has no knowledge of the terms of any lease with said law firm tenants; and

(c) the law firms have not paid any rent for occupying the Caldari Property, or, if either have paid rent, this rent has not been paid to the Company or deposited to the Company bank account.

(e) Corporate governance

25. The Applicant states that:

(a) there is no shareholders' agreement for the Company;

(b) there were no shareholders' meetings ever called for the Company;

(c) a pro-forma co-tenancy agreement for the Company was prepared in draft, but never discussed, reviewed or finalized;

(d) the Applicant's intentions to hold the Caldari Property and sell it to realize upon a capital gain was never memorialized;

(e) there has been no effort, and a failure to provide contracts, services agreements, transaction records and correspondence relating to the Company;

(f) the Company has not maintained its corporate filings; and

(g) the Company has not maintained its corporate governance in respect of mortgage requirements on the Caldari Property.

(f) Tax

26. The Applicant states that:

(a) the Company was not intended to operate the Caldari Property as a "going concern" over a long period of time;

(b) there was, and is, no tax or business plan for the Company;

(c) there have been no income tax returns prepared for the Company;

(d) there have been no HST returns prepared for the Company; and

(e) there have been no tax remittances submitted to the CRA on behalf of the Company.

Mortgage

27. The Caldari Property is subject to a first mortgage in favour of the Canadian Western Bank registered as instrument number YR3344879 (the "CWB Mortgage"), which is currently in default by reason of, *inter alia*, of the failure of the Company to have financial statements, an accurate rent roll, and tax filings and remittances; all of which acts of the Company are outside of the control of the Applicant.

28. It is a term of the CWB Mortgage that the Aurora Hotel Group also provide financial information, including financial statements, as a primary tenant of the Caldari Property and guarantor of the CWB Mortgage, and the Applicant has no knowledge or control over the Aurora Hotel Group.

29. The Applicant, both personally and corporately, is also a guarantor of the covenants of the Company in respect of the CWB Mortgage, and it is not just and equitable that the Applicant be exposed to the personal liability in light of the CWB Mortgage defaults, and the acts of oppression set out herein.

Frustration of Reasonable Expectations

30. The Applicant states that his reasonable expectations of the Company in respect of the Caldari Property as an investment property have been ignored, and frustrated by reason that:

(a) the Caldari Property was purchased as an investment opportunity in the middle of the COVID-19 pandemic at a reduced fair market value at $9.87 million;

(b) the CWB Mortgage (currently in filing default) is $8.4 million;

(c) the fair market value of the property is now approximately $15 million;

(d) $5 million of equity has been realized in two years through rise of property values;

(e) it was and is the intention of the Applicant to realize upon the increase in the property value for the Caldari Property;

(f) the financial landscape has changed since the Applicant's investment; interest rates are climbing; rent is fixed by two current tenants;

(g) the CWB Mortgage was placed only for one year, and renewal of the CWB Mortgage at current interest rates will place the Company in significant financial jeopardy; and

(h) mortgage payments will significantly increase, and the Caldari Property, through the Company, will operate at a loss.

31. The Court should order a winding up of the Corporation by reason that:

(a) the other 50% shareholder, Nakul Aurora, has departed from normal business-like practices in respect of the conduct of the Company;

(b) the other 50% shareholder, Nakul Aurora, is a shareholder in name only, and the person which is in control of the Company is in fact Akash Aurora;

(c) the personal relationship between Nakul Aurora, Akash Aurora, and the Applicant in the closely held "two person corporation" has deteriorated to the point that continued co-operation in the business and affairs of the Company is not practically feasible;

(d) the Applicant has been frustrated in his reasonable expectation of participating in the management of the Company while being 50% shareholder of it;

(e) there is no shareholders' agreement which provides an exit mechanism for the Applicant as a shareholder, absent a sale of the sole asset of the Company, being the Caldari Property under Section 207 of the *OBCA*;

(f) the reasonable expectations of the Applicant to be an active principal of the business, and to participate in its profitability have been defeated by the conduct of Nakul, Akash, and the Aurora Hotel Group;

(g) The relationship of trust and confidence between the shareholders as partners in a corporate guise has irrevocably broken down, by reason of the facts set forth herein, and by reason of paragraph 34 below; and

(h) The Company's continuation of the ownership of the Caldari Property is no longer feasible, and judicial intervention under Sections 207 and/or 248 of the *OBCA* is merited and necessary.

32. The foregoing acts and inaction of Nakul are oppressive, are unfairly prejudicial and disregard the Applicant's interests as they defeat of the reasonable expectations of the Applicant in this single-purpose Company to benefit from the Company's ultimate sale and realization upon the equity in the Caldari Property.

33. The Applicant's 50% share interest in the Company is conservatively in excess of $3.5 to $4 million, which is a significant portion of his net worth. There is no risk that a costs order cannot be satisfied.

Related Action

34. The Applicant, through corporate entities, is party to litigation where the Aurora Group of Companies Inc., Aurora Hotel Group, 2782736 Ontario Inc., Akash Aurora, and Ravi Aura are defendants, being action number CV-22-00001381-0000, where fraud and misrepresentation are at issue, and as such, the relationship of trust and confidence in respect of the Company and the Caldari Property has irretrievably deteriorated to the point that an order is required under Section 207 of the *OBCA.*

35. The Applicant has a *prima facie* meritorious claim to the relief sought in the Application.

36. Rules 14 and 40.01 of the *Rules of Civil Procedure*.

37. Parts XII (Sections 148-160), XVI (Sections 206-218), and XVII (Sections 245-248 of Ontario *Business Corporations Act,* R.S.O., 1990, B.16, as amended.

38. Such further and other grounds as counsel may advise.

THE FOLLOWING EVIDENCE WILL BE USED IN SUPPORT OF THIS APPLICATION:

(a) the Affidavit of the Applicant, Jay Khanna and Exhibits annexed thereto, to be delivered; and

(b) such further and other evidence as counsel may tender, and this Honourable Court may receive.

(Date of issue)

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
Tel: 416.941.8821
Fax: 416.941.8852
cskipper@foglers.com
Marko Petrovic (LSO# 77778F)
Tel: 416.849.4104
Fax: 416.941.8852
mpetrovic@foglers.com

Lawyers for the Applicant

SCHEDULE "A" – LEGAL DESCRIPTION OF 20 CALDARI ROAD, VAUGHAN, ON, L4K 4N8

PROPERTY DESCRIPTION: PCL 1-1 SEC 65M2681; LT 1 PL 65M2681; S/T LT552714, LT586315; S/T LT546620, LT546628 VAUGHAN

PIN: 03276-0125 (LT)

ESTATE QUALIFER: FEE SIMPLE ABSOLUTE

This is Exhibit "E" referred to in the Affidavit of Sam Khanna sworn before me, this 16th day of May 2024

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. CV-23-00004340-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	THURSDAY, THE 7th
	)	
JUSTICE TZIMAS	)	DAY OF DECEMBER, 2023

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

- and -

20 CALDARI DEVELOPMENT INC.

Respondent

O R D E R

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Ernst & Young Inc., as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 20 Caldari Development Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard on December 5, 2023, and December 7, 2023,via judicial videoconference, at 7755 Hurontario Street, Brampton, Ontario.

ON READING the affidavit of Tyson Hartwell sworn October 19, 2023 and the Exhibits thereto, the consent of Ernst & Young Inc. to act as the Receiver, and on hearing the submissions of counsel for the Applicant, Canadian Western Bank, counsel for Jay Khanna, and the submissions of Akash Aurora, no one else appearing, although served, as appears from the affidavit of service dated November 21, 2023 filed,

APPOINTMENT

1. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Ernst & Young Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

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

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

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

(c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

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

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

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

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

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

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

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

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

> (i) without the approval of this Court in respect of any transaction not exceeding \$150,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and

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

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

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

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

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

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

4. THIS COURT ORDERS that all Persons including, without limitation, Akash (Shawn) Aurora, Ravi Aurora, Nakul (Nick) Aurora, and Aurora Hotel Group Inc., and each of them shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that all Persons, including, without limitation, Akash (Shawn) Aurora, Ravi Aurora, Nakul (Nick) Aurora, and Aurora Hotel Group Inc., and each of them shall be required to cooperate and share information with the Receiver in connection with all books and records, contracts, agreements, permits, licences and insurance policies and other documents in respect of the Debtor and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, Akash (Shawn) Aurora, Ravi Aurora, Nakul (Nick) Aurora, and Aurora Hotel Group Inc., shall be required to do the following things: (a) in respect of any and all such contracts, agreements, permits, licences and insurance policies and other documents

(1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty days' notice of any renewal days, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licences that may be required.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $300,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

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

day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

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

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. THIS COURT ORDERS that notwithstanding the engagement of Dickinson Wright LLP as counsel for Canadian Western Bank, the Receiver may engage Dickinson Wright LLP as its legal counsel in respect of matters where there is no conflict of interest. The Receiver shall, however, engage independent legal counsel in respect of any matter where a conflict of interest arises.

E. Ria Zumis J.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $_____________________

1. THIS IS TO CERTIFY that Ernst & Young Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 20 Caldari Development Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 5th day of December, 2023 (the "Order") made in an action having Court file number CV-23-00004340-0000, has received as such please insert court file # Receiver from the holder of this certificate (the "Lender") the principal sum of $___________, being part of the total principal sum of $___________ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the _____ day of ______________, 20__.

Ernst & Young Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: ________________________________

Name: Allen Yao

Title: Senior Vice President

CANADIAN WESTERN BANK
Applicant

-and-

20 CALDARI DEVELOPMENT INC.
Respondent

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

O R D E R

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
Tel: 416-646-4608
Fax: 844-670-7009

Lawyers for the Applicant

1000688136 ONTARIO INC.
Applicant

-and-

20 CALDARI DEVELOPMENT INC.
Respondent

Court File No. CV-23-00004340-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

MOTION RECORD

FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Charles W. Skipper (LSO# 33481I)
cskipper@foglers.com
Tel: 416.941.8821
Fax: 416.941.8852

Lawyers for the Applicants,
Jay Khanna and 10000688136 ONTARIO INC.