

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

MOTION RECORD

(Sale Approval and Distribution Motion – hearing January 7, 2025)

VOLUME I OF II

December 20, 2024

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TO: **SERVICE LIST**

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Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

NOTICE OF MOTION

(Sale Approval and Vesting Orders and Ancillary Relief)

The moving party, msi Spergel inc. ("**Spergel**") in its capacity as the Court-Appointed Receiver (in such capacity, the "**Receiver**") of certain assets, property and undertakings of Toronto Artscape Inc. (the "**Debtor**"), will make a Motion to a Judge presiding over the Commercial List on Tuesday, January 7, 2025 at 10:30 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 ;
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location

[courthouse address, a dial-in number, access code, video link, etc.]

(Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable)

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

- (a) An Order approving the Second Report of the Receiver dated December 20, 2024 (the "**Second Report**") and the activities of the Receiver described therein;
- (b) An Order approving the Receiver's Interim Statement of Receipts and Disbursements as at December 3, 2024;
- (c) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 2, 2024 between the City of Toronto and the Receiver for the purchase and sale of Units 51 and 65, Level 2, Units 4 and 7, Level 3 property located at 210 Simcoe Street, Toronto, Ontario (the "**210 Simcoe Property**") and attached as **Appendix "6"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (d) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 2, 2024 between the City of Toronto and the Receiver for the purchase and sale of Units 5, Level 1, Units 2, 3, 6, 8, 12, 13, 14, 15, 25, 26, Level 2, Units 2, 3, 6, 8, 12, 13, 14, 15, 29, Level 3 property located at 38 Abell Street, Toronto, Ontario and attached as **Appendix "7"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (e) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 2, 2024 between Propeller Centre for the

Visual Arts and the Receiver for the purchase and sale of Units 1, 2, Level 1 property located at 38 Abell Street, Toronto, Ontario and attached as **Appendix “8”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;

- (f) An Order approving the sale transaction (contemplated by an agreement of purchase and sale dated October 8, 2024 between the Centre for Indigenous Theatre and the Receiver for the purchase and sale of Units 8 and 9, Level 2 property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “9”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (g) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 8, 2024 between College-Montrose Children’s Place and the Receiver for the purchase and sale of Units 2 and 3, Level A property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “10”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (h) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 8, 2024 between Inspirit Foundation and the Receiver for the purchase and sale of Units 2 and 7, Level 1 property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “11b”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (i) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 8, 2024 between Intergalactic Arts

Collective and the Receiver for the purchase and sale of Unit 3, Level 1 property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “12”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;

- (j) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 8, 2024 between Koffler Centre of the Arts and the Receiver for the purchase and sale of Units 4 and 5, Level 1, Unit 1, Level 3 property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “13b”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (k) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 8, 2024 between Small World Music Society and the Receiver for the purchase and sale of Unit 1, Level 1, Unit 5, Level 3 property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “14”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (l) An Order approving the sale transaction contemplated by an agreement of purchase and sale dated October 8, 2024 between Gillian Iles and Matthew Schofield and the Receiver for the purchase and sale of Unit 5, Level 2 property located at 180 Shaw Street, Toronto, Ontario and attached as **Appendix “15”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (m) An Order vesting in the Purchasers of the properties set out in subparagraphs (c) to (l) herein all of the Debtor's right, title and interest in

and to the purchased properties, free and clear of all encumbrances, except certain permitted encumbrances;

- (n) An Order increasing the Receiver's Borrowing Charge (as defined in the Receivership Order) from \$600,000 to \$670,000 *nunc pro tunc*;
- (o) An Order authorizing the repayment of amounts borrowed by the Receiver under the Receiver's Certificates provided for in the Receivership Order;
- (p) An Order sealing certain Confidential Appendices to the Second Report;
- (q) An Order authorizing and directing the Receiver to make a distribution to First Ontario Credit Union Limited ("**FOCU**"), or such other party, as directed by FOCU, upon the closing of the Transactions;
- (r) An Order authorizing and directing the Receiver to make a distribution to Community Forward Fund ("**CFF**"), or such other party, as directed by CFF upon the closing of the Transactions;
- (s) An Order authorizing and directing the Receiver to make a distribution to The City of Toronto in the amount of \$63,890, plus any other amounts accrued at the closing of the Transactions, for the outstanding realty taxes;
- (t) An Order approving the fees and disbursements of the Receiver; and
- (u) An Order approving the fees and disbursements of Minden Gross LLP ("**Minden**") and Fogler, Rubinoff LLP ("**Fogler**"), as legal counsel to the Receiver;
- (v) 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)*

1. The Debtor is a Not-for-Profit corporation incorporated pursuant to the laws of the Province of Ontario, with its registered head office located at 130 Queens Quay East, Suite 423, Toronto, ON.

2. The Debtor's operations consisted of, among other things:

(a) providing various property management services to residential units for artists and artist led families and commercial tenants, through arrangement with the City of Toronto;

(b) providing mortgage program management for approximately 85 affordable home ownership units; and

(c) providing venue rental from owned or leased premises.

3. The Debtor is the registered owner of various real properties located in Toronto at 130 Queens Quay East, 38 Abell Street, 180 Shaw Street and 210 Simcoe Street (each a "**Real Property**" and collectively, the "**Real Properties**").

4. On January 11, 2024, on motion by The Toronto-Dominion Bank, a secured creditor of the Debtor, Spergel was appointed as Receiver of certain assets, undertaking and property of the Debtor, including the Real Properties (the "**Receivership Order**").

5. The First Report of the Receiver dated April 11, 2024 (the "**First Report**") set out the initial steps taken by the Receiver pursuant to the Receivership Order.

6. The Receiver engaged the services of Colliers International Realty Advisors Inc. and Avison Young Commercial Real Estate LP (“**Avison**”) to attend at and conduct a full narrative appraisal of the Real Properties.

7. The Receiver requested listing proposals from Cushman & Wakefield ULC, Coldwell Banker Richard Ellis and Avison.

8. The Receiver brought a motion initially returnable on April 25, 2024 for, among other things:

- (a) An Order approving the First Report;
- (b) An Order approving the Receiver’s Interim Statement of Receipts and Disbursements as at April 11, 2024;
- (c) An Order authorizing and directing the Receiver to execute a listing agreement between the Receiver and Avison;
- (d) An Order authorizing and directing the Receiver, in conjunction with Avison as its real estate consultant, to carry out the Sale Process proposed by the Receiver;

9. By way of a Sales Process Order dated April 25, 2024, the Honourable Justice Steele approved a sale process for the Real Properties at 130 Queens Quay and 180 Shaw Street.

10. By way of a Sales Process Order dated May 1, 2024, the Honourable Justice Steele approved a sale process for the Real Properties at 38 Abell Street and 210 Simcoe Street.

11. Pursuant to the Sale Process Order dated April 25, 2024, the Receiver has entered into Agreements of Purchase and Sale with Centre for Indigenous Theatre, College-Montrose Children's Place, Inspirit Foundation, Intergalactic Arts Collective, Koffler Centre of the Arts, Small World Music Society and Gillian Iles and Matthew Schofield in respect of Properties at 180 Shaw Street.

12. Pursuant to the Sale Process Order dated May 1, 2024, the Receiver has entered into Agreements of Purchase and Sale with the City of Toronto for the 210 Simcoe Property and Unit 5, Level 1, Units 2, 3, 6, 8, 12, 13, 14, 15, 25, 26, Level 2, and Units 2, 3, 6, 8, 12, 13, 14, 15, 29, Level 3 at 38 Abell.

13. Pursuant to the Sale Process Order dated May 1, 2024, the Receiver has entered into an Agreement of Purchase and Sale with Propeller Centre for the Visual Arts with respect to Units 1, 2, Level 1 at 38 Abell.

14. It is the opinion of the Receiver that the terms and conditions contained in the 180 Shaw transactions are commercially reasonable in all respects and that the purchase prices are within market value for the Real Properties.

15. It is the opinion of the Receiver that the terms and conditions contained in the 38 Abell and 210 Simcoe transactions are commercially reasonable in all respects and that the purchase prices are within market value for the Real Properties.

16. FOCU holds a first mortgage over the Properties at 180 Shaw and 38 Abell. The Receiver has obtain a legal opinion as to the validity of the FOCU security.

17. CFF holds a second mortgage over the Properties at 38 Abell. The Receiver has obtain a legal opinion as to the validity of the CFF security.

18. There will be sufficient proceeds from the sale of the Real Properties to pay the realty taxes owing to the City of Toronto and the mortgages of FOCU and CFF.

19. The Receiver has consulted with FOCU, CFF and TD and they support the completion of the transactions.

20. The Receiver seeks an increase in its borrowing power *nunc pro tunc* to cover the Receiver's borrowings.

21. The Confidential Appendices to the Second Report each contain commercially sensitive information, the release of which prior to the completion of a transaction would be prejudicial to the stakeholders of the Debtor's estate.

22. The Receiver seeks approval of its fees and the fees of its legal counsel, in accordance with the fee affidavits of the Receiver and its legal counsel.

23. 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) First Report of msi Spergel Inc. dated April 11, 2024, previously filed;

- (b) The Confidential Appendices thereto, previously filed under seal;
- (c) Second Report of msi Spergel Inc dated December 20, 2024;
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 20, 2024

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Lawyers for the Receiver

TO: **THE SERVICE LIST**

THE TORONTO-DOMINION BANK
Applicant

-and-

TORONTO ARTSCAPE INC.
Respondent

Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

TORONTO ARTSCAPE INC.

Respondent

**SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
TORONTO ARTSCAPE INC.**

DECEMBER 20, 2024

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2. Endorsement of the Honourable Justice Steele, dated April 25, 2024
3. Sales Process Order for 130 Queens Quay and 180 Shaw Street of the Honourable Justice Steele, dated April 25, 2024
4. Sales Process Order for 38 Abell Street and 210 Simcoe Street of the Honourable Justice Steele, dated May 1, 2024
5. Disclosure, Consultation and Evaluation Addendum to the Artscape Abell and Artscape Simcoe Sales Process, dated May 1, 2024
6. Redacted - City of Toronto – Simcoe Units 51 and 65, level 2, Units 4 and 7, Level 3, Agreement of Purchase and Sale (“**APS**”)
7. Redacted - City of Toronto – Abell Units 5, Level 1, Units 2, 3, 6, 8, 12-15 (inclusive), 25 and 26, Level 2, Units 2, 3, 6, 8, 12-15 (Inclusive), and Unit 29, Level, 3 APS
8. Redacted - Propeller Art Gallery – Abell Units 1, 2, Level 1, APS
9. Redacted - Centre for Indigenous Theatre – Shaw Units 8 and 9, Level 2, APS
10. Redacted - College Montrose Children’s Place – Shaw Units 2 and 3, Level A, APS
11. Redacted - Inspirit Foundation – Shaw Units 2 and 7, Level 1, APS
12. Redacted - Intergalactic Arts Collective – Shaw Unit 3, Level 1, APS
13. Redacted - Koffler Centre for the Arts – Shaw Units 4 and 5, Level 1, and Unit 1, Level 3, APS
14. Redacted - Small World Music Society – Shaw Unit 1, Level 1, Unit 5, Level 3, APS
15. Redacted - Iles & Schoefield – Shaw Unit 5, Level 2, APS

16. Avison Young Listing Agreement for 180 Shaw Street, dated May 1, 2024
17. Avison Young Listing Agreement for 130 Queens Quay, dated May 1, 2024
18. Avison Young Listing Agreement for 38 Abell Street, dated May 10, 2024
19. Avison Young Listing Agreement for 210 Simcoe Street, dated May 10, 2024
20. Receiver's Fee Affidavit, sworn December 18, 2024
21. Minden Gross LLP & Fogler Rubinoff LLP Fee Affidavit sworn December 19, 2024
22. Receiver's Interim Statement of Receipts and Disbursements at December 18, 2024
23. Receiver's Certificate No. 1 and 3 – TD Canada Trust Advance
24. Receiver's Certificate No. 2 - First Ontario Credit Union Advance
25. First Ontario Credit Union Payout Statement, dated December 18, 2024
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27. Property Tax Statements, dated December 19, 2023

CONFIDENTIAL APPENDICES

1. 180 Shaw Street – Initial Offer Summary
2. 180 Shaw Street – Final Submissions
3. 38 Abell & 210 Simcoe – Final Submissions

I. APPOINTMENT AND BACKGROUND

1. This second report (“**Second Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-Appointed Receiver (in such capacity, the “**Receiver**”) of Toronto Artscape Inc. (the “**Debtor**” or “**Toronto Artscape**”):
2. Toronto Artscape is a Not-for-Profit corporation incorporated pursuant to the laws of the Province of Ontario, with its registered head office located at 130 Queens Quay East, Suite 423, Toronto, ON.
3. The Debtor’s operations consisted of, among other things:
 - a) providing various property management services to residential units for artists and artists led families and commercial tenants, through arrangement with the City of Toronto;
 - b) providing mortgage program management for approximately 85 affordable home ownership units; and
 - c) providing venue rental from owned or leased premises.
4. Toronto Artscape is the registered owner of the following real properties that are subject to the within Receivership:
 - a) 130 Queens Quay East, 4th Floor, Toronto, ON;
 - b) 38 Abell Street, Toronto, ON comprising 2 commercial condominium units, 20 live/work condominium units and 1 parking stall;
 - c) 180 Shaw Street, Toronto, ON comprising 15 commercial condominium units; and,
 - d) 210 Simcoe Street, Toronto ON comprising 2 residential condominium units (each a “**Real Property**” and collectively, the “**Real Properties**”).
5. On January 11, 2024, The Toronto-Dominion Bank (“**TD**”), a secured creditor of the Debtor, moved by way of an application for the appointment of Spergel as Receiver of certain property of the Debtor. On the same day, the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order (the “**Receivership Order**”) appointing Spergel as

the Receiver, without security, of all the assets, undertakings and properties of the Debtor acquired for, or used in relation to the Debtor's affairs, ownership of and operations at the Real Properties (as described in Schedule "A" to the Receivership Order) and the Youngplace Shared Appreciation Mortgages, as defined and detailed in Schedule "A" to the Receivership Order, and also including all proceeds thereof, and excluding the Excluded Property as defined in the Receivership Order (collectively, the "**Property**"). A copy of the Receivership Order is attached to this Second Report as **Appendix "1"**.

6. At the return of the application for the appointment of the Receiver, the Debtor brought its own motion to, amongst other things, seek:
 - a) approval of the transaction contemplated by an Asset Transfer Agreement dated January 4, 2024, between Toronto Artscape and ANPHIAH Affordable Homes Inc. in respect to the not-for-profit residential operations and assets of the Debtor (the "**ANPHIAH Transaction**"); and
 - b) approval of the transaction contemplated by an Asset Transfer Agreement dated December 22, 2023, between Toronto Artscape and Arthubs Toronto Inc. in respect to the not-for-profit community cultural hub operations and assets of the Debtor (the "**Arthubs Transaction**").
7. On the same day, the Honourable Madam Justice Steele granted the relief sought by the Debtor and issued Orders approving, among other things, the ANPHIAH Transaction and the Arthubs Transaction.
8. The Receiver retained Minden Gross LLP and Fogler, Rubinoff LLP (the "**Receiver's Counsel**") as its independent legal counsel.
9. On April 25, 2024, the Receiver brought a motion to seek the following relief from the court:
 - a) approving the First Report of the Receiver and the activities of the Receiver described therein;
 - b) approving the Receiver's Interim Statement of Receipts and Disbursements as at April 11, 2024;

- c) authorizing and directing the Receiver to execute a listing agreement (the “**Listing Agreement**”) between the Receiver and Avison Young Commercial Real Estate LP (“**Avison**”) and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
 - d) authorizing and directing the Receiver, in conjunction with Avison as its real estate consultant, to carry out the Sale Process (as defined herein) and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to the prior approval of this Court being obtained before completion of any transaction resulting from the Sale Process;
 - e) increasing the Receiver’s borrowing Charge (as defined in the Receivership Order) from \$300,000 to \$600,000; and
 - f) sealing certain Confidential Appendices (as defined herein) to the First Report.
10. Attached to this Second Report as **Appendices “2”, “3”, “4”, and “5”** is a copy of the Endorsement of the Honourable Justice Steele, dated April 25, 2024, the Sales Process Order of the Honourable Justice Steele for Launchpad and Youngplace dated April 25, 2024, the Sales Process Order of the Honourable Justice Steele for Abell and Simcoe dated May 1, 2024 and the Disclosure, Consultation and Evaluation Addendum to the Artscape Abell and Artscape Simcoe Sales Process dated May 1, 2024.

II. PURPOSE OF THIS SECOND REPORT AND DISCLAIMER

11. The purpose of this Second Report is to report to the Court regarding the Receiver’s activities and conduct since the Receiver’s Second Report and to seek Orders from the Court for the following:
- (a) approving the Second Report of the Receiver and the activities of the Receiver described therein;
 - (b) approving the Receiver’s Interim Statement of Receipts and Disbursements as at December 18, 2024;
 - (c) approving the sale transaction (the “**210 Transaction**”) contemplated by an

agreement of purchase and sale dated October 2, 2024 between the City of Toronto (the “**Purchaser**”) and the Receiver for the purchase and sale of Units 51 and 65, Level 2, Units 4 and 7, Level 3 property located at 210 Simcoe Street, Toronto, Ontario (the “**210 Simcoe Property**”) and attached as **Appendix “6”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;

- (d) approving the sale transaction (the “**38 Transaction**”) contemplated by an agreement of purchase and sale dated October 2, 2024 between the City of Toronto (the “**Purchaser**”) and the Receiver for the purchase and sale of Units 5, Level 1, Units 2, 3, 6, 8, 12, 13, 14, 15, 25 (municipally known as 228-38 Abell Street, Toronto, ON), 26 (municipally known as 229-38 Abell Street, Toronto, ON), Level 2, Units 2, 3, 6, 8, 12, 13, 14, 15, and Unit 29, Level 3 property located at 38 Abell Street, Toronto, Ontario (the “**38 Abell Property**”) and attached as **Appendix “7”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (e) approving the sale transaction (the “**Propeller Transaction**”) contemplated by an agreement of purchase and sale dated October 2, 2024 between Propeller Centre for the Visual Arts (the “**Purchaser**”) and the Receiver for the purchase and sale of Units 1, 2, Level 1 property located at 38 Abell Street, Toronto, Ontario (the “**Propeller Property**”) and attached as **Appendix “8”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (f) approving the sale transaction (the “**Centre for Indigenous Transaction**”) contemplated by an agreement of purchase and sale dated October 8, 2024 between the Centre for Indigenous Theatre (the “**Purchaser**”) and the Receiver for the purchase and sale of Units 8 and 9, Level 2 property located at 180 Shaw Street, Toronto, Ontario (the “**Centre for Indigenous**”

Property") and attached as **Appendix "9"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;

- (g) approving the sale transaction (the "**College-Montrose Transaction**") contemplated by an agreement of purchase and sale dated October 8, 2024 between College-Montrose Children's Place (the "**Purchaser**") and the Receiver for the purchase and sale of Units 2 and 3, Level A property located at 180 Shaw Street, Toronto, Ontario (the "**College-Montrose Property**") and attached as **Appendix "10"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (h) approving the sale transaction (the "**Inspirit Transaction**") contemplated by an agreement of purchase and sale dated October 8, 2024 between Inspirit Foundation (the "**Purchaser**") and the Receiver for the purchase and sale of Units 2 and 7, Level 1 property located at 180 Shaw Street, Toronto, Ontario (the "**Inspirit Property**") and attached as **Appendix "11"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (i) approving the sale transaction (the "**Intergalactic Transaction**") contemplated by an agreement of purchase and sale dated October 8, 2024 between Intergalactic Arts Collective (the "**Purchaser**") and the Receiver for the purchase and sale of Unit 3, Level 1 property located at 180 Shaw Street, Toronto, Ontario (the "**Intergalactic Property**") and attached as **Appendix "12"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (j) approving the sale transaction (the "**Koffler Transaction**") contemplated by an agreement of purchase and sale dated October 8, 2024 between Koffler Centre of the Arts (the "**Purchaser**") and the Receiver for the purchase and

sale of Units 4 and 5, Level 1, Unit 1, Level 3 property located at 180 Shaw Street, Toronto, Ontario (the “**Koffler Property**”) and attached as **Appendix “13”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;

- (k) approving the sale transaction (the “**Small World Transaction**”) contemplated by an agreement of purchase and sale dated October 8, 2024 between Small World Music Society (the “**Purchaser**”) and the Receiver for the purchase and sale of Unit 1, Level 1, Unit 5, Level 3 property located at 180 Shaw Street, Toronto, Ontario (the “**Small World Property**”) and attached as **Appendix “14”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (l) approving the sale transaction (the “**Schofield Transaction**”) contemplated by an agreement of purchase and sale dated October 8, 2024 between Gillian Iles and Matthew Schofield (the “**Purchaser**”) and the Receiver for the purchase and sale of Unit 5, Level 2 property located at 180 Shaw Street, Toronto, Ontario (the “**Schofield Property**”) and attached as **Appendix “15”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (m) vesting in the Purchasers all of the Debtors’ right, title and interest in and to the Purchased Properties, free and clear of all encumbrances, except certain permitted encumbrances;
- (n) increasing the Receiver’s borrowing Charge (as defined in the Receivership Order) from \$600,000 to \$670,000 *nunc pro tunc*;
- (o) sealing certain Confidential Appendices (as defined herein) to the Second Report;
- (p) authorizing and directing the Receiver to make a distribution to TD Canada

Trust ("TD"), or such other party, as directed by TD, in the amount of \$600,000.00, plus interest, upon the closing of the Transactions;

- (q) authorizing and directing the Receiver to make a distribution to First Ontario Credit Union Limited ("**FOCU**"), or such other party, as directed by FOCU, in the amount of \$5,874,354.96, plus interest, upon the closing of the Transactions;
 - (r) authorizing and directing the Receiver to make a distribution to Community Forward Fund ("**CFF**"), or such other party, as directed by CFF in the amount of \$2,394,393.56, together with accrued interest and legal fees, upon the closing of the Transactions;
 - (s) authorizing and directing the Receiver to make a distribution to The City of Toronto in the amount of \$63,890, plus any other amounts accrued at the closing of the Transactions, for the outstanding realty taxes;
 - (t) approving the fees and disbursements of the Receiver for the period up to December 13, 2024 as described in the affidavit of Trevor Pringle, sworn December 18, 2024 (the "**Pringle Affidavit**"); and
 - (u) approving the fees and disbursements of Minden Gross LLP ("**Minden**") and Fogler, Rubinoff LLP ("**Fogler**"), legal counsel to the Receiver for the period up to December 18, 2024 as described in the affidavit of Rachel Moses, sworn December 19, 2024 (the "**Moses Affidavit**");
 - (v) such further and other relief as counsel may advise and this Court may permit.
12. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction or use of this Second Report for any other purpose.
13. In preparing this Second Report, the Receiver has relied upon certain information provided to it by the Debtor and/ or its principals. The Receiver has not performed an audit or verification of such information for accuracy, completeness or

compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.

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

III. ACTIVITIES OF THE RECEIVER

15. The Receiver has attended to the following matters since the Receiver's First Report, whether directly or through the Receiver's Counsel:
 - i. communicated with the Debtor directly or through counsel in relation to, among other things, obtaining books and records of the Debtor;
 - ii. continued to secure possession of the Real Properties when tenants vacated and attended to all necessary repairs and maintenance, where applicable;
 - iii. continued twice weekly security inspections of the Real Properties;
 - iv. entered into listing agreements with Avison Young in accordance with the Sales Process Orders dated April 25, 2024, and May 1, 2024, respectively;
 - v. assisted Avison Young with the compilation of information for the data room for the sales process including compliance with the Disclosure, Consultation and Evaluation Addendum for the 38 Abell and 210 Simcoe Sales Process;
 - vi. overseeing and managing the sales process in accordance with the Sales Process Orders;
 - vii. continued communications with tenants with respect to occupation of the Real Properties and instructed said tenants to pay all arrears and future rent to the Receiver which continues to date;
 - viii. continued to arrange and manage ongoing supplier relationships and utility accounts;
 - ix. continued to monitor, approve and arrange payment for the ongoing operating expenses;

- x. overseeing and approving any short-term mezzanine rentals at 180 Shaw;
- xi. continued to monitor, deposit and post rental payments to the Receiver's trust account;
- xii. arranged for additional funding and issued Receiver's Certificate No. 3 in the amount of \$500,000, which Certificate was funded by TD;
- xiii. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act*;
- xiv. continued to deal with employees and completed necessary filings under the *Wage Earner Protection Program Act*;
- xv. communicating with the various stakeholders including unsecured creditors with respect to the receivership process;
- xvi. held various discussions and communications with stakeholders pertaining to the marketing and sale of the Real Properties; and
- xvii. communicated with Canada Revenue Agency ("**CRA**") with respect to the Debtor.

IV. SALES PROCESS – 180 SHAW AND 130 QUEENS QUAY

- 16. Pursuant to the terms of the Sales Process Order for 180 Shaw and 130 Queens Quay, the Receiver was authorized to enter into a listing agreement with Avison to market and sell the Real Properties, including advertising and soliciting offers in respect of the Real Properties, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. Attached hereto as **Appendices "16" and "17"** are the fully executed listing agreements between Avison and the Receiver.
- 17. The Sale Process was designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Real Properties.
- 18. The principal elements of the Sale Process for the Properties were as follows:
 - a. A transparent unpriced tender process with a bid deadline date;

- b. As soon as is reasonably possible, Avison will distribute marketing material notifying prospective purchasers of the existence of the Sale Process and list each of the Real Properties on the Multiple Listing Service inviting prospective purchasers to express their interest in making an offer in respect of the Real Properties, pursuant to the terms of the Sale Process;
 - c. Prospective purchasers that wish to commence due diligence will be required to execute a non-disclosure agreement (“**NDA**”);
 - d. Upon execution of the NDA, the Receiver, in conjunction with Avison, will determine if the prospective purchaser has a bona fide interest in pursuing a transaction and thus deem them a “**Qualified Bidder**”;
 - e. Avison, in conjunction with the Receiver will prepare a confidential information memorandum, which will provide, among other things, information considered relevant to the Sale Process and will be sent to each Qualified Bidder;
 - f. The Receiver and Avison will give each Qualified Bidder access to due diligence materials and information relating to the Real Properties;
 - g. Due diligence access may include access to an electronic data room, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver may agree;
 - h. A binding offer, based on a form of Agreement of Purchase and Sale (“**APS**”) provided by the Receiver, must be submitted in writing to the Receiver by a date to be determined once the Real Properties have been extensively marketed;
19. Avison ran a sixteen week marketing campaign utilizing a customized confidential information memorandum. They prepared sales and marketing materials that were accessible online to prospective purchasers via Avison’s virtual data room. Avison

also targeted prospective purchasers that might have an interest in the Real Properties and emailed sales and marketing materials to a comprehensive list of potential buyers. Avison provided marketing reports to the Receiver on a bi-weekly basis. There were sixteen weeks of active marketing. Avison marketed the Real Properties on its website and sent out marketing emails to known residential/commercial investors, developers, lawyers, architects, planners and financiers. Avison also placed 2 ads in the Globe and Mail on September 10th and 12th, 2024. In total there were 5,740 people contacted regarding the Real Properties, 36 data room views/downloads, 41 confidentiality agreements executed, and 4 tours completed.

20. On the bid deadline of September 17, 2024, for 180 Shaw Street, the Receiver received seven bids. Attached hereto as **Confidential Appendix “1”** is the bid summary dated September 17, 2024. The Receiver determined that these met the definition of a qualified bidder and agreed to a due diligence period under the agreements of purchase and sale. After negotiations with the Receiver, the purchasers waived their conditions subject to the sales approval of this Court. Attached hereto as **Confidential Appendix “2”** is the updated offer summary for 180 Shaw as of November 15, 2024.
21. The Receiver has not received any offers with respect to 130 Queens Quay to date and in conjunction with Avison will set a new listing price for the Real Property.
22. The Receiver has 2 remaining units at 180 Shaw that are still being marketed for sale and will need to return to Court once an agreement of sale has been executed for those units.
23. It is the opinion of the Receiver that the terms and conditions contained in the 180 Shaw Transactions are commercially reasonable in all respects and that the purchase prices are within market value for the Real Properties, as evidenced by the appraisal values previously provided under a sealed order and is the best outcome in the circumstances. The Real Properties are being sold on an “as is, where is” basis.

24. The Receiver has consulted with FOCU and TD with respect to the Transactions and they support the completion of the same.
25. Therefore, the Receiver recommends that the Court approve the Transactions. If the Transactions are approved, they will close in accordance with the terms of APS's.
26. Accordingly, the Receiver is seeking, among other things, an Approval and Vesting Order in respect of the Transactions contemplated by APS's.

V. SALES PROCESS – 38 ABELL AND 210 SIMCOE STREET

27. Pursuant to the terms of the Sales Process Order for 38 Abell and 210 Simcoe, the Receiver was authorized to enter into a listing agreement with Avison to market and sell the Real Properties, including advertising and soliciting offers in respect of the Real Properties, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. Attached hereto as **Appendices “18” and “19”** are the fully executed listing agreements between Avison and the Receiver.
28. The Sale Process was designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Real Properties.
29. The principal elements of the Sale Process for the Properties were detailed in the previous section.
30. With respect to the units at 38 Abell, Avison ran a fourteen week marketing campaign utilizing a customized confidential information memorandum. They prepared sales and marketing materials that were accessible online to prospective purchasers via Avison's virtual data room. Avison also targeted prospective purchasers that might have an interest in the Real Properties and emailed sales and marketing materials to a comprehensive list of potential buyers. Avison provided marketing reports to the Receiver on a bi-weekly basis. There were fourteen weeks of active marketing. Avison marketed the Real Properties on its website and sent out weekly marketing emails to known residential/commercial investors, developers, lawyers, architects, planners and financiers. Avison also

placed 2 ads in the Globe and Mail on September 10th and 12th, 2024. In total there were 5,596 people contacted regarding the Real Properties, 8 data room views/downloads, 46 confidentiality agreements executed, and 3 tours completed.

31. With respect to the units at 210 Simcoe, Avison ran a thirteen week marketing campaign utilizing a customized confidential information memorandum. They prepared sales and marketing materials that were accessible online to prospective purchasers via Avison's virtual data room. Avison also targeted prospective purchasers that might have an interest in the Real Properties and emailed sales and marketing materials to a comprehensive list of potential buyers. Avison provided marketing reports to the Receiver on a bi-weekly basis. There were thirteen weeks of active marketing. Avison marketed the Real Properties on its website and sent out weekly marketing emails to known residential/commercial investors, developers, lawyers, architects, planners and financiers. Avison also placed 2 ads in the Globe and Mail on September 10th and 12th, 2024. In total there were 5,596 people contacted regarding the Real Properties, 3 data room views/downloads, 34 confidentiality agreements executed and 1 tour completed.
32. On the bid deadline of September 19, 2024, for 38 Abell Street and 210 Simcoe Street, the Receiver received three bids. Attached hereto as **Confidential Appendix "3"** is the bid summary dated September 19, 2024. The Receiver determined that these met the definition of a qualified bidder and agreed to a due diligence period under the APS's. The successful purchasers waived their conditions subject to the sales approval of this Court.
33. There is still the lone parking stall that is being marketed for sale. The Receiver will need to return to Court once a sales agreement has been executed.
34. It is the opinion of the Receiver that the terms and conditions contained in the 38 Abell and 210 Simcoe Transactions are commercially reasonable in all respects and that the purchase prices are within market value for the Real Properties, as evidenced by the appraisal values previously provided under a sealed order and

is the best outcome in the circumstances. The Real Properties are being sold on an “as is, where is” basis.

35. The Receiver has consulted with FOCU, CFF and TD with respect to the Transactions and they support the completion of the same.
36. Therefore, the Receiver recommends that the Court approve the Transactions. If the Transactions are approved, they will close in accordance with the terms of APS’s.
37. Accordingly, the Receiver is seeking, among other things, an Approval and Vesting Order in respect of the Transactions contemplated by APS’s.

VI. FUNDING OF THE RECEIVERSHIP

38. Pursuant to the Sales Process Order dated April 25, 2024, the Courts increased the allowable borrowable amount under the Appointment Order from \$300,000 to \$600,000.
39. The Receiver has borrowed \$70,000 from FOCU and \$600,000 from TD respectively. The advance from FOCU is for the operations of 180 Shaw Street and 38 Abell where FOCU holds security. The advance from TD is for the operations of 130 Queens Quay and 210 Simcoe Street where TD holds security over. The Receiver respectively is requesting that the Court increase the Receiver’s borrowing Charge (as defined in the Receivership Order) from \$600,000 to \$670,000 *nunc pro tunc* and provide TD with the benefit of the Receiver’s Charge pursuant to the Receiver’s Certificate Number 3.

VII. REQUEST FOR A SEALING ORDER

40. The Receiver is seeking a sealing order in respect of the Confidential Appendices to this Second Report as they each contain commercially sensitive information, the release of which prior to the completion of a transaction would be prejudicial to the stakeholders of the Debtor’s estate.

VIII. FEES AND DISBURSEMENTS OF THE RECEIVER AND COUNSEL

41. Attached to this Second Report as **Appendix “20”** is the Affidavit of Trevor Pringle, sworn December 18, 2024 (the “**Pringle Affidavit**”) which incorporates, by

reference a copy of the time dockets pertaining to the period up to December 13, 2024 (the “**Receiver Fee Period**”).

42. The fees and disbursements of the Receiver in respect of the Receiver Fee Period amount to \$355,164.43 (inclusive of HST and disbursements), as detailed in the Pringle Affidavit.
43. Attached to this Second Report as **Appendix “21”** is the Affidavit of Rachel Moses, sworn December 19, 2024 (the “**Moses Affidavit**”) which incorporates, by reference a copy of the time dockets pertaining to the period up to December 18, 2024 (the “**Folger Fee Period**”).
44. The fees and disbursements of Minden and Folger in respect of the Folger Fee Period amount to \$312,640.30 (inclusive of HST and disbursements), as detailed in the Moses Affidavit.
45. The Receiver has reviewed Minden and Folger’s accounts and given the numerous issues that both the Receiver and Folger were required to deal with in this matter, the Receiver is of the view that the work carried out by Folger was necessary and the fees charges by Minden and Folger are reasonable. The hourly rates of the lawyers who worked on this matter were reasonable, in light of the services required, and the services were carried out by lawyers with the appropriate level of experience. Further, a rate cap was provided by Folger, which resulted in a significant saving on costs, as compared to the rates charged by other large law firms.

IX. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

46. Attached to this Second Report as **Appendix “22”** is the Receiver’s interim statement of receipts and disbursements as of December 18, 2024.

X. PROPOSED DISTRIBUTION

47. Pursuant to the Appointment Order, the Receiver borrowed monies from TD and FOCU in the principal amount of \$670,000.00 (the “**Borrowings**”) to fund certain expenses in these proceedings, which funding is secured by the Receiver’s Borrowings Charge, as provided for in the Receivership Order. Attached hereto as

Appendices “23” and “24” to this Second Report is a copy of Receiver’s Certificate No. 1, 2 and 3 representing the Borrowings to date.

48. A title search conducted with respect to 180 Shaw Street and 38 Abell Street on November 17, 2023, and September 7, 2023, respectively, indicates the following registrations on title in order of priority:
- a) A first mortgage in the principal amount of \$5,700,000 held by FOCU, which was initially charged and registered on May 6, 2021. The Receiver has been provided with a payout statement from FOCU for the first mortgage dated December 18, 2024, which shows a balance outstanding of \$5,798,750.98. The FOCU payout statement (the “**FOCU Payout Statement**”) is attached as **Appendix “25”**;
 - b) A second mortgage in the principal amount of \$2,215,000 held by CFF, which comprises an initial charge, registered on October 15, 2020, and postponed on May 6, 2021. The CFF Payout Statement shows a balance for the second mortgage as at December 13, 2024, of \$2,394,393.56 plus legal fees and costs. The CFF payout statement (the “**CFF Payout Statement**”) is attached as **Appendix “26”**;
49. The Receiver has obtained legal opinions from Fogler confirming the validity and enforceability of the mortgage security held by FOCU and CFF as against the Real Properties located at 180 Shaw and 38 Abell.
50. The City of Toronto has a priority charge to the existing mortgages in respect of property tax arrears that have accrued in respect of the Real Properties. Attached hereto as **Appendix “27”** is a copy of the tax arrears statement issued by the City of Toronto on December 19, 2023, which indicates that the property taxes outstanding are in the amount of approximately \$63,890.
51. Accordingly, the Receiver is proposing to make an interim distribution (after payment of the fees and disbursements of both the Receiver and the Receiver’s Counsel, as outlined in this Second Report) as follows:
- a) To the City of Toronto in the amount of \$63,890 plus any other amounts accrued at the closing of the Transaction, for the outstanding realty taxes;

- b) To TD, or such other party as TD might direct, for the repayment of the Borrowings, pursuant to Receiver Certificate No. 1 and 3 in the amount of \$600,000, plus interest thereon, in accordance with Receiver's Certificate No. 1 and 3 that were issued to TD;
 - c) To FOCU, or such other party as FOCU might direct, for the repayment of the Borrowings, pursuant to Receiver Certificate No. 2 in the amount of \$70,000, plus interest thereon, in accordance with Receiver's Certificate No. 2 that was issued to FOCU;
 - d) To FOCU in the amount of \$5,798,750.98 plus interest, or such other party as FOCU might direct, for the repayment of the First Mortgages held by FOCU;
 - e) To CFF in the amount of \$2,394,393.56 plus interest, or such other party as CFF might direct, for the repayment of the Second Mortgage held by CFF;
52. The Receiver anticipates a surplus in the estate after the above distribution. As the administration of the receivership is not completed, the Receiver proposes to retain the surplus proceeds to fund its further activities and contemplates the need for a further motion(s) to the Court for directions with regards to a future distribution and with respect to the Receiver's discharge.

XI. RECOMMENDATION

53. For the reasons outlined in this Second Report, the Receiver respectfully requests that the Court grant the relief specified at paragraph 11 of this Second Report. All of which is respectfully submitted.

Dated at Hamilton, Ontario this 20th day of December 2024.

msi Spergel Inc.

solely in its capacity as the Court-Appointed Receiver of the Debtor and not in its personal or corporate capacity.

Per:



Trevor B. Pringle, CFE, CIRP, LIT
Partner

THE TORONTO-DOMINION BANK
Applicant

-and- TORONTO ARTSCAPE INC.
Respondent

Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

SECOND REPORT OF MSI SPERGEL INC.

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Lawyers for the Receiver



Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM

)

THURSDAY, THE 11th

)

JUSTICE STEELE

)

DAY OF JANUARY, 2024

THE TORONTO-DOMINION BANK

Applicant

- and -

TORONTO ARTSCAPE INC.

Respondent

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. as receiver and manager (in such capacities, the "Receiver") without security, of the assets, undertakings and properties of Toronto Artscape Inc. (the "Debtor") as detailed in this Order, and excluding the Excluded Property (as defined herein) , was heard this day by judicial videoconference via Zoom, at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kathryn Furfaro sworn December 19, 2023 and the Exhibits thereto, the Report of msi Spergel inc. as Proposed Receiver dated December 19, 2023 and on hearing the submissions of counsels for the Applicant, the Respondent, and all other counsel present, no one else appearing, although duly served as appears from the affidavits of service of Isabelle Stacey sworn December 21, 2023 and December 22, 2023 and on reading the consent of msi Spergel inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel 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 the Debtor's affairs, ownership of and operations at the real property described at Schedule "A" hereto and owned by the Debtor (the "Real Property"), and the Youngplace Shared Appreciation Mortgages, as defined and detailed at Schedule "A" hereto, and also including all proceeds thereof, and excluding the Excluded Property as defined herein (the "Property").

3. THIS COURT ORDERS that the assets, undertakings, contracts and properties of the Debtor other than the Property, including as detailed at Schedule "B", shall not be included in the Property subject to this Order (the "Excluded Property").

4. THIS COURT ORDERS that the Excluded Property shall remain in the possession and control of the Debtor.

RECEIVER'S POWERS

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

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

- b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- g) to settle, extend or compromise any indebtedness owing to the Debtor;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- j) 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 \$10,000.00, provided that the aggregate consideration for all such transactions does not exceed \$50,000.00; 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;
 - (iii) 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

6. 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.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor in relation to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery

of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. 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

9. 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

10. 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

11. 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

12. 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

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

RECEIVER TO HOLD FUNDS

14. 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

15. 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

16. 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

17. 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

18. 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, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, 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

19. 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.

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

21. 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

22. 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.

23. 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.

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

25. 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

26. 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 '<https://www.spergelcorporate.ca/engagements>'.

27. 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

28. 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.

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


30. 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.

31. 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.

32. 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.

33. 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.

34. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing.



Digitally signed by
Jana Steele
Date: 2024.01.11
11:44:12 -05'00'

Justice, Ontario Superior Court of Justice

SCHEDULE "A"

REAL PROPERTY

Artscape Daniels Launchpad – 130 Queens Quay East, Toronto, Ontario

UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0221 LT)

UNIT 13, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0014 LT)

UNIT 12, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0013 LT)

UNIT 11, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0012 LT)

UNIT 10, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0011 LT)

UNIT 9, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0010 LT)

UNIT 8, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0009 LT)

UNIT 7, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0008 LT)

UNIT 6, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0007 LT)

UNIT 5, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0006 LT)

UNIT 4, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0005 LT)

UNIT 3, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0004 LT)

UNIT 2, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2674 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4969740; CITY OF TORONTO (PIN 76674-0003 LT)

Artscape Triangle Lofts – 38 Abell Street, Toronto, Ontario

UNIT 1, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0001 LT)

UNIT 2, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0002 LT)

UNIT 5, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0005 LT)

UNIT 2, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0015 LT)

UNIT 3, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0016 LT)

UNIT 6, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0019 LT)

UNIT 8, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0021 LT)

UNIT 12, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0025 LT)

UNIT 13, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0026 LT)

UNIT 14, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0027 LT)

UNIT 15, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0028 LT)

UNIT 25, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0038 LT)

UNIT 26, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0039 LT)

UNIT 2, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0041 LT)

UNIT 3, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0042 LT)

UNIT 6, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0045 LT)

UNIT 8, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0047 LT)

UNIT 12, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0051 LT)

UNIT 13, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0052 LT)

UNIT 14, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0053 LT)

UNIT 15, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0054 LT)

UNIT 29, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO (PIN 76118-0068 LT)

UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2249 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3073995; CITY OF TORONTO (PIN 76249-0379 LT)

Artscape Youngplace – 180 Shaw Street, Toronto, Ontario

UNIT 1, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0001 LT)

UNIT 2, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0002 LT)

UNIT 3, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0003 LT)

UNIT 4, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0004 LT)

UNIT 5, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0005 LT)

UNIT 7, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0007 LT)

UNIT 10, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0010 LT)

UNIT 5, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0015 LT)

UNIT 8, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0018 LT)

UNIT 9, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0019 LT)

UNIT 1, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0026 LT)

UNIT 5, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0030 LT)

UNIT 7, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0032LT)

UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0044 LT)

UNIT 3, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0045 LT)

Artscape Lofts – 210 Simcoe Street, Toronto, Ontario

UNIT 51, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO (PIN 76430-0051 LT)

UNIT 65, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO (PIN 76430-0065 LT)

UNIT 4, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO (PIN 76430-0094 LT)

UNIT 7, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO (PIN 76430-0097 LT)

Youngplace Shared Appreciation Mortgages

1. Charge/Mortgage of Land in the principal sum of \$47,193 and receipted as instrument number AT3703965 on October 1, 2014 over the property municipally known as 206 Unit, 180 Shaw Street, Toronto, Ontario, legally described as:

UNIT 6, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0016 LT)

2. Charge/Mortgage of Land in the principal sum of \$50,203 and receipted as instrument number AT3704221 on October 1, 2014 over the property municipally known as 214 Unit, 180 Shaw Street, Toronto, Ontario, legally described as:

UNIT 14, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0024 LT)

3. Charge/Mortgage of Land in the principal sum of \$56,545 and receipted as instrument number AT3703701 on October 1, 2014 over the property municipally known as 215 Unit, 180 Shaw Street, Toronto, Ontario, legally described as:

UNIT 15, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0025 LT)

4. Charge/Mortgage of Land in the principal sum of \$50,203 and receipted as instrument number AT3703724 on October 1, 2014 over the property municipally known as 303 Unit, 180 Shaw Street, Toronto, Ontario, legally described as:

UNIT 3, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0028 LT)

5. Charge/Mortgage of Land in the principal sum of \$56,545 and receipted as instrument number AT3704047 on October 1, 2014 over the property municipally known as 317 Unit, 180 Shaw Street, Toronto, Ontario, legally described as:

UNIT 17, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO (PIN 76397-0042 LT)

(1. – 5., collectively, the “Youngplace Shared Appreciation Mortgages”).

SCHEDULE "B"

THE EXCLUDED PROPERTY

1. Not-for-Profit Affordable Housing

a. Leasehold Interests and Related Agreements

The Debtor's leasehold interest in, and all the assets, undertakings, agreements, records and properties of the Debtor acquired for, or used in relation to the Debtor's affairs and operations at and leasehold interest in the following properties:

- i. Parkdale Arts and Cultural Centre, at the property municipally known as 1313 Queen Street West, Toronto, pursuant to a lease between the Debtor and the City of Toronto dated August 15, 2017, together with all related sub-leases;
- ii. Artscape Bayside Lofts, at the property municipally known as 30 Merchant's Wharf, Toronto, pursuant to a lease between the Debtor and the City of Toronto dated June 14, 2019, as amended by a partial surrender and lease amending agreement dated November 22, 2022 and a second amending agreement dated September 25, 2023, together with all related sub-leases, and a contribution agreement between the Debtor and the City of Toronto, as assigned to and assumed by the Debtor by agreement dated June 20, 2019;
- iii. Artscape Weston Common (live/work units), at the property municipally known as 33 King Street, Toronto, pursuant to a lease between the Debtor as tenant, 2295477 Ontario Inc. as landlord, and 22 John Street developments Inc. and the City of Toronto as parties to the lease with certain rights or obligations, dated November 1, 2016, as assigned by 2295477 Ontario Inc. to MPCT DIF DAM RESIDENCE AT WESTON INC. as landlord effective September 29, 2021, together with all related sub-leases, and a contribution agreement between the Debtor and the City of Toronto dated November 1, 2016, and a Subordination and Non-Disturbance Agreement made as of June 20, 2019 among Vancity Community Investment Bank, the Debtor, 2295477 Ontario Inc., and the City of Toronto; and
- iv. Artscape West Queen West (certain unit(s)), at the property municipally known as 910 Queen Street West, Toronto, pursuant to a lease between the Debtor and Artscape Non-Profit Homes Inc. dated September 24, 2002, together with all related sub-leases;

b. Management Agreements

- i. Management Agreement dated October 1, 2011 in relation to Artscape West Queen West.

- ii. Management Agreement dated October 1, 2011 in relation to Artscape Wychwood Barns.

c. Affordable Home Ownership Program Interests and Related Agreements

All shared appreciation mortgages, options to purchase, loan agreements, and assets, interests, undertakings, agreements, records and properties of the Debtor acquired for, or used in relation to the Debtor's affairs and operations of an affordable home ownership program at the following properties:

- i. Artscape Triangle Lofts at the properties municipally known as 8, 10, 12, 14, 16, 18, 20, 22, 26, 28 and 38 Abell Street, Toronto;
- ii. Artscape Lofts @ 210 Simcoe, at the property municipally known as 210 Simcoe Street, Toronto;
- iii. Artscape Lofts @ PACE, at the property municipally known as 159 Dundas Street, Toronto;
- iv. Artscape Lofts @ Waterworks, at the property municipally known as 505 Richmond Street West, Toronto; and
- v. including, without limitation, the following related agreements between the Debtor and the City of Toronto:
 - a. a contribution agreement dated November 2014 for the Artscape Lofts @ 210 Simcoe, as it pertains to the affordable home ownership program only, and excluding all right, title and interest in and pursuant to, and all benefit and advantage to be derived from, and all covenants, provisos and conditions on the part of the Debtor pursuant to said contribution agreement that are in any way associated with the two (2) affordable rental units at Artscape Lofts @ Simcoe which constitute part of the Real Property;
 - b. a contribution agreement dated November 2014 for the Artscape Lofts @ PACE;
 - c. a home ownership assistance program delivery agreement signed by the Debtor on November 12, 2014 and signed by the City of Toronto on November 17, 2014 for the Artscape Lofts @ PACE and the Artscape Lofts @ Simcoe; and
 - d. an affordable ownership housing delivery agreement dated August 9, 2017 for the Artscape Lofts @ Waterworks.

d. Debt to be Assigned and Assumed

- i. Charge of the Debtor's leasehold interest in Artscape Bayside Lofts in favour of the City of Toronto, registered as instrument number AT5166075;
- ii. Charge of the Debtor's leasehold interest in Artscape Weston Common (live/work units) in favour of the City of Toronto, registered as instrument number AT4420802, together with a Notice of General Assignment of Rents in favour of the City of Toronto, registered as instrument number AT4420803;
- iii. Charge of Debtor's leasehold interest in Artscape Bayside Lofts in favour of Vancity Community Investment Bank ("Vancity") (registered as instrument number AT5165713 and as amended by AT5507184), together with a Notice of Assignment of Rents - General in favour of Vancity, registered as instrument number AT5165713; and
- iv. Charge of Debtor's leasehold interest in Artscape Weston Common (live/work units) in favour of Vancity Community Investment Bank (registered as instrument number AT5165138) together with a Notice of Assignment of Rents - General in favour of Vancity, registered as instrument number AT5165139, and a Subordination and Non-Disturbance Agreement made as of June 20, 2019 among Vancity Community Investment Bank, the Debtor, 2295477 Ontario Inc., and the City of Toronto.

e. Related Assets

All assets related to the forgoing interests and agreements, including, without limitation:

- i. Accounts receivables, rents and other proceeds;
- ii. Prepaid insurance;
- iii. Chattels, including, without limitation, furniture, equipment, computer and telephony deployed for operating these assets and interests;
- iv. Records relating to the foregoing interests and agreements and the related operations of the Debtor.

2. Non-Profit Cultural Assets and Contracts (Community Hubs)

a. Leasehold Interests and Related Agreements

The Debtor's leasehold interest in, and all the assets, undertakings, agreements, records and properties of the Debtor acquired for, or used in relation to the Debtor's affairs and operations at and leasehold interest in the following properties:

- i. Gibraltar Point Centre for the Arts, at the property municipally known as 443 Lakeshore Avenue, Toronto, pursuant to a lease between the Debtor and the City of Toronto dated September 28, 1999, together with all related sub-leases;
- ii. Artscape Wychwood Barns, at the property municipally known as 601 Christie Street, Toronto, formerly known as 76 Wychwood Avenue, Toronto, pursuant to a lease between the Debtor and the City of Toronto dated March 28, 2006, as amended by a lease amending agreement dated November 27, 2013, together with all related sub-leases, and a licence agreement between the Debtor and the City of Toronto, dated January 1, 2015;
- iii. Artscape Weston Common (Community/Cultural Hub), at the property municipally known as 33 King Street, Toronto, pursuant to a lease between the Debtor as tenant, 2295477 Ontario Inc. as landlord, and 22 John Street Developments Inc. and the City of Toronto as parties to the lease with certain rights or obligations, dated November 1, 2016, as assigned by 2295477 Ontario Inc. to MPCT DIF DAM RESIDENCE AT WESTON INC. as landlord effective September 29, 2021, together with all related sub-leases, and a licence agreement related to outdoor community space dated May 18, 2022; and
- iv. Daniels Spectrum, at the property municipally known as 585 Dundas Street East, Toronto, pursuant to ground and operating leases between the Debtor and Toronto Community Housing Corporation, and Regent's Park Art Non-Profit Development Corporation dated December 19, 2011, together with all related sub-leases.

b. Fee Simple Interest

The Debtor's encumbered fee simple interest in, and all the assets, undertakings, agreements, records and personal property of the Debtor acquired for, or used in relation to the Debtor's operations at the following property:

- i. Artscape Sandbox, at the property municipally known as 301 Adelaide Street West, subject to an exercised option to purchase in favour of the City of Toronto for nominal consideration, with a closing in December 2023;

c. Management Agreements

- i. Condominium Management Agreement in relation to Artscape Youngplace

d. Related Assets

All assets related to the forgoing interests and agreements, including, without limitation:

- i. Accounts receivables, rents and other proceeds;
- ii. Prepaid insurance;
- iii. Chattels, including, without limitation, furniture, equipment, computer and telephony deployed for operating these assets and interests;

- iv. Records relating to the foregoing interests and agreements and the related operations of the Debtor.

General Toronto Artscape Inc assets:

- a. Operating business name “Toronto Artscape Inc.” / “Artscape”
- b. All data, images and content in respect to the following websites, including, but not limited to, the website address, webpages and related digital content or links and any hosting or related agreements:
- artscape.ca
 - torontoartscapefoundation.ca
 - unitedesarts.ca & artsunite.ca
 - journeyregentpark.ca
 - artscapedanielslaunchpad.com
 - artscapeyoungplace.ca
 - danielsspectrum.ca
 - artscapewychwoodbarns.ca
 - artscapeweston.ca
 - artscapegibraltarpont.ca
 - artscapvenues.ca
 - ArtscapeDIY.org
 - CreativePlaceMaking.Artscape.ca
 - ArtscapeDistilleryStudios.ca

SCHEDULE "C"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

35. THIS IS TO CERTIFY that msi Spergel inc., the receiver (the "Receiver") of the assets, undertakings and properties of Toronto Artscape Inc. for, or used in relation to a business carried on by the Debtor, including the Real Property (as defined in the Order), and including all proceeds thereof, excluding the Excluded Property (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

37. 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.

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

39. 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.

40. 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.

41. 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__.

msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

THE TORONTO-DOMINION BANK

v.

TORONTO ARTSCAPE INC.

Applicant

Respondent

Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

ORDER

HARRISON PENZA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #69806O)**

Tel : (519) 661-6743

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Applicant,
The Toronto-Dominion Bank



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00711609-00CL

DATE: Apr 25 2024

NO. ON LIST:2

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. TORONTO ARTSCAPE INC.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

Name of Person Appearing	Name of Party	Contact Info
Rosemary Fisher	First Ontario	fisherr@simpsonwiggles.com
An Nguyen	TSCC2674 & TSCC2397	an.nguyen@gmalaw.ca
Daniel Elmadany	City Of Toronto	Daniel.Elmadany@toronto.ca
Catherine Francis	Receiver, msi Spergel Inc.	cfrancis@foglers.com
Dom Michaud	Community Forward Fund	dmichaud@robapp.com

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	TD Bank	thogan@harrisonpensa.com
Michelle Wright	City Of Toronto	Michele.A.Wright@toronto.ca
Mukul Manchan	Receiver, msi Spergel Inc.	mmanchanda@spergel.ca
Christopher Henderson	City Of Toronto	Christopher.Henderson@toronto.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver of Toronto Artscape Inc. brings this motion seeking, among other things, an order authorizing the Receiver to engage Avison Young Commercial Real Estate LP and, in conjunction with Avison, to carry out a sale process, a sealing order in respect of the appraisals and other commercially sensitive information regarding the properties, and an increase to the Receiver's borrowing charge.
- [2] The proposed sales process is in respect of the following:
- a. 20 live/work condominium units located at 38 Abell Street, Toronto (the "Abell Units");
 - b. Two residential condominium units at 210 Simcoe Street, Toronto (the "Simcoe Units");
 - c. 130 Queens Quay East, 4th Floor, Toronto ("Launchpad"); and
 - d. 180 Shaw Street, Toronto ("Youngplace").
- [3] No one opposes the proposed sale process in respect of Launchpad and Youngplace.
- [4] However, the City of Toronto (the "City") opposes the proposed sale process in respect of the Abell Units and the Simcoe Units. The City is not an economic stakeholder. However, among other things, the City is party to agreements that contain certain restrictions on changes, registered on title under s. 118 of the *Land Titles Act*.
- [5] No one else opposes the proposed sale process in respect of the Abell Units and the Simcoe Units.
- [6] The other relief sought by the Receiver on the motion (the increase to the borrowing limit, the sealing order, etc.) is unopposed.
- Should the Issues related to zoning and other restrictions, among other issues raised by the City, be determined prior to the commencement of the sales process for the Abell Units and Simcoe Units?*
- [7] The City of Toronto filed an extensive record over the past two days setting out their position on a number of complex matters, including the zoning and restrictions applicable to the Abell Units and the Simcoe Units. The Receiver disagrees with the City's position.
- [8] The Receiver is also of the view that the Court's consideration of the issues raised by the City is premature. In addition, the Receiver indicated that for the Court to consider these issues, the determination would have to be made "on a full factual record with the opportunity for all affected parties to file material and participate, not in a factual vacuum in advance of the Sale Process."
- [9] I advised the parties at the motion that the interpretation of the numerous issues raised by the City required a full factual record for the Court to consider. I further indicated that the determination of these

matters should not preclude the Receiver commencing the sales process, as it is authorized to do pursuant to the appointment order. 64

- [10] Depending on the outcome of the sale process, these issues may have to be before the Court on a full record at a later date prior to the issuance of an approval and vesting order.
- [11] The City submitted that if the Court declined to issue a ruling on the numerous matters raised at this stage, then amendments ought to be made to the proposed sale process in respect of the Abell Units and Simcoe Units “for disclosure, consultation and evaluation” in order to ensure “an efficient, fair and transparent process.”
- [12] The parties agreed to have discussions in advance of a return before me to attempt to narrow the outstanding issues related to the sale process for the Abell Units and Simcoe Units and the City’s request for disclosure, consultation, and evaluation.
- [13] **The matter is adjourned to May 2, 2024 at 10:30 am before me (90 minutes).** The parties may file briefs (up to 10 pages in length, double spaced), which should be filed at least one day prior to the appearance.
- [14] I informed the parties today that, based on the written submissions and oral submissions at the return of this matter on May 2, 2024, I would determine what requirements, if any, be included in the sale process for the Abell Units and the Simcoe Units to address the City’s request for disclosure, consultation, and evaluation.

Should the Requested Sealing Order be Granted?

- [15] The Receiver requests a temporary sealing order in respect of the confidential appendices, which contain the appraisal reports in respect of the four properties, unredacted summary of listing proposals, and listing proposal with market valuations.
- [16] The sealing orders sought are all in respect of materials that could taint the market if available prior to the sale process in respect of the properties being launched. The proposed order contains language that the sealing order would apply until further order of the court.
- [17] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. The Court also has inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.* (2010), 100 O.R. (3d) 510 (ONSC), at para. 34.
- [18] I am satisfied that the proposed sealing of the Confidential Appendices is appropriate in the circumstances. The Confidential Appendices contain confidential and commercially sensitive information regarding the properties. The information in the Confidential Appendices could taint the market and the sale process. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. As a matter of proportionality, the benefits of keeping the Confidential Appendices sealed for a limited period of time so as not to taint the sale process for the properties outweighs the negative effects of temporarily restricting public access to a limited amount of information.

[19] Having considered the test set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2022 SCC 41, at para. 45, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, I am satisfied that it is appropriate to grant the requested sealing order. 65

[20] The Receiver is directed to provide the sealed Confidential Appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the Confidential Appendices can be physically sealed.

Increase to Borrowing Limit.

[21] Under the Receivership Order, the Receiver is empowered to borrow up to \$300,000. The Receiver seeks to increase the limit to \$600,000.

[22] The Receiver has already borrowed approximately \$170,000. The Receiver states that in order to continue operations, an increase in its borrowing powers is required.

[23] Order attached.

A handwritten signature in blue ink, appearing to be 'J. Lee', is located in the lower right quadrant of the page.



Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 25TH

JUSTICE STEELE

)

DAY OF APRIL, 2024

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

ORDER

THIS MOTION, made by the Receiver for, among other things, an Order approving the First Report of the Receiver dated April 11, 2024 (the "**First Report**") and the activities of the Receiver since the Receiver's appointment as set out in the First Report and the sale process proposed by the Receiver, was heard this day by videoconference.

ON READING the Notice of Motion herein and the First Report and the Appendices and Confidential Appendices thereto and the affidavits of Sarah Phipps and Doug Rollins affirmed April 22, 2024, and on hearing the submissions of the lawyers for the Receiver

and for The Toronto-Dominion Bank, First Ontario Credit Union Limited, Community Forward Fund, City of Toronto, Toronto Standard Condominium Corporation No. 2674, Toronto Standard Condominium Corporation No. 2397 and Toronto Standard Condominium Corporation No. 2118, no one else in attendance, although properly served as appears from the Affidavit of Service of Karen A. Fox sworn April 16, 2024, and no interested parties opposing the relief herein.

1. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to execute a listing agreement between the Receiver and Avison Young Commercial Real Estate LP ("**Avison**") and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof with respect to the properties located at 130 Queens Quay East, 4th Floor, Toronto, Ontario ("**Artscape Launchpad**") and 180 Shaw Street, Toronto, Ontario, comprising 15 commercial condominium units ("**Artscape Youngplace**").


2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, in conjunction with Avison as its real estate consultant, to carry out the Sale Process (as defined in the First Report) in respect of Artscape Launchpad and Artscape Youngplace (the "**Launchpad/Youngplace Sale Process**") and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to the prior approval of this Court being obtained before completion of any transaction resulting from the Launchpad/Youngplace Sale Process.

3. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisers, agents, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Launchpad/Youngplace Sale Process, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or willful misconduct of the Receiver, as determined by this Court.

4. **THIS COURT ORDERS** that the Receiver may apply to this Court to amend, vary or supplement this Order, or for advice and directions with respect to the discharge of its powers and duties under this Order, or under the Launchpad/Youngplace Sale Process, at any time during the terms of the Launchpad/Youngplace Sale Process.

5. **THIS COURT ORDERS** that the Confidential Appendices (as defined herein) to the First Report, are hereby sealed pending further order of the court.

6. **THIS COURT ORDERS** that the Receiver's Borrowing Charge is hereby increased from \$300,000 to \$600,000.



(Signature of judge, officer or registrar)

Electronically issued / Délivré par voie électronique : 30-Apr-2024
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00711609-00CL

THE TORONTO-DOMINION BANK
Applicant

-and- TORONTO ARTSCAPE INC.
Respondent

Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Receiver



Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 1st

JUSTICE STEELE

)

DAY OF MAY, 2024

)

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

ORDER

THIS MOTION, made by the Receiver for, among other things, an Order approving the First Report of the Receiver dated April 11, 2024 (the "**First Report**") and the activities of the Receiver since the Receiver's appointment as set out in the First Report and the sale process proposed by the Receiver, was heard on April 25 by videoconference.

ON READING the Notice of Motion herein and the First Report and the Appendices and Confidential Appendices thereto and the affidavits of Sarah Phipps and

Doug Rollins affirmed April 22, 2024, and on hearing the submissions of the lawyers for the Receiver and for The Toronto-Dominion Bank, First Ontario Credit Union Limited, Community Forward Fund and the City of Toronto,

1. **THIS COURT ORDERS** that the First Report and the activities of the Receiver since the Receiver's appointment as set out in the First Report, are hereby approved.

2. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements as at April 11, 2024 is hereby approved.

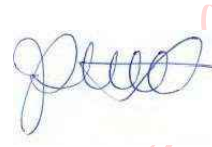
3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to execute a listing agreement between the Receiver and Avison Young Commercial Real Estate LP ("**Avison**") and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof with respect to the properties located at 38 Abell Street, Toronto (the "**Abell Units**") and 210 Simcoe Street, Toronto (the "**Simcoe Units**"), as described in Schedule "A" to the Receivership Order of the Honourable Madam Justice Steele dated January 11, 2024.

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, in conjunction with Avison as its real estate consultant, to carry out the Sale Process (as defined in the First Report) in respect of the Abell Units and the Simcoe Units, but modified in the Disclosure, Consultation and Evaluation Addendum agreed to between the Receiver and the City of Toronto dated May 1, 2024 (the "**Abell/Simcoe Sale Process**") and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to

the prior approval of this Court being obtained before completion of any transaction resulting from the Abell/Simcoe Sale Process.

5. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisers, agents, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Sale Process, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or willful misconduct of the Receiver, as determined by this Court.

6. **THIS COURT ORDERS** that the Receiver may apply to this Court to amend, vary or supplement this Order, or for advice and directions with respect to the discharge of its powers and duties under this Order, or under the Abell/Simcoe Sale Process, at any time during the terms of the Abell/Simcoe Sale Process.

 Digitally signed
by Jana Steele
Date: 2024.05.01
17:38:46 -04'00'

(Signature of judge, officer or registrar)

THE TORONTO-DOMINION BANK
Applicant

-and- TORONTO ARTSCAPE INC.
Respondent

Court File No. CV-23-00711609-00C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

TORONTO ARTSCAPE INC.

Respondent

**DISCLOSURE, CONSULTATION AND EVALUATION ADDENDUM TO THE
ARTSCAPE ABELL AND ARTSCAPE SIMCOE SALES PROCESS
(May 1, 2024)**

PART I - DISCLOSURE

(a) General Marketing Material

Including email template, marketing postcard, related social media materials
Reference: Sales Process Para 20(b), Avison pg. 25

The following will be included / added:

“Whether this property is restricted to below market rental housing for artists, or whether it can be used for general residential purposes, has not yet been determined.”

(b) MLS (Multiple Listing Service) Posting

Reference: Sales Process, Para 20(b)

The MLS listing will contain the following:

Precedent:¹

Change to:

Land

Replace RM2 With:

Other Property Information

Whether this property is restricted to below market rental housing for artists, or whether it can be used for general residential purposes, has not yet been determined.

Zoning Description

RM2

If this can be included directly in MLS summary, if not, say “see note” and link to an Attachment or Schedule

If possible to add to “possession” or “occupancy” fields in MLS, add:

“Currently occupied / tenanted as affordable housing to artists.”

If this cannot be added to “possession” or “occupancy,” include this sentence in “Listing Description.”

(c) Marketing Brochure

Reference: Avison Proposal, pg. 3, 4, 25, 29

Precedent:²

Change to: (*Abell Properties only)

Page 2

Taxes

Property is tax exempt as per contract with City of Toronto contribution agreement

Taxes – Property is tax exempt as per contract with the City of Toronto and municipal capital facility by-laws (hyperlink to bylaw)

Precedent:

Change to:

Property Summary |

Zoning

Commercial Residential

Zoning: Replace Commercial / Residential With:

Whether this property is restricted to below market rental housing for artists, or whether it can be used for general residential purposes, has not yet been determined.

¹ [For sale: 150 SUDBURY Street Unit# 613, Toronto, Ontario M6J3S8 - 40537266 | REALTOR.ca](https://www.realtor.ca/property/150-Sudbury-Street-Unit-613-Toronto-Ontario-M6J3S8-40537266)

² <https://buildout.com/connect/sharing/affordable-housing-portfolio-toronto-sale?file=2858606>

(d) Data Room

Reference: Sales Process, para. 20(g)

The following will be included for the entries in the Artscape Abell and Artscape Simcoe data rooms, respectively.

Abell

OMB Zoning Order
 By-Law No. 1169-2009 (OMB)
 By-Law No. 784-2010
 By-Law No. 783-2010 / OPA 121
 Contribution Agreement
 S. 118 *Land Titles Act* restriction
 s. 37 *Planning Act* Agmt.
 Report May 26, 2010
 Current leases (if they exist)
 Condo declaration
 Justice Steele Decision, Apr. 26, 2024
 City's factum
 Receiver's factum
 City's Responding Motion Record

Simcoe

S. 118 *Land Titles Act* restriction
 Contribution Agreement
 s. 37 *Planning Act* Agmt
 Report April 20, 2011
 Current leases (if they exist)
 Condo declaration
 Justice Steele Decision, Apr. 26, 2024
 City's factum
 Receiver's factum
 City's Responding Motion Record

The Receiver will provide confirmation to the City that the documents have been received from the City (or are otherwise available), and have been successfully uploaded to the data room, if requested, shortly after successfully uploaded.

(e) Confidential Information Memorandum (CIM)

There Will be an "As is, Where is" Clause, that Includes:

Add at the end as a separate paragraph:

Whether this property is restricted to below market rental housing for artists, or whether it can be used for general residential purposes, has not yet been determined. Documents with reference to these issues are contained in the data room.

PART II - CONSULTATION AND EVALUATION

(a) **Affordable Housing Evaluation Form**

Reference: Confidential Information Memorandum, Sales Process, Para 2(e)

When a prospective bidder is provided with the Confidential Information Memorandum, it will also be provided with a form “the Affordable Housing Evaluation Form” which will state the following:

Whether this property is restricted to below market rental housing for artists, or whether it can be used for general residential purposes, has not yet been determined. It is the City’s position that the property was created as a community benefit under the *Planning Act*, and its use and/or ownership is restricted by various *Planning Act* and/or *Land Titles Act* instruments. Documents with reference to these issues are contained in the data room.

Should it be necessary to evaluate this issue, the City of Toronto is requesting bidders provide the following information.

1. The bidder’s name;
2. The unit or units they are proposing to purchase.
3. State that they intend (and circle all that are true):
 - (a) to rent the unit;
 - (b) to live in the unit;
 - (c) that the unit will be occupied by person who’s occupation is an artist (and their household);
 - (d) that the unit will be made available at 80% or less of the average cost for a unit of this size in the City of Toronto;
 - (e) none of the above;
 - (f) I refuse to answer
4. Regarding the Contribution Agreement referenced above and contained in the data room, I:
 - (a) would agree to execute a Contribution Agreement on the same terms and conditions;
 - (b) might agree to execute a Contribution Agreement, but would request some changes. Please attach a list of the changes you would propose to the Contribution Agreement; and
 - (c) would not agree to execute a Contribution Agreement with the City;
 - (d) I refuse to answer.

Signed and dated by the bidder.

(b) Evaluation

Reference: Sales Process, Para 20(k)

If the Receiver intends to proceed with a bidder who has filled out the Affordable Housing Evaluation Form, a copy of the Affordable Housing Evaluation Form shall be submitted to it to the City forthwith following the Receiver arriving at said determination.

If the Receiver intends to proceed with a bidder who has not filled out the Affordable Housing Evaluation Form, the Receiver shall advise the City forthwith after arriving at said determination.

The City will keep confidential the responses to the Affordable Housing Evaluation Forms that are provided to it, and shall not disclose them except:

- a. to its legal, professional or financial advisors,
- b. as required by law;
- c. as evidence on any motion before the Court in this matter or subsequent / related legal proceedings; or
- d. after it is included in a public court file which is not the subject of a sealing order.

The Receiver will consider the information provided in the Affordable Housing Evaluation Forms in good faith as part of its evaluation of the bids.

The Receiver shall include all completed Affordable Housing Evaluation Forms, and its evaluation of the bids to which the completed Forms relate, in its summary of bids in its Motion Record when seeking approval of the sale.

PART III – GENERAL PROVISIONS

To the extent that clauses or wording is required to be added in the manner set out above, there shall not be other provisions or wording that is contrary to or inconsistent with the required clauses or wording.

The font size, colour and style will be consistent with what is used elsewhere in the document / precedent (ie. not reduced to “fine print”).

Any of these requirements may only be varied, waived, or modified by express written agreement between the Receiver and the City of Toronto.

May 1, 2024



City Solicitor's Office,
Per C. Henderson
Lawyers for the City of Toronto



Fogler Rubinoff LLP
Per C. Francis
Lawyers for the Receiver

Notice to Reader: For all offer submissions, please provide a black-lined copy of the APS (showing all changes made to the document by the Purchaser), as well as a clean executed copy of the APS.

AGREEMENT OF PURCHASE AND SALE

Units 51 and 65, Level 2, Units 4 and 7, Level 3
Toronto Standard Condominium Plan No. 2430
(located at 210 Simcoe Street, Toronto, Ontario)

THIS AGREEMENT is dated as of the 19th day of **September**, 2024,

B E T W E E N:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

CITY OF TORONTO

(the "**Purchaser**")

WHEREAS:

- A. Toronto Artscape is the registered owner of the Property.
- B. On January 11, 2024, the Court, in Court File No. CV-23-00711609-00CL, issued an order (the "**Order**") providing that, pursuant to Section 101 of the *Courts of Justice Act* (R.S.O.) and Section 243(1) of the *Bankruptcy and Insolvency Act* (R.S.C.), the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and remaining properties of Toronto Artscape as described in Schedule "A" of the Order; and
- C. Pursuant to the Order, the Vendor was granted powers to, among other things, market and sell the Property; and
- D. The Vendor has agreed, subject to obtaining the requisite approval of the Court, to sell all of Toronto Artscape's right, title and interest, if any, in and to the Purchased Assets and the Purchaser has agreed to purchase, acquire and assume all of Toronto Artscape's right title and interest, if any, in and to the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"Agent" means Avison Young Commercial Real Estate Services, LP.

"Agreement" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"Applicable Laws" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

"Approval and Vesting Order" means an order of the Court in a form acceptable to the Vendor and the Purchaser, each acting reasonably, pursuant to which title to the Purchased Assets will be vested in the name of the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

"Assignment and Assumption of Contracts" means an assignment by the Vendor and an assumption by the Purchaser of the Assumed Contracts, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assignment and Assumption of Leases" means an assignment by the Vendor and assumption by the Purchaser of all of the right, title and interest in the Leases of the Vendor and the benefit of all covenants, guarantees and indemnities thereunder, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assumed Contracts" means the Required Contracts and any of the other Contracts the Purchaser designates it wishes to assume on Closing by notice in writing delivered to the Vendor on or before the Due Diligence Date pursuant to Section 5.7 of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Claim" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"Closing" means the closing and consummation of the transactions contemplated by this Agreement, including, without limitation, the delivery of the Closing Documents on the Closing Date.

"Closing Date" means the date that is twenty (20) Business Days following the date of issuance of the Approval and Vesting Order.

"Closing Documents" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

"Court" means the Ontario Superior Court of Justice.

"Contracts" means any and all contracts and agreements relating to the Property to which the Vendor is a party or by which the Vendor is bound, in respect of the ownership, maintenance, repair, operation, cleaning and security of the Property in effect as at the date of this Agreement, if applicable, and all contracts and agreements relating to any equipment or other assets leased by the Vendor and located on or in the Property in effect as at the date of this Agreement, as well as those contracts and agreements entered into by the Vendor in the normal course of business after the date of this Agreement and prior to the Closing Date. For greater certainty, the Contracts shall include the Required Contracts and shall not include the Leases.

"Deposit" has the meaning given to it in Section 2.3(a) of this Agreement.

"Due Diligence Date" means the date that is sixty (60) days following the date of execution and delivery of this Agreement by both parties.

"Encumbrance" means any mortgage, lien, charge, or other financial encumbrance.

"Excluded Assets" means the following assets relating to the Property: (i) any refunds of realty taxes which relate to the period prior to Closing; (ii) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to Toronto Artscape; and (iii) the interest of Toronto Artscape in contracts of insurance, insurance policies (including director & officer insurance policies) and the full benefit of Toronto Artscape's rights under or in respect of the foregoing, including in and to any cash surrender value thereof.

"HST" means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada);

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Leases" means all agreements to lease, leases, renewals of lease and other rights (including licenses, concessions or occupancy agreements, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, the Vendor, and which entitle any Person to possess or occupy any space within the Property as of the date of this Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied to the date hereof.

"Notice" has the meaning set out in Section 7.3(1) of this Agreement.

"Permitted Encumbrances" means those Encumbrances listed in *Schedule "B"* attached hereto.

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"Property" means the property legally described in *Schedule "A"* attached hereto, together with all appurtenant interests thereto, all being located within the building municipally known as 210 Simcoe Street, in the City of Toronto, Province of Ontario.

"Purchase Price" has the meaning set out in Section 2.2 of this Agreement.

"Purchased Assets" means, collectively: (i) the Property; (ii) the Vendor's interest in the Leases; (iii) the Vendor's interest in the Assumed Contracts; and (iv) the Permitted Encumbrances, but specifically excludes the Excluded Assets.

"Purchaser's Solicitors" means City of Toronto, Legal Services Division.

"Re-adjustment Agreement" has the meaning set out in Section 2.6 of this Agreement.

"Receiver" means msi Spergel Inc., solely in its capacity as receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape, and not in its personal or corporate capacity and without personal or corporate liability.

"Required Contracts" means those Contracts listed in *Schedule "C"* attached hereto.

"Tenants" means all the tenants or occupants under the Leases.

"Vendor's Solicitors" means Fogler, Rubinoff LLP.

1.2 Extended Meanings. Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

1.3 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

1.5 Currency. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

1.6 Severability. If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

1.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.


1.8 Time. Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the conditions set out herein, including obtaining the requisite approval of the Court, the Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor's right, title and interest, if any, in and to the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume all of the Vendor's right, title and interest, if any, in and to the Purchased Assets from the Vendor, for the Purchase Price and otherwise on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall be

2.3 Payment of Purchase Price. Subject to adjustment in accordance with Section 2.6 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) 
amount representing not less than ten percent (10%) of the Purchase Price (the "**Deposit**"), by wire transfer of immediately available funds to the Receiver, in trust, at the time of the submission of this offer; and
- (b) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor, or as it may direct in writing, on the Closing Date.

2.4 Deposit. The Deposit shall be held by the Receiver in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Receiver in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date on which the Deposit is received by the Receiver until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque forthwith following the Closing Date. If this Agreement is not completed other than by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed by reason of the default of the Purchaser, the Vendor shall be entitled to receive and retain the Deposit, together with all accrued interest thereon, without prejudice to other rights or damages available to the Vendor at law or in equity.

The parties agree that the Receiver shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Receiver shall be entitled to bring an application to Court to pay the Deposit and/or interest accrued thereon into Court.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for all current rents (but not rent in arrears) realty taxes, common expense fees, local improvement rates and charges, water and assessment rates and other utilities. An adjustment shall also be made for prepaid rents and other amounts paid by the Tenants under the Leases and any security deposit given by the Tenants under the Leases, to the extent actually received by and in the possession or control of the Receiver.

(2) Rent Receivables. Any amounts due and owing but unpaid on the Closing Date by any Tenant for rent or any other amounts under their Leases that relate to any calendar month preceding the month in which the Closing Date falls (the "**Rent Receivables**") shall remain the property of the Vendor on Closing and there shall be no adjustment in favour of the Vendor on the

statement of adjustments for such amounts. All current rent amounts for the calendar month in which the Closing Date falls that have been collected by the Vendor before the Closing Date shall be adjusted in favour of the Purchaser as to its pro rata share on the statement of adjustments, but current rent amounts for the calendar month in which the Closing Date falls that have not been collected by the Vendor shall be adjusted in favour of the Vendor and shall become the property of the Purchaser. After the Closing Date, if the Vendor receives any current rent amounts for the calendar month in which the Closing Date falls, it shall promptly pay such amounts over to the Purchaser. After the Closing Date, the Purchaser shall use reasonable efforts to assist the Vendor in recovering the Rent Receivables (but shall not be required to apply current rent payments to the Rent Receivables or to terminate Leases or exercise rights of distress or to expend any monies with respect thereto), and the Vendor shall continue to have the right after Closing to recover by way of action from the Tenants any of the Rent Receivables. Any amount of rent received by the Purchaser after Closing from a Tenant that owes Rent Receivables to the Vendor shall be credited, first, to current month's rent, second, to any arrears of rent owing to the Purchaser accruing from and after the Closing Date, and third, to the Rent Receivables.

(3) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than twelve (12) Business Days prior to the Closing Date.

(4) Day of Closing. The Purchaser shall pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.6 Re-adjustment. If the final cost or amount of an item which is to be adjusted cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the parties, acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and, within ten (10) days thereafter, the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments shall be requested in writing in a detailed manner on or before the date that is ninety (90) days after the Closing Date, after which time neither party shall have any right to request re-adjustments.

ARTICLE 3 COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor. The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date:

- (a) Authority. The Receiver is the Court-appointed receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape as described in the Order and, subject to the Vendor obtaining the Approval and Vesting Order, has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) Residence. Neither the Vendor nor the Receiver is a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

3.2 Representations of the Purchaser. The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and/or government entity and subsisting under the laws of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action; and
- (c) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date and the Purchaser shall execute a form of HST undertaking and indemnity in form and substance satisfactory to the Vendor.

3.3 No Survival of Representations. The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of ninety (90) days following the Closing Date. No claim for any breach of such covenant, representation or warranty may be made by either party hereto after such ninety (90) day period.

3.4 As Is, Where Is. The Purchaser shall accept the Purchased Assets on Closing on an entirely "as is, where is" basis as it exists as of the Closing Date without regard to the state of repair, condition, use or occupation of the Property, location of fences, wires, lines, underground wells, pipes or conduits, in, on or outside of the Property, if any, including, without limitation, any special assessments, deficiencies in the reserve fund, liabilities, Claims or contingent liabilities as may be

disclosed in status certificates issued in respect of the Property; the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Property; the Purchased Asset's compliance with any Applicable Laws; the size, dimension, or topography of the Property; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Property or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent). The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor with respect to the condition thereof. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including, without limitation, any representation or warranty, express or implied, with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with Applicable Laws, fitness for any particular purpose) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. Without limiting the foregoing, the Purchaser hereby releases the Vendor with respect to any Claims the Purchaser may have arising out of or in respect of the condition (including, without limitation, the environmental condition) of the Property. The provisions of this Section 3.4 shall survive the Closing of the transactions contemplated by this Agreement.

3.5 Disclosure and Marketing Materials

The Purchaser acknowledges and agrees that: (i) any information, documents and other materials, including, without limitation, the confidential information memorandum or other marketing materials prepared in respect of the Property (collectively the "**Disclosure Materials**"), made available or to be made available by the Vendor, the Agent or otherwise in connection with the sale of the Purchased Assets has been prepared and provided solely for the convenience of prospective purchasers; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Disclosure Materials; and (iii) the Purchaser is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Disclosure Materials the Purchaser hereby releases the Vendor from any and all claims it now has, or may in the future have, in that regard.

ARTICLE 4 CONDITIONS

4.1 Conditions of the Vendor. The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Approval and Vesting Order. The Vendor shall have obtained the Approval and Vesting Order and delivered same to the Purchaser.

4.2 Conditions of the Purchaser. The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Property, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Purchased Assets);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;
- (d) Performance of Terms, Covenants and Conditions. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed in all material respects; and
- (e) Approval and Vesting Order. The Vendor shall have obtained and delivered the Approval and Vesting Order to the Purchaser.

4.3 Satisfaction of Conditions. Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control.

4.4 Waiver of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement, other than the condition contained in Section 4.1(d), in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement are not satisfied or waived on or prior to the Closing Date, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions set out in Sections 4.2(b), 4.2(c) and 4.2(d) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

4.5 Not Conditions Precedent. The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.

4.6 Planning Act. This Agreement shall be effective to create an interest in the Property only if the provisions of the *Planning Act* (Ontario) are complied with.

4.7 Title. The Purchaser shall have until the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity. The Purchaser agrees that, on Closing, it shall: (i) accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Permitted Encumbrances, whether or not such Permitted Encumbrances have been complied with; and (ii) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances.

4.8 Court Matters.

(1) Application for Approval and Vesting Order. The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible following waiver or satisfaction of the condition contained in Section 4.2(a) of this Agreement. The Vendor shall advise the Purchaser prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order.

(2) Assistance by Purchaser. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order.

(3) Outside Date. This Agreement may be terminated by the Vendor or the Purchaser if the Approval and Vesting Order is not obtained by one hundred and twenty (120) days after the waiver of the Purchaser's condition set out in Section 4.2(a) herein.

ARTICLE 5 INTERIM PERIOD

5.1 Delivery of Documents. The Vendor shall deliver copies of the Leases and the Contracts to the Purchaser within five (5) Business Days following the date of this Agreement and from time to time as any Leases or Contracts shall come into the possession of the Vendor during the Interim Period.

5.2 Access by Purchaser. During the Interim Period, subject to the rights of any Tenant, the Vendor shall allow the Purchaser, its representatives and advisors to have access to the Property on reasonable prior Notice to the Vendor to allow the Purchaser to carry out such non-invasive tests and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections. The Purchaser hereby indemnifies the Vendor from any Claims arising from or relating to the access to the Property and/or interference with any Tenant's usage of the Property or any loss or liability arising from such interference as a result of the Purchaser's access granted in this Section 5.2 and, notwithstanding anything to the contrary contained in this Agreement, the Vendor shall have recourse to the Deposit to secure this indemnity.

5.3 Governmental Authorities. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or the Purchaser's Solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Purchased Assets. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities and the Vendor specifically does not authorize any such inspection.

5.4 Confidentiality. The Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.4); (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

5.5 Risk.

- (a) General. The Purchased Assets shall be at the risk of the Vendor until completion of the transactions contemplated by this Agreement. If any loss or damage to the Purchased Assets or any part thereof occurs on or before the Closing Date, the Vendor shall promptly deliver a Notice (the "**Notice of Loss**") to the Purchaser specifying the nature and extent of the loss or damage.
- (b) Damage Not Permitting Termination. If the extent of all losses and damage to the Purchased Assets will not cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser shall have no right to terminate this Agreement pursuant to this Section 5.5 and the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds.

- (c) **Damage Permitting Termination.** If the extent of all losses and damage to the Purchased Assets will cost in excess of twenty percent (20%) of the Purchase Price, to repair, the Purchaser may, on or before the second (2nd) Business Day following delivery of the Notice of Loss, at its option, by Notice to the Vendor elect to terminate this Agreement and the Deposit shall be returned to the Purchaser. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds. In addition, the Purchase Price shall be reduced by the amount of the deductible under the Vendor's insurance coverage, if the Vendor has not already paid the deductible.

5.6 Leasing. The Vendor shall not enter into any new Leases of the Property, renew or extend the term of any existing Leases or amend or accept a surrender of any of the Leases after the Due Diligence Date without the prior written approval of the Purchaser, which approval shall not be unreasonably withheld or delayed. The Purchaser's approval hereunder shall be deemed to have been given if no response is received from the Purchaser within three (3) Business Days following a written request by the Vendor or its representatives for approval. If the Purchaser approves or is deemed to have approved of any new Leases or any renewal or extension of the term of any existing Leases or any amendment or surrender of any Lease, the Purchaser shall be responsible for and shall indemnify and hold the Vendor harmless from and against any and all leasing commissions, tenant inducements, tenant allowances, landlord's work, free rent and other landlord obligations thereunder and, to the extent that any amount relating to the foregoing has been paid for and incurred by the Vendor prior to Closing, the Vendor shall receive an adjustment for same on Closing.

5.7 Assumed Contracts. On or before the Due Diligence Date, the Purchaser shall advise the Vendor in writing of which Contracts, if any, the Purchaser wishes to assume on Closing. The Assumed Contracts, together with the Required Contracts, shall be assigned to the Purchaser pursuant to the Assignment and Assumption of Contracts. All other Contracts shall be terminated by the Vendor on or before the Closing Date, at the Vendor's expense.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Electronic Registration. The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Ontario, and are hereby authorized by the parties hereto to enter the most recent form of document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's Solicitors and the Purchaser's Solicitors may agree, acting reasonably (the "**DRA**"), establishing the procedures and timing for completing the transactions contemplated by this Agreement, which DRA shall be exchanged between the Vendor's Solicitors and the Purchaser's Solicitors prior to

the Closing Date. The delivery and exchange of all Closing Documents and other deliverables hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents or other deliverables will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA. Notwithstanding Section 4 of the Joint LSUC-CBAO form of DRA, the release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed.

6.2 Documents of the Vendor. The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date:

- (a) Approval and Vesting Order. A copy of the Approval and Vesting Order for the Property pursuant to the provisions of the Approval and Vesting Order including the Receiver's certificate to vest the Property in the name of the Purchaser;
- (b) Certificate of the Vendor. A certificate of the Vendor certifying that each of the Persons comprising the Vendor are not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Vendor;
- (d) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Vendor;
- (e) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor; and
- (f) Keys. All keys and entry devices with respect to the Property and the combinations to any locks, if applicable.

6.3 Documents of the Purchaser. The Purchaser shall deliver to the Vendor the following documents on the Closing Date:

- (a) Balance of the Purchase Price. A wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b) of this Agreement;
- (b) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Purchaser;
- (c) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (d) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and

- (e) HST. The undertaking and indemnity described in Section 6.4(2) of this Agreement, duly executed by the Purchaser.

6.4 Taxes and Fees.

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with registration of the Approval and Vesting Order. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, or will on the Closing Date be, registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada);
- (b) the Purchaser shall be liable for, shall self-assess and, if applicable, remit directly to the Receiver General of Canada, all harmonized sales tax that is payable under the *Excise Tax Act* (Canada) in connection with the purchase of the Property; and
- (c) the representations and warranties contained in this Section 6.4(2) shall survive the Closing and be embodied in an undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing pursuant to which undertaking and indemnity the Purchaser confirms the Purchaser's HST registration number, undertakes to self-assess and, if applicable, remit all HST that is payable in respect of the purchase of the Property and agrees to indemnify the Vendor in respect of all applicable HST.

ARTICLE 7 MISCELLANEOUS

7.1 Tender. Unless expressly stated otherwise in this Agreement, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.

7.2 Relationship of the Parties. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

7.3 Notices.

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by electronic mail to the parties at the applicable address set forth below:

- (a) in the case of the Vendor addressed to it at:

msi Spergel Inc.
21 King Street West
Suite 1602
Hamilton, Ontario
L8P 4W7

Attention: Trevor Pringle
Email: tpringle@spergel.ca

and to:

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

Attention: Ian Kady
Email: ikady@foglers.com

(b) in the case of the Purchaser addressed to it at:

Corporate Real Estate Management Division
Real Estate Services
City of Toronto
Metro Hall, 2nd Floor,
55 John Street
Toronto, Ontario
M5V 3C6

Attention: Alison Folosea
Facsimile: (416) 392-1880
Email: alison.folosea@toronto.ca

and to:

City of Toronto
Legal Services Division – Real Estate Law Section
Metro Hall
55 John Street, 26th Floor
Toronto, Ontario
M5V 3C6

Attention: City Solicitor
Email: legalrec@toronto.ca
Attention: Chris Cieslik and Jennifer Davidson
Email: chris.cieslik@toronto.ca; jennifer.davidson@toronto.ca

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

7.4 Dispute Resolution. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

7.6 Assignment. This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be granted or withheld in the sole, absolute and unfettered discretion of the Vendor.

7.7 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

7.8 No Registration of Agreement. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement against title to the Property.

7.9 Planning Act. This Agreement and the transactions contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario) at the Purchaser's expense.

7.10 No personal Liability of Vendor. The Vendor is signing this Agreement in its capacity as Court appointed receiver and manager of the assets and undertaking of Toronto Artscape, and the Purchaser acknowledges and agrees that the Receiver, and its agents, directors, officers and employees, shall have no personal or corporate liability whatsoever under, as a result of or in connection with any obligations of Toronto Artscape (and anyone for whom it is in law responsible) under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against Toronto Artscape's assets.


7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the executed copy of this Agreement which was so electronically communicated.

7.12 Irrevocable Period. This Offer shall be open for acceptance by the Vendor until 5:00 p.m. EDT on the 3rd day of October, 2024, which date is not less than ten (10) Business Days from the date hereof, and failing acceptance by that time, shall be null and void.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement.

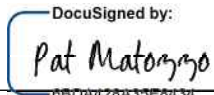
msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability

By: 
Name: Trevor Pringle
Title: Partner


By: _____
Name:
Title:

I/We have authority to bind the corporation

CITY OF TORONTO

By: 
Name: Patrick Matozzo
Title: Executive Director, Corporate Real Estate Management

I have authority to bind the corporation

APPROVED AS TO FORM
DocuSigned by:

For Wendy Walberg
City Solicitor
File No. 5000-652-1311 2023
(*J.Davidson*)

Authorized by Item MM11.32, as adopted by City of Toronto Council at its meeting held on October 11 and 12, 2023; and by Item MM18.37, as adopted by City of Toronto Council at its meeting held on May 22, 2024

SCHEDULE "A"

PROPERTY

	Property Identification Number	Legal Description
1.	76430-0051	UNIT 51, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO
2.	76430-0065	UNIT 65, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AN ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLA 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS A SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO
3.	76430-0094	UNIT 4, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO
4.	76430-0097	UNIT 7, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2430 AND ITS APPURTENANT INTEREST ; THE EAST SIDE OF ST. PATRICK STREET & WEST SIDE SIMCOE STREET IS CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1093 REGISTERED INSTRUMENT CT258877; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3816544; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****General**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property.
3. Encumbrances respecting minor encroachments by the Property over neighbouring lands or by improvements on neighbouring lands and/or permitted under agreements with the owners of such other lands.
4. Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property for the purposes for which it is presently used.
5. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
6. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
7. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
8. Any unregistered easements, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
9. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
10. The Leases.

Specific

- A. Instrument No. 63BA1093 registered pursuant to the Plan Boundaries Act October 12, 1977.
- B. Instrument No. AT2760061 registered July 21, 2011 is Notice of an agreement between the City of Toronto and 210 Simcoe Holdings Inc.

- C. Instrument No. AT3018607 registered May 16, 2012 being a Transfer Easement in favour of Rogers Communications Inc.
- D. Instrument No. AT3125178 registered September 11, 2012 is Notice of an agreement between the City of Toronto and 210 Simcoe Holdings Inc.
- E. Instrument No. TCP2430 registered February 24, 2015 is a Standard Condominium Plan.
- F. Instrument No. AT3816544 registered February 24, 2015 is the Condominium Declaration creating Toronto Standard Condominium Corporation No. 2430 ("**TSCC 2430**").
- G. Instrument No. AT3829291 registered March 10, 2015 is By-Law #1 of TSCC 2430.
- H. Instrument No. AT3922485 registered June 23, 2015 is a restriction on the land whereby there can be no transfer or charge without the consent of the City of Toronto.
- I. Instrument No. AT5763629 registered June 10, 2021 is By-Law #2 of TSCC 2430.
- J. Instrument No. AT6496748 registered January 16, 2024 whereby MSI Spergel Inc. was appointed as receiver. *Note: To be vested off title.*





SCHEDULE "C"

REQUIRED CONTRACTS

[List Contracts that Purchaser is required to assume, if any.]

Title	Simcoe APS - City of Toronto
File name	JD_-_Simcoe_Form_...o_Final_.docx.pdf
Document ID	a2b49645c55acb507f9568c64e21a3ccf624d5f4
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History

 SENT	10 / 02 / 2024 10:12:16 UTC-4	Sent for signature to Trevor Pringle (tpringle@spergel.ca) from hamiltonsign@spergel.ca IP: 104.171.204.20
 VIEWED	10 / 02 / 2024 10:14:06 UTC-4	Viewed by Trevor Pringle (tpringle@spergel.ca) IP: 168.151.46.49
 SIGNED	10 / 02 / 2024 10:14:21 UTC-4	Signed by Trevor Pringle (tpringle@spergel.ca) IP: 104.171.204.20
 COMPLETED	10 / 02 / 2024 10:14:21 UTC-4	The document has been completed.

Notice to Reader: For all offer submissions, please provide a black-lined copy of the APS (showing all changes made to the document by the Purchaser), as well as a clean executed copy of the APS.

AGREEMENT OF PURCHASE AND SALE

Units 5, Level 1, Units 2, 3, 6, 8, 12-15 (inclusive), 25 and 26, Level 2,
Units 2, 3, 6, 8, 12-15 (inclusive), and Unit 29, Level 3
Toronto Standard Condominium Plan No. 2118
(located at 38 Abell Street, Toronto, Ontario)

THIS AGREEMENT is dated as of the 19th day of September, 2024,

B E T W E E N:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

CITY OF TORONTO

(the "**Purchaser**")

WHEREAS:

- A. Toronto Artscape is the registered owner of the Property.
- B. On January 11, 2024, the Court, in Court File No. CV-23-00711609-00CL, issued an order (the "**Order**") providing that, pursuant to Section 101 of the *Courts of Justice Act* (R.S.O.) and Section 243(1) of the *Bankruptcy and Insolvency Act* (R.S.C.), the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and remaining properties of Toronto Artscape as described in Schedule "A" of the Order; and
- C. Pursuant to the Order, the Vendor was granted powers to, among other things, market and sell the Property; and
- D. The Vendor has agreed, subject to obtaining the requisite approval of the Court, to sell all of Toronto Artscape's right, title and interest, if any, in and to the Purchased Assets and the Purchaser has agreed to purchase, acquire and assume all of Toronto Artscape's right title and interest, if any, in and to the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"Agent" means Avison Young Commercial Real Estate Services, LP.

"Agreement" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"Applicable Laws" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

"Approval and Vesting Order" means an order of the Court in a form acceptable to the Vendor and the Purchaser, each acting reasonably, pursuant to which title to the Purchased Assets will be vested in the name of the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

"Assignment and Assumption of Contracts" means an assignment by the Vendor and an assumption by the Purchaser of the Assumed Contracts, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assignment and Assumption of Leases" means an assignment by the Vendor and assumption by the Purchaser of all of the right, title and interest in the Leases of the Vendor and the benefit of all covenants, guarantees and indemnities thereunder, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assumed Contracts" means the Required Contracts and any of the other Contracts the Purchaser designates it wishes to assume on Closing by notice in writing delivered to the Vendor on or before the Due Diligence Date pursuant to Section 5.7 of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Claim" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"Closing" means the closing and consummation of the transactions contemplated by this Agreement, including, without limitation, the delivery of the Closing Documents on the Closing Date.

"Closing Date" means the date that is twenty (20) Business Days following the date of issuance of the Approval and Vesting Order.

"Closing Documents" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

"Court" means the Ontario Superior Court of Justice.

"Contracts" means any and all contracts and agreements relating to the Property to which the Vendor is a party or by which the Vendor is bound, in respect of the ownership, maintenance, repair, operation, cleaning and security of the Property in effect as at the date of this Agreement, if applicable, and all contracts and agreements relating to any equipment or other assets leased by the Vendor and located on or in the Property in effect as at the date of this Agreement, as well as those contracts and agreements entered into by the Vendor in the normal course of business after the date of this Agreement and prior to the Closing Date. For greater certainty, the Contracts shall include the Required Contracts and shall not include the Leases.

"Deposit" has the meaning given to it in Section 2.3(a) of this Agreement.

"Due Diligence Date" means the date that is sixty (60) days following the date of execution and delivery of this Agreement by both parties.

"Encumbrance" means any mortgage, lien, charge, or other financial encumbrance.

"Excluded Assets" means the following assets relating to the Property: (i) any refunds of realty taxes which relate to the period prior to Closing; (ii) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to Toronto Artscape; and (iii) the interest of Toronto Artscape in contracts of insurance, insurance policies (including director & officer insurance policies) and the full benefit of Toronto Artscape's rights under or in respect of the foregoing, including in and to any cash surrender value thereof.

"HST" means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada);

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Leases" means all agreements to lease, leases, renewals of lease and other rights (including licenses, concessions or occupancy agreements, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, the Vendor, and which entitle any Person to possess or occupy any space within the Property as of the date of this Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied to the date hereof.

"Notice" has the meaning set out in Section 7.3(1) of this Agreement.

"Permitted Encumbrances" means those Encumbrances listed in *Schedule "B"* attached hereto.

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"Property" means the property legally described in *Schedule "A"* attached hereto, together with all appurtenant interests thereto, all being located within the building municipally known as 38 Abell Street, in the City of Toronto, Province of Ontario.

"Purchase Price" has the meaning set out in Section 2.2 of this Agreement.

"Purchased Assets" means, collectively: (i) the Property; (ii) the Vendor's interest in the Leases; (iii) the Vendor's interest in the Assumed Contracts; and (iv) the Permitted Encumbrances, but specifically excludes the Excluded Assets.

"Purchaser's Solicitors" means City of Toronto, Legal Services Division.

"Re-adjustment Agreement" has the meaning set out in Section 2.6 of this Agreement.

"Receiver" means msi Spergel Inc., solely in its capacity as receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape, and not in its personal or corporate capacity and without personal or corporate liability.

"Required Contracts" means those Contracts listed in *Schedule "C"* attached hereto.

"Tenants" means all the tenants or occupants under the Leases.

"Vendor's Solicitors" means Fogler, Rubinoff LLP.

1.2 Extended Meanings. Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

1.3 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

1.5 Currency. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

1.6 Severability. If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

1.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.

1.8 Time. Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.


ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the conditions set out herein, including obtaining the requisite approval of the Court, the Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor's right, title and interest, if any, in and to the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume all of the Vendor's right, title and interest, if any, in and to the Purchased Assets from the Vendor, for the Purchase Price and otherwise on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall be

2.3 Payment of Purchase Price. Subject to adjustment in accordance with Section 2.6 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:

(a)


(10%) of the Purchase Price (the "**Deposit**"), by wire transfer of immediately available funds to the Receiver, in trust, at the time of the submission of this offer; and

(b) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor, or as it may direct in writing, on the Closing Date.

2.4 Deposit. The Deposit shall be held by the Receiver in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Receiver in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date on which the Deposit is received by the Receiver until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque forthwith following the Closing Date. If this Agreement is not completed other than by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed by reason of the default of the Purchaser, the Vendor shall be entitled to receive and retain the Deposit, together with all accrued interest thereon, without prejudice to other rights or damages available to the Vendor at law or in equity.

The parties agree that the Receiver shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Receiver shall be entitled to bring an application to Court to pay the Deposit and/or interest accrued thereon into Court.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for all current rents (but not rent in arrears) realty taxes, common expense fees, local improvement rates and charges, water and assessment rates and other utilities. An adjustment shall also be made for prepaid rents and other amounts paid by the Tenants under the Leases and any security deposit given by the Tenants under the Leases, to the extent actually received by and in the possession or control of the Receiver.

(2) Rent Receivables. Any amounts due and owing but unpaid on the Closing Date by any Tenant for rent or any other amounts under their Leases that relate to any calendar month preceding the month in which the Closing Date falls (the "**Rent Receivables**") shall remain the

property of the Vendor on Closing and there shall be no adjustment in favour of the Vendor on the statement of adjustments for such amounts. All current rent amounts for the calendar month in which the Closing Date falls that have been collected by the Vendor before the Closing Date shall be adjusted in favour of the Purchaser as to its pro rata share on the statement of adjustments, but current rent amounts for the calendar month in which the Closing Date falls that have not been collected by the Vendor shall be adjusted in favour of the Vendor and shall become the property of the Purchaser. After the Closing Date, if the Vendor receives any current rent amounts for the calendar month in which the Closing Date falls, it shall promptly pay such amounts over to the Purchaser. After the Closing Date, the Purchaser shall use reasonable efforts to assist the Vendor in recovering the Rent Receivables (but shall not be required to apply current rent payments to the Rent Receivables or to terminate Leases or exercise rights of distress or to expend any monies with respect thereto), and the Vendor shall continue to have the right after Closing to recover by way of action from the Tenants any of the Rent Receivables. Any amount of rent received by the Purchaser after Closing from a Tenant that owes Rent Receivables to the Vendor shall be credited, first, to current month's rent, second, to any arrears of rent owing to the Purchaser accruing from and after the Closing Date, and third, to the Rent Receivables.

(3) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than twelve (12) Business Days prior to the Closing Date.

(4) Day of Closing. The Purchaser shall pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.6 Re-adjustment. If the final cost or amount of an item which is to be adjusted cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the parties, acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and, within ten (10) days thereafter, the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments shall be requested in writing in a detailed manner on or before the date that is ninety (90) days after the Closing Date, after which time neither party shall have any right to request re-adjustments.

ARTICLE 3 COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor. The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date:

- (a) Authority. The Receiver is the Court-appointed receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape as described in the Order and, subject to the Vendor obtaining the Approval and Vesting Order, has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) Residence. Neither the Vendor nor the Receiver is a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

3.2 Representations of the Purchaser. The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and/or government entity and subsisting under the laws of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action; and
- (c) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date and the Purchaser shall execute a form of HST undertaking and indemnity in form and substance satisfactory to the Vendor.

3.3 No Survival of Representations. The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of ninety (90) days following the Closing Date. No claim for any breach of such covenant, representation or warranty may be made by either party hereto after such ninety (90) day period.

3.4 As Is, Where Is. The Purchaser shall accept the Purchased Assets on Closing on an entirely "as is, where is" basis as it exists as of the Closing Date without regard to the state of repair, condition, use or occupation of the Property, location of fences, wires, lines, underground wells, pipes or conduits, in, on or outside of the Property, if any, including, without limitation, any special assessments, deficiencies in the reserve fund, liabilities, Claims or contingent liabilities as may be

disclosed in status certificates issued in respect of the Property; the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Property; the Purchased Asset's compliance with any Applicable Laws; the size, dimension, or topography of the Property; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Property or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent). The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor with respect to the condition thereof. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including, without limitation, any representation or warranty, express or implied, with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with Applicable Laws, fitness for any particular purpose) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. Without limiting the foregoing, the Purchaser hereby releases the Vendor with respect to any Claims the Purchaser may have arising out of or in respect of the condition (including, without limitation, the environmental condition) of the Property. The provisions of this Section 3.4 shall survive the Closing of the transactions contemplated by this Agreement.

3.5 Disclosure and Marketing Materials

The Purchaser acknowledges and agrees that: (i) any information, documents and other materials, including, without limitation, the confidential information memorandum or other marketing materials prepared in respect of the Property (collectively the "**Disclosure Materials**"), made available or to be made available by the Vendor, the Agent or otherwise in connection with the sale of the Purchased Assets has been prepared and provided solely for the convenience of prospective purchasers; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Disclosure Materials; and (iii) the Purchaser is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Disclosure Materials the Purchaser hereby releases the Vendor from any and all claims it now has, or may in the future have, in that regard.

ARTICLE 4 CONDITIONS

4.1 Conditions of the Vendor. The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Approval and Vesting Order. The Vendor shall have obtained the Approval and Vesting Order and delivered same to the Purchaser.

4.2 Conditions of the Purchaser. The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Property, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Purchased Assets);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;
- (d) Performance of Terms, Covenants and Conditions. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed in all material respects; and
- (e) Approval and Vesting Order. The Vendor shall have obtained and delivered the Approval and Vesting Order to the Purchaser.

4.3 Satisfaction of Conditions. Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control.

4.4 Waiver of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement, other than the condition contained in Section 4.1(d), in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement are not satisfied or waived on or prior to the Closing Date, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions set out in Sections 4.2(b), 4.2(c) and 4.2(d) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

4.5 Not Conditions Precedent. The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.

4.6 Planning Act. This Agreement shall be effective to create an interest in the Property only if the provisions of the *Planning Act* (Ontario) are complied with.

4.7 Title. The Purchaser shall have until the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity. The Purchaser agrees that, on Closing, it shall: (i) accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Permitted Encumbrances, whether or not such Permitted Encumbrances have been complied with; and (ii) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances.

4.8 Court Matters.

(1) Application for Approval and Vesting Order. The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible following waiver or satisfaction of the condition contained in Section 4.2(a) of this Agreement. The Vendor shall advise the Purchaser prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order.

(2) Assistance by Purchaser. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order.

(3) Outside Date. This Agreement may be terminated by the Vendor or the Purchaser if the Approval and Vesting Order is not obtained by one hundred and twenty (120) days after the waiver of the Purchaser's condition set out in Section 4.2(a) herein.

ARTICLE 5 INTERIM PERIOD

5.1 Delivery of Documents. The Vendor shall deliver copies of the Leases and the Contracts to the Purchaser within five (5) Business Days following the date of this Agreement and from time to time as any Leases or Contracts shall come into the possession of the Vendor during the Interim Period.

5.2 Access by Purchaser. During the Interim Period, subject to the rights of any Tenant, the Vendor shall allow the Purchaser, its representatives and advisors to have access to the Property on reasonable prior Notice to the Vendor to allow the Purchaser to carry out such non-invasive tests and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections. The Purchaser hereby indemnifies the Vendor from any Claims arising from or relating to the access to the Property and/or interference with any Tenant's usage of the Property or any loss or liability arising from such interference as a result of the Purchaser's access granted in this Section 5.2 and, notwithstanding anything to the contrary contained in this Agreement, the Vendor shall have recourse to the Deposit to secure this indemnity.

5.3 Governmental Authorities. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or the Purchaser's Solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Purchased Assets. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities and the Vendor specifically does not authorize any such inspection.

5.4 Confidentiality. The Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.4); (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

5.5 Risk.

- (a) General. The Purchased Assets shall be at the risk of the Vendor until completion of the transactions contemplated by this Agreement. If any loss or damage to the Purchased Assets or any part thereof occurs on or before the Closing Date, the Vendor shall promptly deliver a Notice (the "**Notice of Loss**") to the Purchaser specifying the nature and extent of the loss or damage.
- (b) Damage Not Permitting Termination. If the extent of all losses and damage to the Purchased Assets will not cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser shall have no right to terminate this Agreement pursuant to this Section 5.5 and the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds.

- (c) **Damage Permitting Termination.** If the extent of all losses and damage to the Purchased Assets will cost in excess of twenty percent (20%) of the Purchase Price, to repair, the Purchaser may, on or before the second (2nd) Business Day following delivery of the Notice of Loss, at its option, by Notice to the Vendor elect to terminate this Agreement and the Deposit shall be returned to the Purchaser. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds. In addition, the Purchase Price shall be reduced by the amount of the deductible under the Vendor's insurance coverage, if the Vendor has not already paid the deductible.

5.6 Leasing. The Vendor shall not enter into any new Leases of the Property, renew or extend the term of any existing Leases or amend or accept a surrender of any of the Leases after the Due Diligence Date without the prior written approval of the Purchaser, which approval shall not be unreasonably withheld or delayed. The Purchaser's approval hereunder shall be deemed to have been given if no response is received from the Purchaser within three (3) Business Days following a written request by the Vendor or its representatives for approval. If the Purchaser approves or is deemed to have approved of any new Leases or any renewal or extension of the term of any existing Leases or any amendment or surrender of any Lease, the Purchaser shall be responsible for and shall indemnify and hold the Vendor harmless from and against any and all leasing commissions, tenant inducements, tenant allowances, landlord's work, free rent and other landlord obligations thereunder and, to the extent that any amount relating to the foregoing has been paid for and incurred by the Vendor prior to Closing, the Vendor shall receive an adjustment for same on Closing.

5.7 Assumed Contracts. On or before the Due Diligence Date, the Purchaser shall advise the Vendor in writing of which Contracts, if any, the Purchaser wishes to assume on Closing. The Assumed Contracts, together with the Required Contracts, shall be assigned to the Purchaser pursuant to the Assignment and Assumption of Contracts. All other Contracts shall be terminated by the Vendor on or before the Closing Date, at the Vendor's expense.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Electronic Registration. The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Ontario, and are hereby authorized by the parties hereto to enter the most recent form of document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's Solicitors and the Purchaser's Solicitors may agree, acting reasonably (the "**DRA**"), establishing the procedures and timing for completing the transactions contemplated by this Agreement, which DRA shall be exchanged between the Vendor's Solicitors and the Purchaser's Solicitors prior to

the Closing Date. The delivery and exchange of all Closing Documents and other deliverables hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents or other deliverables will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA. Notwithstanding Section 4 of the Joint LSUC-CBAO form of DRA, the release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed.

6.2 Documents of the Vendor. The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date:

- (a) Approval and Vesting Order. A copy of the Approval and Vesting Order for the Property pursuant to the provisions of the Approval and Vesting Order including the Receiver's certificate to vest the Property in the name of the Purchaser;
- (b) Certificate of the Vendor. A certificate of the Vendor certifying that each of the Persons comprising the Vendor are not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Vendor;
- (d) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Vendor;
- (e) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor; and
- (f) Keys. All keys and entry devices with respect to the Property and the combinations to any locks, if applicable.

6.3 Documents of the Purchaser. The Purchaser shall deliver to the Vendor the following documents on the Closing Date:

- (a) Balance of the Purchase Price. A wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b) of this Agreement;
- (b) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Purchaser;
- (c) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (d) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and

- (e) HST. The undertaking and indemnity described in Section 6.4(2) of this Agreement, duly executed by the Purchaser.

6.4 Taxes and Fees.

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with registration of the Approval and Vesting Order. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, or will on the Closing Date be, registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada);
- (b) the Purchaser shall be liable for, shall self-assess and, if applicable, remit directly to the Receiver General of Canada, all harmonized sales tax that is payable under the *Excise Tax Act* (Canada) in connection with the purchase of the Property; and
- (c) the representations and warranties contained in this Section 6.4(2) shall survive the Closing and be embodied in an undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing pursuant to which undertaking and indemnity the Purchaser confirms the Purchaser's HST registration number, undertakes to self-assess and, if applicable, remit all HST that is payable in respect of the purchase of the Property and agrees to indemnify the Vendor in respect of all applicable HST.

ARTICLE 7 MISCELLANEOUS

7.1 Tender. Unless expressly stated otherwise in this Agreement, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.

7.2 Relationship of the Parties. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

7.3 Notices.

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by electronic mail to the parties at the applicable address set forth below:

- (a) in the case of the Vendor addressed to it at:

msi Spergel Inc.
21 King Street West
Suite 1602
Hamilton, Ontario
L8P 4W7

Attention: Trevor Pringle
Email: tpringle@spergel.ca

and to:

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

Attention: Ian Kady
Email: ikady@foglers.com

(b) in the case of the Purchaser addressed to it at:

Corporate Real Estate Management Division
Real Estate Services
City of Toronto
Metro Hall, 2nd Floor,
55 John Street
Toronto, Ontario
M5V 3C6

Attention: Alison Folosea
Facsimile: (416) 392-1880
Email: alison.folosea@toronto.ca

and to:

City of Toronto
Legal Services Division – Real Estate Law Section
Metro Hall
55 John Street, 26th Floor
Toronto, Ontario
M5V 3C6

Attention: City Solicitor
Email: legalrec@toronto.ca
Attention: Chris Cieslik and Jennifer Davidson
Email: chris.cieslik@toronto.ca; jennifer.davidson@toronto.ca

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

7.4 Dispute Resolution. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

7.6 Assignment. This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be granted or withheld in the sole, absolute and unfettered discretion of the Vendor.

7.7 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

7.8 No Registration of Agreement. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement against title to the Property.

7.9 Planning Act. This Agreement and the transactions contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario) at the Purchaser's expense.

7.10 No personal Liability of Vendor. The Vendor is signing this Agreement in its capacity as Court appointed receiver and manager of the assets and undertaking of Toronto Artscape, and the Purchaser acknowledges and agrees that the Receiver, and its agents, directors, officers and employees, shall have no personal or corporate liability whatsoever under, as a result of or in connection with any obligations of Toronto Artscape (and anyone for whom it is in law responsible) under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against Toronto Artscape's assets.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the executed copy of this Agreement which was so electronically communicated.

7.12 Irrevocable Period. This Offer shall be open for acceptance by the Vendor until 5:00 p.m. EDT on the 3rd day of October, 2024, which date is not less than ten (10) Business Days from the date hereof, and failing acceptance by that time, shall be null and void.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement.

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability

By: *J.P.*
Name: Trevor Pringle
Title: Partner

By: _____
Name:
Title:

I/We have authority to bind the corporation

CITY OF TORONTO

By: *Pat Matozzo*
Name: Patrick Matozzo
Title: Executive Director, Corporate Real Estate Management

I have authority to bind the corporation

APPROVED AS TO FORM
DocuSigned by:
 Jennifer Davidson
66DDBE3064564A6
For *Jennifer Davidson*
City Solicitor
File No. 5000-652-1311 2023
(*J.Davidson*)

Authorized by Item MM11.32, as adopted by City of Toronto Council at its meeting held on October 11 and 12, 2023; and by Item MM18.37, as adopted by City of Toronto Council at its meeting held on May 22, 2024

SCHEDULE "A"**PROPERTY**

	Property Identification Number	Legal Description
1.	76118-0005	UNIT 5, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
2.	76118-0015	UNIT 2, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
3.	76118-0016	UNIT 3, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
4.	76118-0019	UNIT 6, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
5.	76118-0021	UNIT 8, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
6.	76118-0025	UNIT 12, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
7.	76118-0026	UNIT 13, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO

8.	76118-0027	UNIT 14, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
9.	76118-0028	UNIT 15, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
10.	76118-0038	UNIT 25, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
11.	76118-0039	UNIT 26, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
12.	76118-0041	UNIT 2, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
13.	76118-0042	UNIT 3, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
14.	76118-0045	UNIT 6, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
15.	76118-0047	UNIT 8, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO

16.	76118-0051	UNIT 12, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
17.	76118-0052	UNIT 13, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
18.	76118-0053	UNIT 14, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
19.	76118-0054	UNIT 15, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
20.	76118-0068	UNIT 29, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****General**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property.
3. Encumbrances respecting minor encroachments by the Property over neighbouring lands or by improvements on neighbouring lands and/or permitted under agreements with the owners of such other lands.
4. Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property for the purposes for which it is presently used.
5. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
6. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
7. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
8. Any unregistered easements, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
9. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
10. The Leases.

Specific

- A. Instrument No. E4939AZ is an Application for Restrictive Covenants registered on May 14, 1996, for the purpose of maintaining access and ingress over the benefitting lands.
- B. Instrument No. E362019 is Notice of a Section 37 Agreement registered on October 3, 2000, between R.A.M. Holdings Inc. and the City of Toronto for the purpose of amendments to the Zoning By-law for the purposes of constructing a development of up to 120 residential units at the subject lands.

- C. Instrument No. AT1719790 is Notice of an Agreement registered on February 27, 2008, between Westside Gallery Lofts Inc., Greater Toronto Transit Authority and Canadian National Railway Company, for the purpose of implementing various rail noise, vibration and safety impact mitigation measures as required for the residential development.
- D. Instrument No. AT1784893 is a Transfer Easement registered on May 22, 2008, in favour of Rogers Cable Communications Inc. for the purpose of permitting Rogers to provide television, internet, telephony and other communication services.
- E. Instrument No. AT1929991 is a Transfer Easement registered October 22, 2008, in favour of the Greater Toronto Transit Authority and Canadian National Railway Company for the purpose of discharging, emitting or releasing on the burdened lands the noise, vibration and other sounds of every nature and kind whatsoever arising from same.
- F. Instrument No. AT2198441 is an Application General registered on October 7, 2009, by Westside Gallery Lofts Inc., as applicant, for the purpose of deleting a right of way.
- G. Instrument No. AT2483854 is a Notice of an Agreement registered on August 23, 2010, between Westside Gallery Lofts Inc., Distance Road Co. Inc., and the City of Toronto for the purposes of an amendment to the Section 37 Agreement set out above.
- H. Instrument No. AT2483856 is a Postponement of Interest registered on August 23, 2010, from Rogers Communications Inc. in favour of the City of Toronto
- I. Instrument No. AT2497740 is a Notice of a Shared Facilities Agreement between Toronto Artscape Inc. and Westside Gallery Lofts Inc., registered September 3, 2010.
- J. Instrument No. AT2497741 is a Notice of a Shared Facilities Agreement between Toronto Artscape Inc., Westside Gallery Lofts Inc. in its capacity as owner and Westside Gallery Lofts Inc. in its capacity as declarant of the Curve Condominium registered September 3, 2010.
- K. Instrument No. AT2497744 is an Application to Annex Restrictive Covenants pursuant to S. 119 of the Land Titles Act, registered by Toronto Artscape Inc. on September 3, 2010. The restriction is such that the owner shall not be able to register a condominium on only part of the servient lands.
- L. Instrument No. TCP2118 is the condominium plan registered November 12, 2010.
- M. Instrument No. AT2549616 registered November 12, 2010, is the condominium declaration whereby Toronto Standard Condominium Corporation No. 2118 was created.
- N. Instrument No. AT2560469 is By-law No. 1 of Toronto Standard Condominium Corporation No. 2118.

- O. Instrument No. AT2560470 is By-law No. 2 of Toronto Standard Condominium Corporation No. 2118.
- P. Instrument No. AT2560471 is By-law No. 3 of Toronto Standard Condominium Corporation No. 2118.
- Q. Instrument No. AT2560472 is By-law No. 4 of Toronto Standard Condominium Corporation No. 2118.
- R. Instrument No. AT2564073 is By-Law No. 5 of Toronto Standard Condominium Corporation No. 2118.
- S. Instrument No. AT2561162 is a Notice of a Two-Way Shared Facilities Assumption Agreement registered November 26, 2010, between Toronto Artscape Inc. and Toronto Standard Condominium Corporation No. 2118.
- T. Instrument No. AT2561163 is a Notice of a Three-Way Shared Facilities Assumption Agreement between Toronto Artscape Inc. and Toronto Standard Condominium Corporation No. 2118.
- U. Instrument No. AT3110448 is an Application to Annex Restrictive Covenants pursuant to S. 118 of the Land Titles Act, registered by Toronto Artscape Inc. August 24, 2012, pursuant to which none of the subject lands maybe transferred in whole or in part without the prior written consent of the City's Director, Affordable Housing Office.
- V. Instrument No. AT3760267 registered on December 5, 2015, is a Transfer, Release and Abandonment of an easement in favour of Edge On Triangle Park Inc.
- W. Instrument No. AT3760311 registered on December 5, 2015, is a Transfer, Release and Abandonment of an easement in favour of Epic On Triangle Park Inc.
- X. Instrument No. AT5546921 registered on October 15, 2020, is a Charge/Mortgage securing the principal amount of \$2,215,000.00 granted by Toronto Artscape Inc. in favour of Community Fund Forward Assistance Corp./Fond De Progress Communautaire Societe De Gestion. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- Y. Instrument No. AT5729198 registered on May 6, 2021, is a Charge/Mortgage securing the principal amount of \$5,700,000.00 granted by Toronto Artscape Inc. in favour of FirstOntario Credit Union Limited *Note: to be vested off pursuant to the Approval and Vesting Order.*
- Z. Instrument No. AT5729199 is a general assignment of rents in favour of FirstOntario Credit Union Limited granted in relation to Instrument No. AT5729198. *Note: to be vested off pursuant to the Approval and Vesting Order.*

- AA. Instrument No. AT5729200 is a Postponement of Instrument No. AT5546921 in favour of AT5729198. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- BB. Instrument No. AT5756580 is By-law No. 6 of Toronto Standard Condominium No. 2118.
- CC. Instrument No. AT6496748 is an Application for Court Order from the Ontario Superior Court of Justice whereby MSI Spergel Inc. was appointed the receiver for Toronto Artscape Inc. *Note: to be vested off pursuant to the Approval and Vesting Order.*

SCHEDULE "C"

REQUIRED CONTRACTS

[List Contracts that Purchaser is required to assume, if any.]

Title	Abell APS - City of Toronto
File name	JD_-_Form_of_Purc..._of_Toronto_F.pdf
Document ID	70fda3981f8c9e7030292a63da817d459ef5d736
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

10 / 02 / 2024

10:10:46 UTC-4

Sent for signature to Trevor Pringle (tpringle@spergel.ca)
from hamiltonsign@spergel.ca
IP: 104.171.204.20



VIEWED

10 / 02 / 2024

10:13:34 UTC-4

Viewed by Trevor Pringle (tpringle@spergel.ca)
IP: 206.204.45.239



SIGNED

10 / 02 / 2024

10:13:54 UTC-4

Signed by Trevor Pringle (tpringle@spergel.ca)
IP: 104.171.204.20



COMPLETED

10 / 02 / 2024

10:13:54 UTC-4

The document has been completed.

AGREEMENT OF PURCHASE AND SALE

Units 1, 2, Level 1
Toronto Standard Condominium Plan No. 2118
(located at 38 Abell Street, Toronto, Ontario)

THIS AGREEMENT is dated as of the 19th day of September, 2024,

B E T W E E N:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

PROPELLER CENTRE FOR THE VISUAL ARTS

(the "**Purchaser**")

WHEREAS:

- A. Toronto Artscape is the registered of the Property.
- B. On January 11, 2024, the Court, in Court File No. CV-23-00711609-00CL, issued an order (the "**Order**") providing that, pursuant to Section 101 of the *Courts of Justice Act* (R.S.O.) and Section 243(1) of the *Bankruptcy and Insolvency Act* (R.S.C.), the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and remaining properties of Toronto Artscape as described in Schedule "A" of the Order; and
- C. Pursuant to the Order, the Vendor was granted powers to, among other things, market and sell the Property; and
- D. The Vendor has agreed, subject to obtaining the requisite approval of the Court, to sell all of Toronto Artscape's right, title and interest, if any, in and to the Purchased Assets and the Purchaser has agreed to purchase, acquire and assume all of Toronto Artscape's right title and

interest, if any, in and to the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"Agent" means Avison Young Commercial Real Estate Services, LP.

"Agreement" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"Applicable Laws" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

"Approval and Vesting Order" means an order of the Court in a form acceptable to the Vendor and the Purchaser, each acting reasonably, pursuant to which title to the Purchased Assets will be vested in the name of the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

"Assignment and Assumption of Contracts" means an assignment by the Vendor and an assumption by the Purchaser of the Assumed Contracts, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assignment and Assumption of Leases" means an assignment by the Vendor and assumption by the Purchaser of all of the right, title and interest in the Leases of the Vendor and the benefit of all covenants, guarantees and indemnities thereunder, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assumed Contracts" means the Required Contracts and any of the other Contracts the Purchaser designates it wishes to assume on Closing by notice in writing delivered to the Vendor on or before the Due Diligence Date pursuant to Section 5.7 of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Claim" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"Closing" means the closing and consummation of the transactions contemplated by this Agreement, including, without limitation, the delivery of the Closing Documents on the Closing Date.

"Closing Date" means the date that is the later of ten (10) Business Days following the date of issuance of the Approval and Vesting Order or sixty (60) days after the date of acceptance of this Offer.

"Closing Documents" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

"Court" means the Ontario Superior Court of Justice.

"Contracts" means any and all contracts and agreements relating to the Property to which the Vendor is a party or by which the Vendor is bound, in respect of the ownership, maintenance, repair, operation, cleaning and security of the Property in effect as at the date of this Agreement, if applicable, and all contracts and agreements relating to any equipment or other assets leased by the Vendor and located on or in the Property in effect as at the date of this Agreement, as well as those contracts and agreements entered into by the Vendor in the normal course of business after the date of this Agreement and prior to the Closing Date. For greater certainty, the Contracts shall include the Required Contracts and shall not include the Leases.

"Deposit" has the meaning given to it in Section 2.3(a) of this Agreement.

"Due Diligence Date" means the date that is thirty (30) days following the date of execution and delivery of this Agreement by both parties.

"Encumbrance" means any mortgage, lien, charge, or other financial encumbrance.

"Excluded Assets" means the following assets relating to the Property: (i) any refunds of realty taxes which relate to the period prior to Closing; (ii) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to Toronto Artscape; and (iii) the interest of Toronto Artscape in contracts of insurance, insurance policies (including director & officer

insurance policies) and the full benefit of Toronto Artscape's rights under or in respect of the foregoing, including in and to any cash surrender value thereof.

"HST" means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada);

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Leases" means all agreements to lease, leases, renewals of lease and other rights (including licenses, concessions or occupancy agreements, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, the Vendor, and which entitle any Person to possess or occupy any space within the Property as of the date of this Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied to the date hereof.

"Notice" has the meaning set out in Section 7.3(1) of this Agreement.

"Permitted Encumbrances" means those Encumbrances listed in *Schedule "B"* attached hereto.

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"Property" means the property legally described in *Schedule "A"* attached hereto, together with all appurtenant interests thereto, all being located within the building municipally known as 38 Abell Street, in the City of Toronto, Province of Ontario.

"Purchase Price" has the meaning set out in Section 2.2 of this Agreement.

"Purchased Assets" means, collectively: (i) the Property; (ii) the Vendor's interest in the Leases; (iii) the Vendor's interest in the Assumed Contracts; and (iv) the Permitted Encumbrances, but specifically excludes the Excluded Assets.

"Purchaser's Solicitors" means Harris, Sheaffer LLP

"Re-adjustment Agreement" has the meaning set out in Section 2.6 of this Agreement.

"Receiver" means msi Spergel Inc., solely in its capacity as receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape, and not in its personal or corporate capacity and without personal or corporate liability.

"Required Contracts" means those Contracts listed in *Schedule "C"* attached hereto.

"Tenants" means all the tenants or occupants under the Leases.

"Vendor's Solicitors" means Fogler, Rubinoff LLP.

12 Extended Meanings. Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

13 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

15 Currency. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

16 Severability. If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.

18 Time. Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the conditions set out herein, including obtaining the requisite approval of the Court, the Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor's right, title and interest, if any, in and to the Purchased Assets to the

Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume all of the Vendor's right, title and interest, if any, in and to the Purchased Assets from the Vendor, for the Purchase Price and otherwise on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall be

2.3 Payment of Purchase Price. Subject to adjustment in accordance with Section 2.6 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) [REDACTED] being an amount representing not less than ten percent (10%) of the Purchase Price (the "**Deposit**"), by wire transfer of immediately available funds to the Receiver, in trust, at the time of the submission of this offer; and
- (b) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor, or as it may direct in writing, on the Closing Date.

2.4 Deposit. The Deposit shall be held by the Receiver in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Receiver in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date on which the Deposit is received by the Receiver until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque forthwith following the Closing Date. If this Agreement is not completed other than by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed by reason of the default of the Purchaser, the Vendor shall be entitled to receive and retain the Deposit, together with all accrued interest thereon, without prejudice to other rights or damages available to the Vendor at law or in equity.

The parties agree that the Receiver shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Receiver shall be entitled to bring an application to Court to pay the Deposit and/or interest accrued thereon into Court.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for all current rents (but not rent in arrears) realty taxes, common expense fees, local improvement rates and charges, water and assessment rates, other utilities and the cost of lock repairs paid by the Purchaser. An adjustment shall also be made for prepaid rents and other amounts paid by the Tenants under the Leases and any security deposit given by

the Tenants under the Leases, to the extent actually received by and in the possession or control of the Receiver.

(2) Rent Receivables. Any amounts due and owing but unpaid on the Closing Date by any Tenant for rent or any other amounts under their Leases that relate to any calendar month preceding the month in which the Closing Date falls (the "**Rent Receivables**") shall remain the property of the Vendor on Closing and there shall be no adjustment in favour of the Vendor on the statement of adjustments for such amounts. All current rent amounts for the calendar month in which the Closing Date falls that have been collected by the Vendor before the Closing Date shall be adjusted in favour of the Purchaser as to its pro rata share on the statement of adjustments, but current rent amounts for the calendar month in which the Closing Date falls that have not been collected by the Vendor shall be adjusted in favour of the Vendor and shall become the property of the Purchaser. After the Closing Date, if the Vendor receives any current rent amounts for the calendar month in which the Closing Date falls, it shall promptly pay such amounts over to the Purchaser. After the Closing Date, the Purchaser shall use reasonable efforts to assist the Vendor in recovering the Rent Receivables (but shall not be required to apply current rent payments to the Rent Receivables or to terminate Leases or exercise rights of distress or to expend any monies with respect thereto), and the Vendor shall continue to have the right after Closing to recover by way of action from the Tenants any of the Rent Receivables. Any amount of rent received by the Purchaser after Closing from a Tenant that owes Rent Receivables to the Vendor shall be credited, first, to current month's rent, second, to any arrears of rent owing to the Purchaser accruing from and after the Closing Date, and third, to the Rent Receivables.

(3) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than two (2) Business Days prior to the Closing Date.

(4) Day of Closing. The Purchaser shall pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.6 Re-adjustment. If the final cost or amount of an item which is to be adjusted cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the parties, acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and, within ten (10) days thereafter, the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this

Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments shall be requested in writing in a detailed manner on or before the date that is ninety (90) days after the Closing Date, after which time neither party shall have any right to request re-adjustments.

ARTICLE 3 COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor. The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date:

- (a) Authority. The Receiver is the Court-appointed receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape as described in the Order and, subject to the Vendor obtaining the Approval and Vesting Order, has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) Residence. Neither the Vendor nor the Receiver is a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

3.2 Representations of the Purchaser. The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and subsisting under the laws of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action; and
- (c) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date and the Purchaser shall execute a form of HST undertaking and indemnity in form and substance satisfactory to the Vendor.

3.3 No Survival of Representations. The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of ninety (90) days following the Closing Date. No claim for any breach of such covenant, representation or warranty may be made by either party hereto after such ninety (90) day period.

34 As Is, Where Is. The Purchaser shall accept the Purchased Assets on Closing on an entirely "as is, where is" basis as it exists as of the Closing Date without regard to the state of repair, condition, use or occupation of the Property, location of fences, wires, lines, underground wells, pipes or conduits, in, on or outside of the Property, if any, including, without limitation, any special assessments, deficiencies in the reserve fund, liabilities, Claims or contingent liabilities as may be disclosed in status certificates issued in respect of the Property; the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Property; the Purchased Asset's compliance with any Applicable Laws; the size, dimension, or topography of the Property; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Property or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent). The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor with respect to the condition thereof. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including, without limitation, any representation or warranty, express or implied, with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with Applicable Laws, fitness for any particular purpose) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. Without limiting the foregoing, the Purchaser hereby releases the Vendor with respect to any Claims the Purchaser may have arising out of or in respect of the condition (including, without limitation, the environmental condition) of the Property. The provisions of this Section 3.4 shall survive the Closing of the transactions contemplated by this Agreement.

35 Disclosure and Marketing Materials

The Purchaser acknowledges and agrees that: (i) any information, documents and other materials, including, without limitation, the confidential information memorandum or other marketing materials prepared in respect of the Property (collectively the "**Disclosure Materials**"), made available or to be made available by the Vendor, the Agent or otherwise in connection with the sale of the Purchased Assets has been prepared and provided solely for the convenience of prospective purchasers; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Disclosure Materials; and (iii) the Purchaser is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Disclosure Materials the Purchaser hereby releases the Vendor from any and all claims it now has, or may in the future have, in that regard.

ARTICLE 4 CONDITIONS

41 Conditions of the Vendor. The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Approval and Vesting Order. The Vendor shall have obtained the Approval and Vesting Order.

42 Conditions of the Purchaser. The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Property, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Purchased Assets);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;

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

43 Satisfaction of Conditions. Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control.

44 Waiver of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement, other than the condition contained in Section 4.1(d), in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement are not satisfied or waived on or prior to the Closing Date, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions

set out in Sections 4.2(b), 4.2(c) and 4.2(d) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

45 Not Conditions Precedent. The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.

46 Planning Act. This Agreement shall be effective to create an interest in the Property only if the provisions of the *Planning Act* (Ontario) are complied with.

47 Title. The Purchaser shall have until the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity. The Purchaser agrees that, on Closing, it shall: (i) accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Permitted Encumbrances, whether or not such Permitted Encumbrances have been complied with; and (ii) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances. The Purchaser shall have until Closing to requisition any title registrations that occur subsequent to the Due Diligence Date and prior to Closing.

48 Court Matters.

(1) Application for Approval and Vesting Order. The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible following waiver or satisfaction of the condition contained in Section 4.2(a) of this Agreement. The Vendor shall advise the Purchaser prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order.

(2) Assistance by Purchaser. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order.

(3) Outside Date. This Agreement may be terminated by the Vendor or the Purchaser if the Approval and Vesting Order is not obtained by December 1, 2024 .

ARTICLE 5 INTERIM PERIOD

5.1 Delivery of Documents. The Vendor shall deliver copies of the Leases and the Contracts to the Purchaser within five (5) Business Days following the date of this Agreement and from time to time as any Leases or Contracts shall come into the possession of the Vendor during the Interim Period.

5.2 Access by Purchaser. During the Interim Period, subject to the rights of any Tenant, the Vendor shall allow the Purchaser, its representatives and advisors to have access to the Property on reasonable prior Notice to the Vendor to allow the Purchaser to carry out such non-invasive tests and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections. The Purchaser hereby indemnifies the Vendor from any Claims arising from or relating to the access to the Property and/or interference with any Tenant's usage of the Property or any loss or liability arising from such interference as a result of the Purchaser's access granted in this Section 5.2 and, notwithstanding anything to the contrary contained in this Agreement, the Vendor shall have recourse to the Deposit to secure this indemnity.

5.3 Governmental Authorities. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or the Purchaser's Solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Purchased Assets. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities and the Vendor specifically does not authorize any such inspection.

5.4 Confidentiality. The Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.4); (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

5.5 Risk.

- (a) General. The Purchased Assets shall be at the risk of the Vendor until completion of the transactions contemplated by this Agreement. If any loss or damage to the Purchased Assets or any part thereof occurs on or before the Closing Date, the Vendor shall promptly deliver a Notice (the "**Notice of Loss**") to the Purchaser specifying the nature and extent of the loss or damage.

- (b) Damage Not Permitting Termination. If the extent of all losses and damage to the Purchased Assets will not cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser shall have no right to terminate this Agreement pursuant to this Section 5.5 and the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds.
- (c) Damage Permitting Termination. If the extent of all losses and damage to the Purchased Assets will cost in excess of twenty percent (20%) of the Purchase Price, to repair, the Purchaser may, on or before the second (2nd) Business Day following delivery of the Notice of Loss, at its option, by Notice to the Vendor elect to terminate this Agreement and the Deposit shall be returned to the Purchaser. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds. In addition, the Purchase Price shall be reduced by the amount of the deductible under the Vendor's insurance coverage, if the Vendor has not already paid the deductible.

5.6 Leasing. The Vendor shall not enter into any new Leases of the Property, renew or extend the term of any existing Leases or amend or accept a surrender of any of the Leases after the Due Diligence Date without the prior written approval of the Purchaser, which approval may be unreasonably withheld or delayed. If the Purchaser approves of any new Leases or any renewal or extension of the term of any existing Leases or any amendment or surrender of any Lease, the Purchaser shall be responsible for and shall indemnify and hold the Vendor harmless from and against any and all leasing commissions, tenant inducements, tenant allowances, landlord's work, free rent and other landlord obligations thereunder and, to the extent that any amount relating to the foregoing has been paid for and incurred by the Vendor prior to Closing, the Vendor shall receive an adjustment for same on Closing.

5.7 Assumed Contracts. On or before the Due Diligence Date, the Purchaser shall advise the Vendor in writing of which Contracts, if any, the Purchaser wishes to assume on Closing. The Assumed Contracts, together with the Required Contracts, shall be assigned to the Purchaser pursuant to the Assignment and Assumption of Contracts. All other Contracts shall be terminated by the Vendor on or before the Closing Date, at the Vendor's expense.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Electronic Registration. The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Ontario, and are hereby authorized by the parties hereto to enter the most recent form of document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's Solicitors and the Purchaser's Solicitors may agree, acting reasonably (the "**DRA**"), establishing the procedures and timing for completing the transactions contemplated by this Agreement, which DRA shall be exchanged between the Vendor's Solicitors and the Purchaser's Solicitors prior to the Closing Date. The delivery and exchange of all Closing Documents and other deliverables hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents or other deliverables will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA. Notwithstanding Section 4 of the Joint LSUC- CBAO form of DRA, the release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed.

6.2 Documents of the Vendor. The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date:

- (a) Approval and Vesting Order. A copy of the Approval and Vesting Order for the Property pursuant to the provisions of the Approval and Vesting Order including the Receiver's certificate to vest the Property in the name of the Purchaser;
- (b) Certificate of the Vendor. A certificate of the Vendor certifying that each of the Persons comprising the Vendor are not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Vendor;
- (d) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Vendor;
- (e) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor; and
- (f) Keys. All keys and entry devices with respect to the Property and the combinations to any locks, if applicable.

6.3 Documents of the Purchaser. The Purchaser shall deliver to the Vendor the following documents on the Closing Date:

- (a) Balance of the Purchase Price. A wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b) of this Agreement;
- (b) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Purchaser;
- (c) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (d) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and
- (e) HST. The undertaking and indemnity described in Section 6.4(2) of this Agreement, duly executed by the Purchaser.

64 Taxes and Fees.

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with registration of the Approval and Vesting Order. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, or will on the Closing Date be, registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada);
- (b) the Purchaser shall be liable for, shall self-assess and, if applicable, remit directly to the Receiver General of Canada, all harmonized sales tax that is payable under the *Excise Tax Act* (Canada) in connection with the purchase of the Property; and
- (c) the representations and warranties contained in this Section 6.4(2) shall survive the Closing and be embodied in an undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing pursuant to which undertaking and indemnity the Purchaser confirms the Purchaser's HST registration number, undertakes to self-assess and, if applicable, remit all HST that is payable in respect of the purchase of the Property and agrees to indemnify the Vendor in respect of all applicable HST.

**ARTICLE 7
MISCELLANEOUS**

71 Tender. Unless expressly stated otherwise in this Agreement, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.

72 Relationship of the Parties. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

73 Notices.

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by electronic mail to the parties at the applicable address set forth below:

(a) in the case of the Vendor addressed to it at:

msi Spergel Inc.
21 King Street West
Suite 1602
Hamilton, Ontario
L8P 4W7

Attention: Trevor Pringle
Email: tpringle@spergel.ca

and to:

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

Attention: Ian Kady
Email: ikady@foglers.com

(b) in the case of the Purchaser addressed to it at:

Propeller Art Gallery
30 Abell Street
Toronto, ON
M6J 0A9

Attention: Peter Friedrichsen
Email: pfriedrichsen@sympatico.ca

and to:

Harris, Sheaffer LLP
4881 Yonge Street, 8th Floor,
Toronto, ON M2N 5X3

Attention: Robert D. Sheaffer
Email: rsheaffer@harris-sheaffer.com

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

74 Dispute Resolution. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

76 Assignment. This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be granted or withheld in the sole, absolute and unfettered discretion of the Vendor.

77 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

78 No Registration of Agreement. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement against title to the Property.

79 Planning Act. This Agreement and the transactions contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario) at the Purchaser's expense.

7.10 No personal Liability of Vendor. The Vendor is signing this Agreement in its capacity as Court appointed receiver and manager of the assets and undertaking of Toronto Artscape, and the Purchaser acknowledges and agrees that the Receiver, and its agents, directors, officers and employees, shall have no personal or corporate liability whatsoever under, as a result of or in

connection with any obligations of Toronto Artscape (and anyone for whom it is in law responsible) under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against Toronto Artscape's assets.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to


constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the executed copy of this Agreement which was so electronically communicated.

7.12 Irrevocable Period. This Offer shall be open for acceptance by the Vendor until 5:00 p.m. EDT on the 3rd day of October, 2024, which date is not less than ten (10) Business Days from the date hereof, and failing acceptance by that time, shall be null and void.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement.

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability

By: 
Name: Trevor Pringle
Title: Partner

By: _____
Name:
Title:

I/We have authority to bind the corporation

PROPELLER CENTRE FOR THE VISUAL ARTS

Signed by: 
By: _____
Name: Peter Fredrikson
Title: Authorized Signing Officer

Signed by: 
By: _____
Name: Susan Rupasing
Title: Authorized Signing Officer

I/We have authority to bind the corporation

SCHEDULE "A"

PROPERTY

	Property Identification Number	Legal Description
1.	76118-0001	UNIT 1, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
2.	76118-0002	UNIT 2, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****General**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property.
3. Encumbrances respecting minor encroachments by the Property over neighbouring lands or by improvements on neighbouring lands and/or permitted under agreements with the owners of such other lands.
4. Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property for the purposes for which it is presently used.
5. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
6. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
7. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
8. Any unregistered easements, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
9. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
10. The Leases.

Specific

- A. Instrument No. E4939AZ is an Application for Restrictive Covenants registered on May 14, 1996, for the purpose of maintaining access and ingress over the benefitting lands.
- B. Instrument No. E362019 is Notice of a Section 37 Agreement registered on October 3, 2000, between R.A.M. Holdings Inc. and the City of Toronto for the purpose of amendments to the Zoning By-law for the purposes of constructing a development of up to 120 residential units at the subject lands.

- C. Instrument No. AT1719790 is Notice of an Agreement registered on February 27, 2008, between Westside Gallery Lofts Inc., Greater Toronto Transit Authority and Canadian National Railway Company, for the purpose of implementing various rail noise, vibration and safety impact mitigation measures as required for the residential development.
- D. Instrument No. AT1784893 is a Transfer Easement registered on May 22, 2008, in favour of Rogers Cable Communications Inc. for the purpose of permitting Rogers to provide television, internet, telephony and other communication services.
- E. Instrument No. AT1929991 is a Transfer Easement registered October 22, 2008, in favour of the Greater Toronto Transit Authority and Canadian National Railway Company for the purpose of discharging, emitting or releasing on the burdened lands the noise, vibration and other sounds of every nature and kind whatsoever arising from same.
- F. Instrument No. AT2198441 is an Application General registered on October 7, 2009, by Westside Gallery Lofts Inc., as applicant, for the purpose of deleting a right of way.
- G. Instrument No. AT2483854 is a Notice of an Agreement registered on August 23, 2010, between Westside Gallery Lofts Inc., Distance Road Co. Inc., and the City of Toronto for the purposes of an amendment to the Section 37 Agreement set out above.
- H. Instrument No. AT2483856 is a Postponement of Interest registered on August 23, 2010, from Rogers Communications Inc. in favour of the City of Toronto
- I. Instrument No. AT2497740 is a Notice of a Shared Facilities Agreement between Toronto Artscape Inc. and Westside Gallery Lofts Inc., registered September 3, 2010.
- J. Instrument No. AT2497741 is a Notice of a Shared Facilities Agreement between Toronto Artscape Inc., Westside Gallery Lofts Inc. in its capacity as owner and Westside Gallery Lofts Inc. in its capacity as declarant of the Curve Condominium registered September 3, 2010.
- K. Instrument No. AT2497744 is an Application to Annex Restrictive Covenants pursuant to S. 119 of the Land Titles Act, registered by Toronto Artscape Inc. on September 3, 2010. The restriction is such that the owner shall not be able to register a condominium on only part of the servient lands.
- L. Instrument No. AT2498075 is a Transfer Easement from Westside Gallery Lofts Inc. to Abell Investments Limited and St. Clare's Multifaith Housing Society registered September 7, 2010.
- M. Instrument No. AT2498080 is a Postponement of Interest from Rogers Communications Inc. to Abell Investments Limited registered September 7, 2010.

- N. Instrument No. AT2498248 is a Transfer Easement from Westside Gallery Lofts Inc. to Abell Investments Limited St. Clare's Multifaith Housing Society registered September 7, 2010.
- O. Instrument No. AT2500640 is a Postponement from Rogers Communications Inc. to Abell Investments Limited and St. Clare's Multifaith Housing Society registered September 9, 2010.
- P. Instrument No. TCP2118 is the condominium plan registered November 12, 2010.
- Q. Instrument No. AT2549616 registered November 12, 2010, is the condominium declaration whereby Toronto Standard Condominium Corporation No. 2118 was created.
- R. Instrument No. AT2675027 registered April 27, 2011, is a Notice of Site Plan Agreement between Westside Gallery Lofts Inc. and Distance Road Co. Inc. and the City of Toronto.
- S. Instrument No. AT2560469 is By-law No. 1 of Toronto Standard Condominium Corporation No. 2118.
- T. Instrument No. AT2560470 is By-law No. 2 of Toronto Standard Condominium Corporation No. 2118.
- U. Instrument No. AT2560471 is By-law No. 3 of Toronto Standard Condominium Corporation No. 2118.
- V. Instrument No. AT2560472 is By-law No. 4 of Toronto Standard Condominium Corporation No. 2118.
- W. Instrument No. AT2564073 is By-Law No. 5 of Toronto Standard Condominium Corporation No. 2118.
- X. Instrument No. AT2561162 is a Notice of a Two-Way Shared Facilities Assumption Agreement registered November 26, 2010, between Toronto Artscape Inc. and Toronto Standard Condominium Corporation No. 2118.
- Y. Instrument No. AT2561163 is a Notice of a Three-Way Shared Facilities Assumption Agreement between Toronto Artscape Inc. and Toronto Standard Condominium Corporation No. 2118.
- Z. Instrument No. AT3070814 is a Notice pursuant to s. 71 of the Land Titles Act to register an unregistered estate, right, interest or equity registered July 11, 2012.
- AA. Instrument No. AT3070815 is a Notice pursuant to s. 71 of the Land Titles Act to register an unregistered estate, right, interest or equity registered July 11, 2012.

- BB. Instrument No. TCP2249 registered July 16, 2012 is a Standard Condominium Plan.
- CC. Instrument No. AT3073995 registered July 16, 2012 is the Condominium Declaration creating Toronto Standard Condominium Plan No. 2249.
- DD. Instrument No. AT3094240 registered August 3, 2012 is an Application to Register a Restrictive Covenant.
- EE. Instrument No. AT3100646 registered August 14, 2012 is By-Law No. 1 for Toronto Standard Condominium Corporation No. 2249.
- FF. Instrument No. AT3100647 registered August 14, 2012 is By-Law No. 2 for Toronto Standard Condominium Corporation No. 2249.
- GG. Instrument No. AT3100648 registered August 14, 2012 is By-Law No. 3 for Toronto Standard Condominium Corporation No. 2249.
- HH. Instrument No. AT3100649 registered August 14, 2012 is By-law No. 4 for Toronto Standard Condominium Corporation No. 2249.
- II. Instrument No. AT3100650 registered August 14, 2012 is By-Law No. 5 for Toronto Standard Condominium Corporation No. 2249.
- JJ. Instrument No. AT3100651 registered August 14, 2012 is By-Law No. 6 for Toronto Standard Condominium Corporation No. 2249.
- KK. Instrument No. AT3100722 registered August 14, 2012 is Notice of a Shared Facilities Agreement between Toronto Standard Condominium Corporation No. 2249, Westside Gallery Lofts Inc., Epic On Triangle Park Inc., Abell Investments Limited and St. Clare's Multifaith Housing Society.
- LL. Instrument No. AT3103107 registered August 16, 2012 is Notice of a Shared Facilities Agreement between Toronto Standard Condominium Corporation No. 2249 and Westside Gallery Lofts Inc.
- MM. Instrument No. AT3104262 registered August 17, 2012 is a Notice of Security Interest registered in favour of Kareg Leasing Inc.
- NN. Instrument No. AT3106455 registered August 21, 2012 is By-Law No. 7 for Toronto Standard Condominium Corporation No. 2249.
- OO. Instrument No. AT3110448 is an Application to Annex Restrictive Covenants pursuant to S. 118 of the Land Titles Act, registered by Toronto Artscape Inc. August 24, 2012, pursuant to which none of the subject lands maybe transferred in whole or in part without the prior written consent of the City's Director, Affordable Housing Office.

- PP. Instrument No. AT4047674 registered on October 26, 2015 is a Transfer, Release and Abandonment between Toronto Standard Condominium Corporation No. 2249 and Epic On Triangle Park Inc.
- QQ. Instrument No. AT3760267 registered on December 5, 2015, is a Transfer, Release and Abandonment of an easement in favour of Edge On Triangle Park Inc.
- RR. Instrument No. AT3760311 registered on December 5, 2015, is a Transfer, Release and Abandonment of an easement in favour of Epic On Triangle Park Inc.
- SS. Instrument No. AT4471212 is a Transfer, Release and Abandonment of easement from Toronto Standard Condominium Corporation No. 2249 to the City of Toronto.
- TT. Instrument No. AT5011046 registered November 20, 2018 is a Notice of Change of Address for Kareg Leasing Inc.
- UU. Instrument No. AT5058459 is Toronto Standard Condominium Corporation No. 2249 By-Law No. 8.
- VV. Instrument No. AT5546921 registered on October 15, 2020, is a Charge/Mortgage securing the principal amount of \$2,215,000.00 granted by Toronto Artscape Inc. in favour of Community Fund Forward Assistance Corp./Fond De Progress Communautaire Societe De Gestion. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- WW. Instrument No. AT5729198 registered on May 6, 2021, is a Charge/Mortgage securing the principal amount of \$5,700,000.00 granted by Toronto Artscape Inc. in favour of FirstOntario Credit Union Limited *Note: to be vested off pursuant to the Approval and Vesting Order.*
- XX. Instrument No. AT5729199 is a general assignment of rents in favour of FirstOntario Credit Union Limited granted in relation to Instrument No. AT5729198. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- YY. Instrument No. AT5729200 is a Postponement of Instrument No. AT5546921 in favour of AT5729198. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- ZZ. Instrument No. AT5756580 is By-law No. 6 of Toronto Standard Condominium No. 2118.
- AAA. Instrument No. AT6496748 is an Application for Court Order from the Ontario Superior Court of Justice whereby MSI Spergel Inc. was appointed the receiver for Toronto Artscape Inc. *Note: to be vested off pursuant to the Approval and Vesting Order.*

SCHEDULE "C"

REQUIRED CONTRACTS

Title	Abell APS - Propeller Art Gallery
File name	Purchase_Agreemen...Comments__v3_.pdf
Document ID	7b1257720559e4f414b856a5fd87d7adcd52ba47
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

10 / 02 / 2024
10:08:06 UTC-4

Sent for signature to Trevor Pringle (tpringle@spergel.ca) from hamiltonsign@spergel.ca
IP: 104.171.204.20



VIEWED

10 / 02 / 2024
10:09:37 UTC-4

Viewed by Trevor Pringle (tpringle@spergel.ca)
IP: 206.204.57.135



SIGNED

10 / 02 / 2024
10:10:08 UTC-4

Signed by Trevor Pringle (tpringle@spergel.ca)
IP: 104.171.204.20



COMPLETED

10 / 02 / 2024
10:10:08 UTC-4

The document has been completed.

AGREEMENT OF PURCHASE AND SALE

Units 8 & 9, Level 2
Toronto Standard Condominium Plan No. 2397
(located at 180 Shaw Street, Toronto, Ontario)

THIS AGREEMENT is dated as of the 8th day of October, 2024,

B E T W E E N:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

CENTRE FOR INDIGENOUS THEATRE

(the "**Purchaser**")

WHEREAS:

- A. Toronto Artscape is the registered owner of the Property.
- B. On January 11, 2024, the Court, in Court File No. CV-23-00711609-00CL, issued an order (the "**Order**") providing that, pursuant to Section 101 of the *Courts of Justice Act* (R.S.O.) and Section 243(1) of the *Bankruptcy and Insolvency Act* (R.S.C.), the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and remaining properties of Toronto Artscape as described in Schedule "A" of the Order; and
- C. Pursuant to the Order, the Vendor was granted powers to, among other things, market and sell the Property; and
- D. The Vendor has agreed, subject to obtaining the requisite approval of the Court, to sell all of Toronto Artscape's right, title and interest, if any, in and to the Purchased Assets and the Purchaser has agreed to purchase, acquire and assume all of Toronto Artscape's right title and interest, if any, in and to the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"Agent" means Avison Young Commercial Real Estate Services, LP.

"Agreement" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"Applicable Laws" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

"Approval and Vesting Order" means an order of the Court in a form acceptable to the Vendor and the Purchaser, each acting reasonably, pursuant to which title to the Purchased Assets will be vested in the name of the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

"Assignment and Assumption of Contracts" means an assignment by the Vendor and an assumption by the Purchaser of the Assumed Contracts, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assignment and Assumption of Leases" means an assignment by the Vendor and assumption by the Purchaser of all of the right, title and interest in the Leases of the Vendor and the benefit of all covenants, guarantees and indemnities thereunder, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assumed Contracts" means the Required Contracts and any of the other Contracts the Purchaser designates it wishes to assume on Closing by notice in writing delivered to the Vendor on or before the Due Diligence Date pursuant to Section 5.7 of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Claim" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"Closing" means the closing and consummation of the transactions contemplated by this Agreement, including, without limitation, the delivery of the Closing Documents on the Closing Date.

"Closing Date" means the date that is ten (10) Business Days following the date of issuance of the Approval and Vesting Order which in no event shall be prior to the Due Diligence Date.

"Closing Documents" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

"Court" means the Ontario Superior Court of Justice.

"Contracts" means any and all contracts and agreements relating to the Property to which the Vendor is a party or by which the Vendor is bound, in respect of the ownership, maintenance, repair, operation, cleaning and security of the Property in effect as at the date of this Agreement, if applicable, and all contracts and agreements relating to any equipment or other assets leased by the Vendor and located on or in the Property in effect as at the date of this Agreement, as well as those contracts and agreements entered into by the Vendor in the normal course of business after the date of this Agreement and prior to the Closing Date. For greater certainty, the Contracts shall include the Required Contracts and shall not include the Leases.

"Deposit" has the meaning given to it in Section 2.3(a) of this Agreement.

"Due Diligence Date" means the date that is thirty (30) days following the date of execution and delivery of this Agreement by both parties.

"Encumbrance" means any mortgage, lien, charge, or other financial encumbrance.

"Excluded Assets" means the following assets relating to the Property: (i) any refunds of realty taxes which relate to the period prior to Closing; (ii) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to Toronto Artscape; and (iii) the interest of Toronto Artscape in contracts of insurance, insurance policies (including director & officer insurance policies) and the full benefit of Toronto Artscape's rights under or in respect of the foregoing, including in and to any cash surrender value thereof.

"HST" means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada);

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Leases" means all agreements to lease, leases, renewals of lease and other rights (including licenses, concessions or occupancy agreements, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, the Vendor, and which entitle any Person to possess or occupy any space within the Property as of the date of this Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied to the date hereof.

"Notice" has the meaning set out in Section 7.3(1) of this Agreement.

"Permitted Encumbrances" means those Encumbrances listed in *Schedule "B"* attached hereto.

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"Property" means the property legally described in *Schedule "A"* attached hereto, together with all appurtenant interests thereto, all being located within the building municipally known as 180 Shaw Street, in the City of Toronto, Province of Ontario.

"Purchase Price" has the meaning set out in Section 2.2 of this Agreement.

"Purchased Assets" means, collectively: (i) the Property; (ii) the Vendor's interest in the Leases; (iii) the Vendor's interest in the Assumed Contracts; and (iv) the Permitted Encumbrances, but specifically excludes the Excluded Assets.

"Purchaser's Solicitors" means Harris, Sheaffer LLP.

"Re-adjustment Agreement" has the meaning set out in Section 2.6 of this Agreement.

"Receiver" means msi Spergel Inc., solely in its capacity as receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape, and not in its personal or corporate capacity and without personal or corporate liability.

"Required Contracts" means those Contracts listed in *Schedule "C"* attached hereto.

"Tenants" means all the tenants or occupants under the Leases.

"Vendor's Solicitors" means Fogler, Rubinoff LLP.

12 Extended Meanings. Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

13 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

15 Currency. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

16 Severability. If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.


18 Time. Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the conditions set out herein, including obtaining the requisite approval of the Court, the Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor's right, title and interest, if any, in and to the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume all of the Vendor's right, title and interest, if any, in and to the Purchased Assets from the Vendor, for the Purchase Price and otherwise on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall

2.3 Payment of Purchase Price. Subject to adjustment in accordance with Section 2.6 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) 
less than ten percent (10%) of the Purchase Price (the "**Deposit**"), by wire transfer of immediately available funds to the Receiver, in trust, at the time of the submission of this offer; and
- (b) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor, or as it may direct in writing, on the Closing Date.

2.4 Deposit. The Deposit shall be held by the Receiver in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Receiver in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date on which the Deposit is received by the Receiver until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque forthwith following the Closing Date. If this Agreement is not completed other than by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed by reason of the default of the Purchaser, the Vendor shall be entitled to receive and retain the Deposit, together with all accrued interest thereon, without prejudice to other rights or damages available to the Vendor at law or in equity.

The parties agree that the Receiver shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Receiver shall be entitled to bring an application to Court to pay the Deposit and/or interest accrued thereon into Court.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for all current rents (but not rent in arrears) realty taxes, common expense fees, local improvement rates and charges, water and assessment rates and other utilities. An adjustment shall also be made for prepaid rents and other amounts paid by the Tenants under the Leases and any security deposit given by the Tenants under the Leases, to the extent actually received by and in the possession or control of the Receiver.

(2) Rent Receivables. Any amounts due and owing but unpaid on the Closing Date by any Tenant for rent or any other amounts under their Leases that relate to any calendar month preceding the month in which the Closing Date falls (the "**Rent Receivables**") shall remain the property of the Vendor on Closing and there shall be no adjustment in favour of the Vendor on the statement of adjustments for such amounts. All current rent amounts for the calendar month

in which the Closing Date falls that have been collected by the Vendor before the Closing Date shall be adjusted in favour of the Purchaser as to its pro rata share on the statement of adjustments, but current rent amounts for the calendar month in which the Closing Date falls that have not been collected by the Vendor shall be adjusted in favour of the Vendor and shall become the property of the Purchaser. After the Closing Date, if the Vendor receives any current rent amounts for the calendar month in which the Closing Date falls, it shall promptly pay such amounts over to the Purchaser. After the Closing Date, the Purchaser shall use reasonable efforts to assist the Vendor in recovering the Rent Receivables (but shall not be required to apply current rent payments to the Rent Receivables or to terminate Leases or exercise rights of distress or to expend any monies with respect thereto), and the Vendor shall continue to have the right after Closing to recover by way of action from the Tenants any of the Rent Receivables. Any amount of rent received by the Purchaser after Closing from a Tenant that owes Rent Receivables to the Vendor shall be credited, first, to current month's rent, second, to any arrears of rent owing to the Purchaser accruing from and after the Closing Date, and third, to the Rent Receivables.

(3) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than two (2) Business Days prior to the Closing Date.

(4) Day of Closing. The Purchaser shall pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.6 Re-adjustment. If the final cost or amount of an item which is to be adjusted cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the parties, acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and, within ten (10) days thereafter, the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments shall be requested in writing in a detailed manner on or before the date that is ninety (90) days after the Closing Date, after which time neither party shall have any right to request re-adjustments.

ARTICLE 3
COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor. The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date:

- (a) Authority. The Receiver is the Court-appointed receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape as described in the Order and, subject to the Vendor obtaining the Approval and Vesting Order, has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) Residence. Neither the Vendor nor the Receiver is a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

3.2 Representations of the Purchaser. The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and subsisting under the laws of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action; and
- (c) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date and the Purchaser shall execute a form of HST undertaking and indemnity in form and substance satisfactory to the Vendor.

3.3 No Survival of Representations. The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of ninety (90) days following the Closing Date. No claim for any breach of such covenant, representation or warranty may be made by either party hereto after such ninety (90) day period.

3.4 As Is, Where Is. The Purchaser shall accept the Purchased Assets on Closing on an entirely "as is, where is" basis as it exists as of the Closing Date without regard to the state of repair, condition, use or occupation of the Property, location of fences, wires, lines, underground wells, pipes or conduits, in, on or outside of the Property, if any, including, without limitation, any special assessments, deficiencies in the reserve fund, liabilities, Claims or contingent liabilities as

may disclosed in status certificates issued in respect of the Property; the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Property; the Purchased Asset's compliance with any Applicable Laws; the size, dimension, or topography of the Property; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Property or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent). The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor with respect to the condition thereof. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including, without limitation, any representation or warranty, express or implied, with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with Applicable Laws, fitness for any particular purpose) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. Without limiting the foregoing, the Purchaser hereby releases the Vendor with respect to any Claims the Purchaser may have arising out of or in respect of the condition (including, without limitation, the environmental condition) of the Property. The provisions of this Section 3.4 shall survive the Closing of the transactions contemplated by this Agreement.

3.5 Disclosure and Marketing Materials

The Purchaser acknowledges and agrees that: (i) any information, documents and other materials, including, without limitation, the confidential information memorandum or other marketing materials prepared in respect of the Property (collectively the "**Disclosure Materials**"), made available or to be made available by the Vendor, the Agent or otherwise in connection with the sale of the Purchased Assets has been prepared and provided solely for the convenience of prospective purchasers; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Disclosure Materials; and (iii) the Purchaser is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Disclosure Materials the Purchaser hereby releases the Vendor from any and all claims it now has, or may in the future have, in that regard.

ARTICLE 4 CONDITIONS

41 Conditions of the Vendor. The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Approval and Vesting Order. The Vendor shall have obtained the Approval and Vesting Order.

42 Conditions of the Purchaser. The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Property, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Purchased Assets);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;

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

43 Satisfaction of Conditions. Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control.

44 Waiver of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement, other than the condition contained in Section 4.1(d), in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement are not satisfied or waived on or prior to the Closing Date, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions

set out in Sections 4.2(b), 4.2(c) and 4.2(d) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

45 Not Conditions Precedent. The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.

46 Planning Act. This Agreement shall be effective to create an interest in the Property only if the provisions of the *Planning Act* (Ontario) are complied with.

47 Title. The Purchaser shall have until the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity. The Purchaser agrees that, on Closing, it shall: (i) accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Permitted Encumbrances, whether or not such Permitted Encumbrances have been complied with; and (ii) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances. The Purchaser shall have until Closing to requisition any title registrations that occur subsequent to the Due Diligence Date and prior to Closing.

48 Court Matters.

(1) Application for Approval and Vesting Order. The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible following waiver or satisfaction of the condition contained in Section 4.2(a) of this Agreement. The Vendor shall advise the Purchaser prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order.

(2) Assistance by Purchaser. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order.

(3) Outside Date. This Agreement may be terminated by the Vendor or the Purchaser if the Approval and Vesting Order is not obtained by one hundred and twenty (120) days after the waiver of the Purchaser's condition set out in Section 4.2(a) herein.

ARTICLE 5 INTERIM PERIOD

5.1 Delivery of Documents. The Vendor shall deliver copies of the Leases and the Contracts to the Purchaser within five (5) Business Days following the date of this Agreement and from time to time as any Leases or Contracts shall come into the possession of the Vendor during the Interim Period.

5.2 Access by Purchaser. During the Interim Period, subject to the rights of any Tenant, the Vendor shall allow the Purchaser, its representatives and advisors to have access to the Property on reasonable prior Notice to the Vendor to allow the Purchaser to carry out such non-invasive tests and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections. The Purchaser hereby indemnifies the Vendor from any Claims arising from or relating to the access to the Property and/or interference with any Tenant's usage of the Property or any loss or liability arising from such interference as a result of the Purchaser's access granted in this Section 5.2 and, notwithstanding anything to the contrary contained in this Agreement, the Vendor shall have recourse to the Deposit to secure this indemnity.

5.3 Governmental Authorities. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or the Purchaser's Solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Purchased Assets. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities and the Vendor specifically does not authorize any such inspection.

5.4 Confidentiality. The Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.4); (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

5.5 Risk.

- (a) General. The Purchased Assets shall be at the risk of the Vendor until completion of the transactions contemplated by this Agreement. If any loss or damage to the Purchased Assets or any part thereof occurs on or before the Closing Date, the Vendor shall promptly deliver a Notice (the "**Notice of Loss**") to the Purchaser specifying the nature and extent of the loss or damage.

- (b) Damage Not Permitting Termination. If the extent of all losses and damage to the Purchased Assets will not cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser shall have no right to terminate this Agreement pursuant to this Section 5.5 and the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds.
- (c) Damage Permitting Termination. If the extent of all losses and damage to the Purchased Assets will cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser may, on or before the second (2nd) Business Day following delivery of the Notice of Loss, at its option, by Notice to the Vendor elect to terminate this Agreement and the Deposit shall be returned to the Purchaser. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds. In addition, the Purchase Price shall be reduced by the amount of the deductible under the Vendor's insurance coverage, if the Vendor has not already paid the deductible.

5.6 Leasing. The Vendor shall not enter into any new Leases of the Property, renew or extend the term of any existing Leases or amend or accept a surrender of any of the Leases after the Due Diligence Date without the prior written approval of the Purchaser, which approval may be unreasonably withheld or delayed. If the Purchaser approves of any new Leases or any renewal or extension of the term of any existing Leases or any amendment or surrender of any Lease, the Purchaser shall be responsible for and shall indemnify and hold the Vendor harmless from and against any and all leasing commissions, tenant inducements, tenant allowances, landlord's work, free rent and other landlord obligations thereunder and, to the extent that any amount relating to the foregoing has been paid for and incurred by the Vendor prior to Closing, the Vendor shall receive an adjustment for same on Closing.

5.7 Assumed Contracts. On or before the Due Diligence Date, the Purchaser shall advise the Vendor in writing of which Contracts, if any, the Purchaser wishes to assume on Closing. The Assumed Contracts, together with the Required Contracts, shall be assigned to the Purchaser pursuant to the Assignment and Assumption of Contracts. All other Contracts shall be terminated by the Vendor on or before the Closing Date, at the Vendor's expense.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Electronic Registration. The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Ontario, and are hereby authorized by the parties hereto to enter the most recent

form of document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's Solicitors and the Purchaser's Solicitors may agree, acting reasonably (the "**DRA**"), establishing the procedures and timing for completing the transactions contemplated by this Agreement, which DRA shall be exchanged between the Vendor's Solicitors and the Purchaser's Solicitors prior to the Closing Date. The delivery and exchange of all Closing Documents and other deliverables hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents or other deliverables will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA. Notwithstanding Section 4 of the Joint LSUC-CBAO form of DRA, the release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed.

6.2 Documents of the Vendor. The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date:

- (a) Approval and Vesting Order. A copy of the Approval and Vesting Order for the Property pursuant to the provisions of the Approval and Vesting Order including the Receiver's certificate to vest the Property in the name of the Purchaser;
- (b) Certificate of the Vendor. A certificate of the Vendor certifying that each of the Persons comprising the Vendor are not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Vendor;
- (d) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Vendor;
- (e) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor; and
- (f) Keys. All keys and entry devices with respect to the Property and the combinations to any locks, if applicable.

6.3 Documents of the Purchaser. The Purchaser shall deliver to the Vendor the following documents on the Closing Date:

- (a) Balance of the Purchase Price. A wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b) of this Agreement;

- (b) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Purchaser;
- (c) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (d) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and
- (e) HST. The undertaking and indemnity described in Section 6.4(2) of this Agreement, duly executed by the Purchaser.

6.4 Taxes and Fees.

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with registration of the Approval and Vesting Order. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, or will on the Closing Date be, registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada);
- (b) the Purchaser shall be liable for, shall self-assess and, if applicable, remit directly to the Receiver General of Canada, all harmonized sales tax that is payable under the *Excise Tax Act* (Canada) in connection with the purchase of the Property; and
- (c) the representations and warranties contained in this Section 6.4(2) shall survive the Closing and be embodied in an undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing pursuant to which undertaking and indemnity the Purchaser confirms the Purchaser's HST registration number, undertakes to self-assess and, if applicable, remit all HST that is payable in respect of the purchase of the Property and agrees to indemnify the Vendor in respect of all applicable HST.

ARTICLE 7 MISCELLANEOUS

71 Tender. Unless expressly stated otherwise in this Agreement, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.

72 Relationship of the Parties. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

73 Notices.

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by electronic mail to the parties at the applicable address set forth below

(a) in the case of the Vendor addressed to it at:

msi Spergel Inc.
21 King Street West
Suite 1602
Hamilton, Ontario
L8P 4W7

Attention: Trevor Pringle
Email: tpringle@spergel.ca

and to:

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

Attention: Ian Kady
Email: ikady@foglers.com

(b) in the case of the Purchaser addressed to it at:

Centre for Indigenous Theatre
180 Shaw Street, Units 208 & 209
Toronto, ON
M6J 2W5

Attention: Michelle Williams
Email: managingdirector@indigenoustheatre.com

and to:

Harris, Sheaffer LLP
4881 Yonge Street, 8th Floor
Toronto, ON
M2N 5X3

Attention: Robert D. Sheaffer
Email: rsheaffer@harris-sheaffer.com

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

74 Dispute Resolution. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

76 Assignment. This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be granted or withheld in the sole, absolute and unfettered discretion of the Vendor.

77 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

78 No Registration of Agreement. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement against title to the Property.

79 Planning Act. This Agreement and the transactions contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario) at the Purchaser's expense.

7.10 No personal Liability of Vendor. The Vendor is signing this Agreement in its capacity as Court appointed receiver and manager of the assets and undertaking of Toronto Artscape, and the Purchaser acknowledges and agrees that the Receiver, and its agents, directors, officers and employees, shall have no personal or corporate liability whatsoever under, as a result of or in connection with any obligations of Toronto Artscape (and anyone for whom it is in law responsible) under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against Toronto Artscape's assets.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward

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to the other party an original of the executed copy of this Agreement which was so electronically communicated. **180**

7.12 Irrevocable Period. This Offer shall be open for acceptance by the Purchaser until 5:00 p.m. EDT on the 8th day of October, 2024.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement.

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability

By: 
Name: Trevor Pringle
Title: Partner

By: _____
Name:
Title:

I/We have authority to bind the corporation

CENTRE FOR INDIGENOUS THEATRE

Signed by:
By: 
Name: Celia Phillips
Title: Authorized Signing Officer

By: _____
Name:
Title:

I/We have authority to bind the corporation

SCHEDULE "A"

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PROPERTY

9.	76397-0018	UNIT 8, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO
10.	76397-0019	UNIT 9, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****General**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property.
3. Encumbrances respecting minor encroachments by the Property over neighbouring lands or by improvements on neighbouring lands and/or permitted under agreements with the owners of such other lands.
4. Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property for the purposes for which it is presently used.
5. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
6. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
7. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
8. Any unregistered easements, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
9. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
10. The Leases.
11. Save and except for a registration that constitutes a lien, any registration made by the condominium corporation at the Property.

Specific

- A. Instrument No. AT2570223 registered December 6, 2010, by the City of Toronto is Notice of an agreement between the Toronto District School Board, the City of Toronto, and Toronto Artscape Inc. relating to the assumption of various obligations by Toronto Artscape Inc. from the Toronto District School Board in favour of the City of Toronto.
- B. Instrument No. AT2579857 registered December 6, 2010, by Toronto Artscape Inc. is a Limiting Distance Agreement between Toronto Artscape Inc., Toronto District School

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Board and the City of Toronto whereby the Toronto District School Board has agreed that no building, addition or other structure will be constructed within the Limiting Distance Area, as such term is defined therein, within the lands owned by the Toronto District School Board.





- C. Instrument No. AT3012728 registered May 10, 2012, by Toronto Artscape Inc. is a Notice of an "Imagination, Manufacturing, Innovation and Technology Tax Increment Equivalent Grant Agreement" between Toronto Artscape Inc. and the City of Toronto.
- D. Instrument No. TCP2397 registered on August 11, 2014, is the Standard Condominium Plan.
- E. Instrument No. AT3657726 registered August 11, 2014, is the condominium declaration whereby Toronto Standard Condominium Corporation No. 2397 was created.
- F. Instrument No. AT3688673 registered September 15, 2014, is the By-law No. 1 of Toronto Standard Condominium Corporation No. 2397.
- G. Instrument No. AT3688674 registered September 15, 2014, is the By-law No. 2 of Toronto Standard Condominium Corporation No. 2397.
- H. Instrument No. AT4137121 registered February 3, 2016, by Toronto Artscape Inc. is notice of the City of Toronto Imagination, Manufacturing, Innovation and Technology, Financial Incentive Amending Agreement whereby the City of Toronto and the Owner have amended a financial incentives agreement in which the City of Toronto has provided Toronto Artscape Inc. with certain financial incentives and development grants.
- I. Instrument No. AT5546921 registered on October 15, 2020, is a Charge/Mortgage securing the principal amount of \$2,215,000.00 granted by Toronto Artscape Inc. in favour of Community Fund Forward Assistance Corp./Fond De Progress Communautaire Societe De Gestion. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- J. Instrument No. AT5729198 registered on May 6, 2021, is a Charge/Mortgage securing the principal amount of \$5,700,000.00 granted by Toronto Artscape Inc. in favour of FirstOntario Credit Union Limited. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- K. Instrument No. AT5756573 registered June 3, 2021, is the By-law No. 3 of Toronto Standard Condominium Corporation No. 2397.
- L. Instrument No. AT6496748 is an Application for Court Order from the Ontario Superior Court of Justice whereby MSI Spergel Inc. was appointed the receiver for Toronto Artscape Inc. *Note: to be vested off pursuant to the Approval and Vesting Order.*

SCHEDULE "C"

REQUIRED CONTRACTS

Title	180 Shaw APS - Centre for Indigenous Theatre - updated
File name	EXECUTION_-_Form_...ents___Centre.pdf
Document ID	1736cdf56dcbf331400be31b382865536eb78a17
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History

 SENT	10 / 02 / 2024 09:56:42 UTC-4	Sent for signature to Trevor Pringle (tpringle@spergel.ca) from hamiltonsign@spergel.ca IP: 104.171.204.20
 VIEWED	10 / 02 / 2024 09:57:07 UTC-4	Viewed by Trevor Pringle (tpringle@spergel.ca) IP: 216.194.82.68
 SIGNED	10 / 02 / 2024 09:57:20 UTC-4	Signed by Trevor Pringle (tpringle@spergel.ca) IP: 104.171.204.20
 COMPLETED	10 / 02 / 2024 09:57:20 UTC-4	The document has been completed.

AGREEMENT OF PURCHASE AND SALE

Units 2 & 3, Level A

Toronto Standard Condominium Plan No. 2397
(located at 180 Shaw Street, Toronto, Ontario)

THIS AGREEMENT is dated as of the 8th day of October, 2024,

B E T W E E N:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

COLLEGE-MONTROSE CHILDREN'S PLACE

(the "**Purchaser**")

WHEREAS:

- A. Toronto Artscape is the registered owner of the Property.
- B. On January 11, 2024, the Court, in Court File No. CV-23-00711609-00CL, issued an order (the "**Order**") providing that, pursuant to Section 101 of the *Courts of Justice Act* (R.S.O.) and Section 243(1) of the *Bankruptcy and Insolvency Act* (R.S.C.), the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and remaining properties of Toronto Artscape as described in Schedule "A" of the Order; and
- C. Pursuant to the Order, the Vendor was granted powers to, among other things, market and sell the Property; and
- D. The Vendor has agreed, subject to obtaining the requisite approval of the Court, to sell all of Toronto Artscape's right, title and interest, if any, in and to the Purchased Assets and the Purchaser has agreed to purchase, acquire and assume all of Toronto Artscape's right title and interest, if any, in and to the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"Agent" means Avison Young Commercial Real Estate Services, LP.

"Agreement" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"Applicable Laws" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

"Approval and Vesting Order" means an order of the Court in a form acceptable to the Vendor and the Purchaser, each acting reasonably, pursuant to which title to the Purchased Assets will be vested in the name of the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

"Assignment and Assumption of Contracts" means an assignment by the Vendor and an assumption by the Purchaser of the Assumed Contracts, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assignment and Assumption of Leases" means an assignment by the Vendor and assumption by the Purchaser of all of the right, title and interest in the Leases of the Vendor and the benefit of all covenants, guarantees and indemnities thereunder, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assumed Contracts" means the Required Contracts and any of the other Contracts the Purchaser designates it wishes to assume on Closing by notice in writing delivered to the Vendor on or before the Due Diligence Date pursuant to Section 5.7 of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Claim" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"Closing" means the closing and consummation of the transactions contemplated by this Agreement, including, without limitation, the delivery of the Closing Documents on the Closing Date.

"Closing Date" means the date that is ten (10) Business Days following the date of issuance of the Approval and Vesting Order which in no event shall be prior to the Due Diligence Date.

"Closing Documents" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

"Court" means the Ontario Superior Court of Justice.

"Contracts" means any and all contracts and agreements relating to the Property to which the Vendor is a party or by which the Vendor is bound, in respect of the ownership, maintenance, repair, operation, cleaning and security of the Property in effect as at the date of this Agreement, if applicable, and all contracts and agreements relating to any equipment or other assets leased by the Vendor and located on or in the Property in effect as at the date of this Agreement, as well as those contracts and agreements entered into by the Vendor in the normal course of business after the date of this Agreement and prior to the Closing Date. For greater certainty, the Contracts shall include the Required Contracts and shall not include the Leases.

"Deposit" has the meaning given to it in Section 2.3(a) of this Agreement.

"Due Diligence Date" means the date that is thirty (30) days following the date of execution and delivery of this Agreement by both parties.

"Encumbrance" means any mortgage, lien, charge, or other financial encumbrance.

"Excluded Assets" means the following assets relating to the Property: (i) any refunds of realty taxes which relate to the period prior to Closing; (ii) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to Toronto Artscape; and (iii) the interest of Toronto Artscape in contracts of insurance, insurance policies (including director & officer insurance policies) and the full benefit of Toronto Artscape's rights under or in respect of the foregoing, including in and to any cash surrender value thereof.

"HST" means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada);

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Leases" means all agreements to lease, leases, renewals of lease and other rights (including licenses, concessions or occupancy agreements, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, the Vendor, and which entitle any Person to possess or occupy any space within the Property as of the date of this Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied to the date hereof.

"Notice" has the meaning set out in Section 7.3(1) of this Agreement.

"Permitted Encumbrances" means those Encumbrances listed in *Schedule "B"* attached hereto.

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"Property" means the property legally described in *Schedule "A"* attached hereto, together with all appurtenant interests thereto, all being located within the building municipally known as 180 Shaw Street, in the City of Toronto, Province of Ontario.

"Purchase Price" has the meaning set out in Section 2.2 of this Agreement.

"Purchased Assets" means, collectively: (i) the Property; (ii) the Vendor's interest in the Leases; (iii) the Vendor's interest in the Assumed Contracts; and (iv) the Permitted Encumbrances, but specifically excludes the Excluded Assets.

"Purchaser's Solicitors" means Harris, Sheaffer LLP.

"Re-adjustment Agreement" has the meaning set out in Section 2.6 of this Agreement.

"Receiver" means msi Spergel Inc., solely in its capacity as receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape, and not in its personal or corporate capacity and without personal or corporate liability.

"Required Contracts" means those Contracts listed in *Schedule "C"* attached hereto.

"Tenants" means all the tenants or occupants under the Leases.

"Vendor's Solicitors" means Fogler, Rubinoff LLP.

12 Extended Meanings. Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

13 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

15 Currency. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

16 Severability. If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

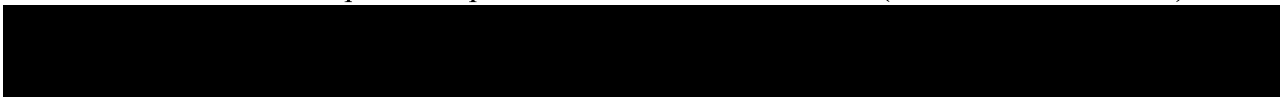
17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.

18 Time. Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

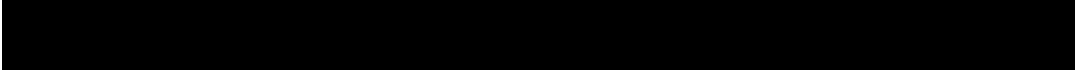
ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the conditions set out herein, including obtaining the requisite approval of the Court, the Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor's right, title and interest, if any, in and to the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume all of the Vendor's right, title and interest, if any, in and to the Purchased Assets from the Vendor, for the Purchase Price and otherwise on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall



2.3 Payment of Purchase Price. Subject to adjustment in accordance with Section 2.6 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) 
amount representing not less than ten percent (10%) of the Purchase Price (the "**Deposit**"), by wire transfer of immediately available funds to the Receiver, in trust, at the time of the submission of this offer; and
- (b) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor, or as it may direct in writing, on the Closing Date.

2.4 Deposit. The Deposit shall be held by the Receiver in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Receiver in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date on which the Deposit is received by the Receiver until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque forthwith following the Closing Date. If this Agreement is not completed other than by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed by reason of the default of the Purchaser, the Vendor shall be entitled to receive and retain the Deposit, together with all accrued interest thereon, without prejudice to other rights or damages available to the Vendor at law or in equity.

The parties agree that the Receiver shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Receiver shall be entitled to bring an application to Court to pay the Deposit and/or interest accrued thereon into Court.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for all current rents (but not rent in arrears) realty taxes, common expense fees, local improvement rates and charges, water and assessment rates and other utilities. An adjustment shall also be made for prepaid rents and other amounts paid by the Tenants under the Leases and any security deposit given by the Tenants under the Leases, to the extent actually received by and in the possession or control of the Receiver.

(2) Rent Receivables. Any amounts due and owing but unpaid on the Closing Date by any Tenant for rent or any other amounts under their Leases that relate to any calendar month preceding the month in which the Closing Date falls (the "**Rent Receivables**") shall remain the property of the Vendor on Closing and there shall be no adjustment in favour of the Vendor on the statement of adjustments for such amounts. All current rent amounts for the calendar month

in which the Closing Date falls that have been collected by the Vendor before the Closing Date shall be adjusted in favour of the Purchaser as to its pro rata share on the statement of adjustments, but current rent amounts for the calendar month in which the Closing Date falls that have not been collected by the Vendor shall be adjusted in favour of the Vendor and shall become the property of the Purchaser. After the Closing Date, if the Vendor receives any current rent amounts for the calendar month in which the Closing Date falls, it shall promptly pay such amounts over to the Purchaser. After the Closing Date, the Purchaser shall use reasonable efforts to assist the Vendor in recovering the Rent Receivables (but shall not be required to apply current rent payments to the Rent Receivables or to terminate Leases or exercise rights of distress or to expend any monies with respect thereto), and the Vendor shall continue to have the right after Closing to recover by way of action from the Tenants any of the Rent Receivables. Any amount of rent received by the Purchaser after Closing from a Tenant that owes Rent Receivables to the Vendor shall be credited, first, to current month's rent, second, to any arrears of rent owing to the Purchaser accruing from and after the Closing Date, and third, to the Rent Receivables.

(3) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than two (2) Business Days prior to the Closing Date.

(4) Day of Closing. The Purchaser shall pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.6 Re-adjustment. If the final cost or amount of an item which is to be adjusted cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the parties, acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and, within ten (10) days thereafter, the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments shall be requested in writing in a detailed manner on or before the date that is ninety (90) days after the Closing Date, after which time neither party shall have any right to request re-adjustments.

ARTICLE 3
COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor. The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date:

- (a) Authority. The Receiver is the Court-appointed receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape as described in the Order and, subject to the Vendor obtaining the Approval and Vesting Order, has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) Residence. Neither the Vendor nor the Receiver is a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

3.2 Representations of the Purchaser. The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and subsisting under the laws of Ontario and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action; and
- (c) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date and the Purchaser shall execute a form of HST undertaking and indemnity in form and substance satisfactory to the Vendor.

3.3 No Survival of Representations. The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of ninety (90) days following the Closing Date. No claim for any breach of such covenant, representation or warranty may be made by either party hereto after ninety (90) day period.

3.4 As Is, Where Is. The Purchaser shall accept the Purchased Assets on Closing on an entirely "as is, where is" basis as it exists as of the Closing Date without regard to the state of repair, condition, use or occupation of the Property, location of fences, wires, lines, underground wells, pipes or conduits, in, on or outside of the Property, if any, including, without limitation, any special assessments, deficiencies in the reserve fund, liabilities, Claims or contingent liabilities as

may disclosed in status certificates issued in respect of the Property; the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Property; the Purchased Asset's compliance with any Applicable Laws; the size, dimension, or topography of the Property; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Property or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent). The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor with respect to the condition thereof. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including, without limitation, any representation or warranty, express or implied, with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with Applicable Laws, fitness for any particular purpose) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. Without limiting the foregoing, the Purchaser hereby releases the Vendor with respect to any Claims the Purchaser may have arising out of or in respect of the condition (including, without limitation, the environmental condition) of the Property. The provisions of this Section 3.4 shall survive the Closing of the transactions contemplated by this Agreement.

35 Disclosure and Marketing Materials

The Purchaser acknowledges and agrees that: (i) any information, documents and other materials, including, without limitation, the confidential information memorandum or other marketing materials prepared in respect of the Property (collectively the "**Disclosure Materials**"), made available or to be made available by the Vendor, the Agent or otherwise in connection with the sale of the Purchased Assets has been prepared and provided solely for the convenience of prospective purchasers; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Disclosure Materials; and (iii) the Purchaser is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Disclosure Materials the Purchaser hereby releases the Vendor from any and all claims it now has, or may in the future have, in that regard.

ARTICLE 4 CONDITIONS

4.1 Conditions of the Vendor. The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Approval and Vesting Order. The Vendor shall have obtained the Approval and Vesting Order.

4.2 Conditions of the Purchaser. The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Property, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Purchased Assets);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;

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

4.3 Satisfaction of Conditions. Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control.

4.4 Waiver of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement, other than the condition contained in Section 4.1(d), in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement are not satisfied or waived on or prior to the Closing Date, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions

set out in Sections 4.2(b), 4.2(c) and 4.2(d) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

45 Not Conditions Precedent. The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.

46 Planning Act. This Agreement shall be effective to create an interest in the Property only if the provisions of the *Planning Act* (Ontario) are complied with.

47 Title. The Purchaser shall have until the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity. The Purchaser agrees that, on Closing, it shall: (i) accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Permitted Encumbrances, whether or not such Permitted Encumbrances have been complied with; and (ii) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances. The Purchaser shall have until Closing to requisition any title registrations that occur subsequent to the Due Diligence Date and prior to Closing.

48 Court Matters.

(1) Application for Approval and Vesting Order. The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible following waiver or satisfaction of the condition contained in Section 4.2(a) of this Agreement. The Vendor shall advise the Purchaser prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order.

(2) Assistance by Purchaser. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order.

(3) Outside Date. This Agreement may be terminated by the Vendor or the Purchaser if the Approval and Vesting Order is not obtained by one hundred and twenty (120) days after the waiver of the Purchaser's condition set out in Section 4.2(a) herein.

ARTICLE 5 INTERIM PERIOD

5.1 Delivery of Documents. The Vendor shall deliver copies of the Leases and the Contracts to the Purchaser within five (5) Business Days following the date of this Agreement and from time to time as any Leases or Contracts shall come into the possession of the Vendor during the Interim Period.

5.2 Access by Purchaser. During the Interim Period, subject to the rights of any Tenant, the Vendor shall allow the Purchaser, its representatives and advisors to have access to the Property on reasonable prior Notice to the Vendor to allow the Purchaser to carry out such non-invasive tests and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections. The Purchaser hereby indemnifies the Vendor from any Claims arising from or relating to the access to the Property and/or interference with any Tenant's usage of the Property or any loss or liability arising from such interference as a result of the Purchaser's access granted in this Section 5.2 and, notwithstanding anything to the contrary contained in this Agreement, the Vendor shall have recourse to the Deposit to secure this indemnity.

5.3 Governmental Authorities. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or the Purchaser's Solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Purchased Assets. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities and the Vendor specifically does not authorize any such inspection.

5.4 Confidentiality. The Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.4); (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

5.5 Risk.

- (a) General. The Purchased Assets shall be at the risk of the Vendor until completion of the transactions contemplated by this Agreement. If any loss or damage to the Purchased Assets or any part thereof occurs on or before the Closing Date, the Vendor shall promptly deliver a Notice (the "**Notice of Loss**") to the Purchaser specifying the nature and extent of the loss or damage.

- (b) Damage Not Permitting Termination. If the extent of all losses and damage to the Purchased Assets will not cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser shall have no right to terminate this Agreement pursuant to this Section 5.5 and the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds.
- (c) Damage Permitting Termination. If the extent of all losses and damage to the Purchased Assets will cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser may, on or before the second (2nd) Business Day following delivery of the Notice of Loss, at its option, by Notice to the Vendor elect to terminate this Agreement and the Deposit shall be returned to the Purchaser. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds. In addition, the Purchase Price shall be reduced by the amount of the deductible under the Vendor's insurance coverage, if the Vendor has not already paid the deductible.

5.6 Leasing. The Vendor shall not enter into any new Leases of the Property, renew or extend the term of any existing Leases or amend or accept a surrender of any of the Leases after the Due Diligence Date without the prior written approval of the Purchaser, which approval may be unreasonably withheld or delayed. If the Purchaser approves of any new Leases or any renewal or extension of the term of any existing Leases or any amendment or surrender of any Lease, the Purchaser shall be responsible for and shall indemnify and hold the Vendor harmless from and against any and all leasing commissions, tenant inducements, tenant allowances, landlord's work, free rent and other landlord obligations thereunder and, to the extent that any amount relating to the foregoing has been paid for and incurred by the Vendor prior to Closing, the Vendor shall receive an adjustment for same on Closing.

5.7 Assumed Contracts. On or before the Due Diligence Date, the Purchaser shall advise the Vendor in writing of which Contracts, if any, the Purchaser wishes to assume on Closing. The Assumed Contracts, together with the Required Contracts, shall be assigned to the Purchaser pursuant to the Assignment and Assumption of Contracts. All other Contracts shall be terminated by the Vendor on or before the Closing Date, at the Vendor's expense.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Electronic Registration. The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Ontario, and are hereby authorized by the parties hereto to enter the most recent

form of document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's Solicitors and the Purchaser's Solicitors may agree, acting reasonably (the "**DRA**"), establishing the procedures and timing for completing the transactions contemplated by this Agreement, which DRA shall be exchanged between the Vendor's Solicitors and the Purchaser's Solicitors prior to the Closing Date. The delivery and exchange of all Closing Documents and other deliverables hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents or other deliverables will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA. Notwithstanding Section 4 of the Joint LSUC-CBAO form of DRA, the release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed. 202

6.2 Documents of the Vendor. The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date:

- (a) Approval and Vesting Order. A copy of the Approval and Vesting Order for the Property pursuant to the provisions of the Approval and Vesting Order including the Receiver's certificate to vest the Property in the name of the Purchaser;
- (b) Certificate of the Vendor. A certificate of the Vendor certifying that each of the Persons comprising the Vendor are not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Vendor;
- (d) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Vendor;
- (e) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor; and
- (f) Keys. All keys and entry devices with respect to the Property and the combinations to any locks, if applicable.

6.3 Documents of the Purchaser. The Purchaser shall deliver to the Vendor the following documents on the Closing Date:

- (a) Balance of the Purchase Price. A wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b) of this Agreement;

- (b) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Purchaser;
- (c) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (d) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and
- (e) HST. The undertaking and indemnity described in Section 6.4(2) of this Agreement, duly executed by the Purchaser.

6.4 Taxes and Fees.

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with registration of the Approval and Vesting Order. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, or will on the Closing Date be, registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada);
- (b) the Purchaser shall be liable for, shall self-assess and, if applicable, remit directly to the Receiver General of Canada, all harmonized sales tax that is payable under the *Excise Tax Act* (Canada) in connection with the purchase of the Property; and
- (c) the representations and warranties contained in this Section 6.4(2) shall survive the Closing and be embodied in an undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing pursuant to which undertaking and indemnity the Purchaser confirms the Purchaser's HST registration number, undertakes to self-assess and, if applicable, remit all HST that is payable in respect of the purchase of the Property and agrees to indemnify the Vendor in respect of all applicable HST.

ARTICLE 7 MISCELLANEOUS

7.1 Tender. Unless expressly stated otherwise in this Agreement, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.

7.2 Relationship of the Parties. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

73 Notices.

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by electronic mail to the parties at the applicable address set forth below

(a) in the case of the Vendor addressed to it at:

msi Spergel Inc.
21 King Street West
Suite 1602
Hamilton, Ontario
L8P 4W7

Attention: Trevor Pringle
Email: tpringle@spergel.ca

and to:

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

Attention: Ian Kady
Email: ikady@foglers.com

(b) in the case of the Purchaser addressed to it at:

College-Montrose Children's Place
180 Shaw Street, Units LL2 & LL3
Toronto, ON
M6J 2W5

Attention: Corina John
Email: cjohn@cmcp.ca

and to:

Harris, Sheaffer LLP
4881 Yonge Street, 8th Floor
Toronto, ON
M2N 5X3

Attention: Robert D. Sheaffer
Email: rsheaffer@harris-sheaffer.com

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

74 Dispute Resolution. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

76 Assignment. This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be granted or withheld in the sole, absolute and unfettered discretion of the Vendor.

77 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

78 No Registration of Agreement. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement against title to the Property.

79 Planning Act. This Agreement and the transactions contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario) at the Purchaser's expense.

7.10 No personal Liability of Vendor. The Vendor is signing this Agreement in its capacity as Court appointed receiver and manager of the assets and undertaking of Toronto Artscape, and the Purchaser acknowledges and agrees that the Receiver, and its agents, directors, officers and employees, shall have no personal or corporate liability whatsoever under, as a result of or in connection with any obligations of Toronto Artscape (and anyone for whom it is in law responsible) under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against Toronto Artscape's assets.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward

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to the other party an original of the executed copy of this Agreement which was so electronically communicated. 206

7.12 Irrevocable Period. This Offer shall be open for acceptance by the Purchaser until 5:00 p.m. EDT on the 8th day of October, 2024.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement.

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability

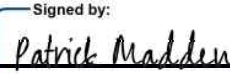
By: 
Name: Trevor Pringle
Title: Partner

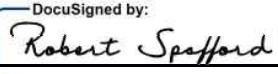
By: _____
Name:
Title:

I/We have authority to bind the corporation

COLLEGE-MONTROSE CHILDREN'S PLACE

DocuSigned by:
By: 
Name: Corina John
Title Authorized Signing Officer

Signed by:
By: 
Name: Patrick Madden
Title: Authorized Signing Officer

DocuSigned by:
By: 
Name: Robert Spafford
Title: Authorized Signing Officer

I/We have authority to bind the corporation

SCHEDULE "A"

208

PROPERTY

14.	76397-0044	UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO
15.	76397-0045	UNIT 3, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****General**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property.
3. Encumbrances respecting minor encroachments by the Property over neighbouring lands or by improvements on neighbouring lands and/or permitted under agreements with the owners of such other lands.
4. Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property for the purposes for which it is presently used.
5. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
6. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
7. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
8. Any unregistered easements, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
9. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
10. The Leases.
11. Save and except for a registration that constitutes a lien, any registration made by the condominium corporation at the Property.

Specific

- A. Instrument No. AT2570223 registered December 6, 2010, by the City of Toronto is Notice of an agreement between the Toronto District School Board, the City of Toronto, and Toronto Artscape Inc. relating to the assumption of various obligations by Toronto Artscape Inc. from the Toronto District School Board in favour of the City of Toronto.
- B. Instrument No. AT2579857 registered December 6, 2010, by Toronto Artscape Inc. is a Limiting Distance Agreement between Toronto Artscape Inc., Toronto District School

12609910.2

Board and the City of Toronto whereby the Toronto District School Board has agreed that no building, addition or other structure will be constructed within the Limiting Distance Area, as such term is defined therein, within the lands owned by the Toronto District School Board.

- C. Instrument No. AT3012728 registered May 10, 2012, by Toronto Artscape Inc. is a Notice of an "Imagination, Manufacturing, Innovation and Technology Tax Increment Equivalent Grant Agreement" between Toronto Artscape Inc. and the City of Toronto.
- D. Instrument No. TCP2397 registered on August 11, 2014, is the Standard Condominium Plan.
- E. Instrument No. AT3657726 registered August 11, 2014, is the condominium declaration whereby Toronto Standard Condominium Corporation No. 2397 was created.
- F. Instrument No. AT3688673 registered September 15, 2014, is the By-law No. 1 of Toronto Standard Condominium Corporation No. 2397.
- G. Instrument No. AT3688674 registered September 15, 2014, is the By-law No. 2 of Toronto Standard Condominium Corporation No. 2397.
- H. Instrument No. AT4137121 registered February 3, 2016, by Toronto Artscape Inc. is notice of the City of Toronto Imagination, Manufacturing, Innovation and Technology, Financial Incentive Amending Agreement whereby the City of Toronto and the Owner have amended a financial incentives agreement in which the City of Toronto has provided Toronto Artscape Inc. with certain financial incentives and development grants.
- I. Instrument No. AT5546921 registered on October 15, 2020, is a Charge/Mortgage securing the principal amount of \$2,215,000.00 granted by Toronto Artscape Inc. in favour of Community Fund Forward Assistance Corp./Fond De Progress Communautaire Societe De Gestion. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- J. Instrument No. AT5729198 registered on May 6, 2021, is a Charge/Mortgage securing the principal amount of \$5,700,000.00 granted by Toronto Artscape Inc. in favour of FirstOntario Credit Union Limited. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- K. Instrument No. AT5756573 registered June 3, 2021, is the By-law No. 3 of Toronto Standard Condominium Corporation No. 2397.
- L. Instrument No. AT6496748 is an Application for Court Order from the Ontario Superior Court of Justice whereby MSI Spergel Inc. was appointed the receiver for Toronto Artscape Inc. *Note: to be vested off pursuant to the Approval and Vesting Order.*

SCHEDULE "C"

REQUIRED CONTRACTS

Title	180 Shaw APS - College Montrose Children's Place - Updated
File name	EXECUTION_-_Form_...ents___Colleg.pdf
Document ID	0c9df99f062fb23ec877fed2bcccc47e0b46ada1
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

10 / 02 / 2024
09:58:32 UTC-4

Sent for signature to Trevor Pringle (tpringle@spergel.ca)
from hamiltonsign@spergel.ca
IP: 104.171.204.20



VIEWED

10 / 02 / 2024
09:58:56 UTC-4

Viewed by Trevor Pringle (tpringle@spergel.ca)
IP: 161.123.83.242



SIGNED

10 / 02 / 2024
09:59:10 UTC-4

Signed by Trevor Pringle (tpringle@spergel.ca)
IP: 104.171.204.20



COMPLETED

10 / 02 / 2024
09:59:10 UTC-4

The document has been completed.

WAIVER & AMENDING AGREEMENT

This waiver and amending agreement is made effective November 15, 2024 (the "**Agreement**").

BETWEEN:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

INSPIRIT FOUNDATION

(the "**Purchaser**")

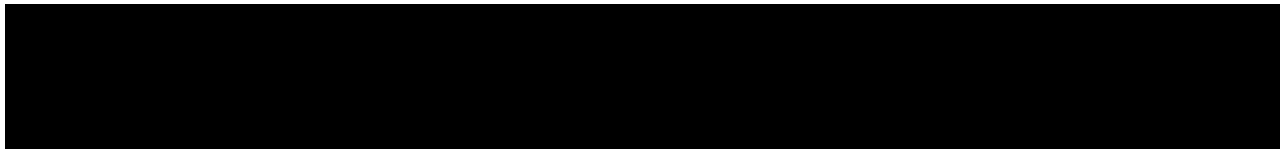
WHEREAS the Vendor and the Purchaser entered into an Agreement of Purchase and Sale for the real property described in Schedule "A" hereto (collectively the "**Property**") dated October 8th, 2024 as amended by email exchange between the parties' respective solicitors from time to time (the "**Purchase Agreement**");

AND WHEREAS the parties have agreed to amend the Purchase Agreement on the terms hereinafter set forth.

NOW THEREFORE THE PARTIES HERETO, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of them, the parties agree to the following amendments and additions with respect to the Purchase Agreement:

1) The Purchase Agreement is hereby amended by deleting the definition of "Closing Date" in Section 1.1 of the Purchase Agreement and replacing it with the following:

"Closing Date" means the date that is twenty-one (21) days following the date of issuance of the Approval and Vesting Order."



3) The Purchaser hereby waives the condition in its favour set out in Section 4.2(a) of the Purchase Agreement.

4) The terms and conditions of this Agreement shall become effective as of the date first written on page one hereof. **215**

5) The Purchase Agreement, as amended by this Agreement, is hereby ratified, and confirmed and is binding upon the parties hereto in accordance with its terms and, except as expressly provided in this Agreement, remains unamended and in full force and effect and time shall continue to be of the essence. The Purchase Agreement and this Agreement shall be read together and shall have effect as if the provisions of the Purchase Agreement and the provisions of this Agreement were contained in one agreement.


3) This Agreement may be executed by DocuSign or otherwise, and delivered originally, by facsimile, or by portable document format ("**PDF**") and each such original, facsimile copy of PDF copy when so executed and delivered shall be deemed to be an original.

4) This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.

[Signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the **216** day and year first above written.

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability

Per: DocuSigned by:

9E54088092F2462...

Name: Trevor Pringle

Title: Partner


I have authority to bind the Corporation

INSPIRIT FOUNDATION

Signed by:
By: 
1BE689A666E24B4...

Name: Sadia Zaman

Title: Authorized Signing Officer

Signed by:
By: 
53DCFEF034414CF...

Name: James Chan

Title: Authorized Signing Officer

I/We have authority to bind the corporation

SCHEDULE "A"

PROPERTY

2.	76397-0002	UNIT 2, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO
6.	76397-0007	UNIT 7, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO

AGREEMENT OF PURCHASE AND SALE

Units 2 & 7, Level 1

Toronto Standard Condominium Plan No. 2397
(located at 180 Shaw Street, Toronto, Ontario)

THIS AGREEMENT is dated as of the 8th day of October, 2024,

B E T W E E N:

msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape Inc. ("**Toronto Artscape**") and not in its personal or corporate capacity and without personal or corporate liability

(the "**Vendor**")

- and -

INSPIRIT FOUNDATION

(the "**Purchaser**")

WHEREAS:

- A. Toronto Artscape is the registered owner of the Property.
- B. On January 11, 2024, the Court, in Court File No. CV-23-00711609-00CL, issued an order (the "**Order**") providing that, pursuant to Section 101 of the *Courts of Justice Act* (R.S.O.) and Section 243(1) of the *Bankruptcy and Insolvency Act* (R.S.C.), the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings and remaining properties of Toronto Artscape as described in Schedule "A" of the Order; and
- C. Pursuant to the Order, the Vendor was granted powers to, among other things, market and sell the Property; and
- D. The Vendor has agreed, subject to obtaining the requisite approval of the Court, to sell all of Toronto Artscape's right, title and interest, if any, in and to the Purchased Assets and the Purchaser has agreed to purchase, acquire and assume all of Toronto Artscape's right title and interest, if any, in and to the Purchased Assets from the Vendor on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, the following terms shall have the meanings set out below unless the context otherwise requires:

"Agent" means Avison Young Commercial Real Estate Services, LP.

"Agreement" means this Agreement and the attached Schedules, as amended from time to time, and "Article", "Section" and "Schedule" mean the specified article, section or schedule, as the case may be, of this Agreement.

"Applicable Laws" means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matter.

"Approval and Vesting Order" means an order of the Court in a form acceptable to the Vendor and the Purchaser, each acting reasonably, pursuant to which title to the Purchased Assets will be vested in the name of the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

"Assignment and Assumption of Contracts" means an assignment by the Vendor and an assumption by the Purchaser of the Assumed Contracts, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assignment and Assumption of Leases" means an assignment by the Vendor and assumption by the Purchaser of all of the right, title and interest in the Leases of the Vendor and the benefit of all covenants, guarantees and indemnities thereunder, which assignment and assumption shall include the indemnity of the Purchaser with respect to any Claims arising from the Purchaser's failure to fulfill its obligations under such assignment and assumption, with such assignment and assumption to take effect on the Closing Date.

"Assumed Contracts" means the Required Contracts and any of the other Contracts the Purchaser designates it wishes to assume on Closing by notice in writing delivered to the Vendor on or before the Due Diligence Date pursuant to Section 5.7 of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Claim" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense including, without limitation, reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"Closing" means the closing and consummation of the transactions contemplated by this Agreement, including, without limitation, the delivery of the Closing Documents on the Closing Date.

"Closing Date" means the date that is ten (10) Business Days following the date of issuance of the Approval and Vesting Order which in no event shall be prior to November 28, 2024.

"Closing Documents" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to Section 6.2 of this Agreement and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to Section 6.3 of this Agreement.

"Court" means the Ontario Superior Court of Justice.

"Contracts" means any and all contracts and agreements relating to the Property to which the Vendor is a party or by which the Vendor is bound, in respect of the ownership, maintenance, repair, operation, cleaning and security of the Property in effect as at the date of this Agreement, if applicable, and all contracts and agreements relating to any equipment or other assets leased by the Vendor and located on or in the Property in effect as at the date of this Agreement, as well as those contracts and agreements entered into by the Vendor in the normal course of business after the date of this Agreement and prior to the Closing Date. For greater certainty, the Contracts shall include the Required Contracts and shall not include the Leases.

"Deposit" has the meaning given to it in Section 2.3(a) of this Agreement.

"Due Diligence Date" means the date that is thirty (30) days following the date of execution and delivery of this Agreement by both parties.

"Encumbrance" means any mortgage, lien, charge, or other financial encumbrance.

"Excluded Assets" means the following assets relating to the Property: (i) any refunds of realty taxes which relate to the period prior to Closing; (ii) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to Toronto Artscape; and (iii) the interest of Toronto Artscape in contracts of insurance, insurance policies (including director & officer insurance policies) and the full benefit of Toronto Artscape's rights under or in respect of the foregoing, including in and to any cash surrender value thereof.

"HST" means the harmonized sales tax payable pursuant to the provisions of the *Excise Tax Act* (Canada);

"Interim Period" means the period between the date of this Agreement and the Closing Date.

"Leases" means all agreements to lease, leases, renewals of lease and other rights (including licenses, concessions or occupancy agreements, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, the Vendor, and which entitle any Person to possess or occupy any space within the Property as of the date of this Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied to the date hereof.

"Notice" has the meaning set out in Section 7.3(1) of this Agreement.

"Permitted Encumbrances" means those Encumbrances listed in *Schedule "B"* attached hereto.

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

"Property" means the property legally described in *Schedule "A"* attached hereto, together with all appurtenant interests thereto, all being located within the building municipally known as 180 Shaw Street, in the City of Toronto, Province of Ontario.

"Purchase Price" has the meaning set out in Section 2.2 of this Agreement.

"Purchased Assets" means, collectively: (i) the Property; (ii) the Vendor's interest in the Leases; (iii) the Vendor's interest in the Assumed Contracts; and (iv) the Permitted Encumbrances, but specifically excludes the Excluded Assets.

"Purchaser's Solicitors" means Harris, Sheaffer LLP.

"Re-adjustment Agreement" has the meaning set out in Section 2.6 of this Agreement.

"Receiver" means msi Spergel Inc., solely in its capacity as receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape, and not in its personal or corporate capacity and without personal or corporate liability.

"Required Contracts" means those Contracts listed in *Schedule "C"* attached hereto.

"Tenants" means all the tenants or occupants under the Leases.

"Vendor's Solicitors" means Fogler, Rubinoff LLP.

12 Extended Meanings. Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

13 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.

15 Currency. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

16 Severability. If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.

18 Time. Time shall be of the essence in all respects of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors.

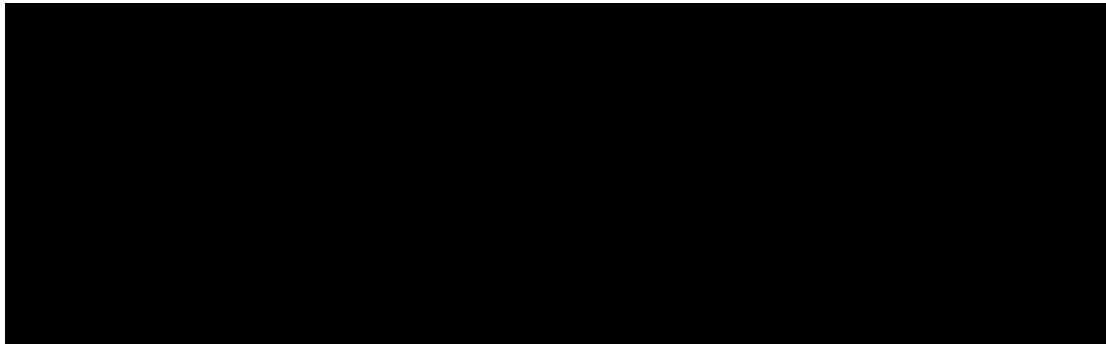
ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the conditions set out herein, including obtaining the requisite approval of the Court, the Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor's right, title and interest, if any, in and to the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume all of the Vendor's right, title and interest, if any, in and to the Purchased Assets from the Vendor, for the Purchase Price and otherwise on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price. The purchase price for the Purchased Assets (the "**Purchase Price**") shall

2.3 Payment of Purchase Price. Subject to adjustment in accordance with Section 2.6 of this Agreement, the Purchase Price shall be paid to the Vendor as follows:

(a)



(b)

(c) as to the balance of the Purchase Price, by wire transfer of immediately available funds payable to the Vendor, or as it may direct in writing, on the Closing Date.

2.4 Deposit. The Deposit shall be held by the Receiver in trust as a deposit and invested in accordance with the following provisions pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. The Deposit shall be invested by the Receiver in an interest-bearing account or term deposit or guaranteed investment certificate with a Schedule I Canadian chartered bank. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date on which the Deposit is received by the Receiver until the Closing Date or other termination of this Agreement. The interest on the Deposit accrued or accruing to the Closing Date shall be paid to the Purchaser by cheque forthwith following the Closing Date. If this Agreement is not completed other than by reason of the default of the Purchaser, the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser forthwith without deduction. If this Agreement is not completed by reason of the default of the Purchaser, the Vendor shall be entitled to receive and retain the Deposit, together with all accrued interest thereon, without prejudice to other rights or damages available to the Vendor at law or in equity.

The parties agree that the Receiver shall be a mere stakeholder with respect to the Deposit and all interest accrued thereon, and if a dispute arises between the Vendor and the Purchaser regarding the manner in which the Deposit and/or interest accrued thereon is to be disbursed, the Receiver shall be entitled to bring an application to Court to pay the Deposit and/or interest accrued thereon into Court.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for all current rents (but not rent in arrears) realty taxes, common expense fees, local improvement rates and charges, water and assessment rates and other utilities. An adjustment shall also be made for prepaid rents and other amounts paid by the Tenants under the Leases and any security deposit given by the Tenants under the Leases, to the extent actually received by and in the possession or control of the Receiver.

(2) Rent Receivables. Any amounts due and owing but unpaid on the Closing Date by any Tenant for rent or any other amounts under their Leases that relate to any calendar month

preceding the month in which the Closing Date falls (the "**Rent Receivables**") shall remain the property of the Vendor on Closing and there shall be no adjustment in favour of the Vendor on the statement of adjustments for such amounts. All current rent amounts for the calendar month in which the Closing Date falls that have been collected by the Vendor before the Closing Date shall be adjusted in favour of the Purchaser as to its pro rata share on the statement of adjustments, but current rent amounts for the calendar month in which the Closing Date falls that have not been collected by the Vendor shall be adjusted in favour of the Vendor and shall become the property of the Purchaser. After the Closing Date, if the Vendor receives any current rent amounts for the calendar month in which the Closing Date falls, it shall promptly pay such amounts over to the Purchaser. After the Closing Date, the Purchaser shall use reasonable efforts to assist the Vendor in recovering the Rent Receivables (but shall not be required to apply current rent payments to the Rent Receivables or to terminate Leases or exercise rights of distress or to expend any monies with respect thereto), and the Vendor shall continue to have the right after Closing to recover by way of action from the Tenants any of the Rent Receivables. Any amount of rent received by the Purchaser after Closing from a Tenant that owes Rent Receivables to the Vendor shall be credited, first, to current month's rent, second, to any arrears of rent owing to the Purchaser accruing from and after the Closing Date, and third, to the Rent Receivables.

(3) Statement of Adjustments. A draft statement of adjustments shall be delivered to the Purchaser by the Vendor not less than two (2) Business Days prior to the Closing Date.

(4) Day of Closing. The Purchaser shall pay all expenses in respect of the Purchased Assets for the day of Closing itself.

(5) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.6 Re-adjustment. If the final cost or amount of an item which is to be adjusted cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the parties, acting reasonably, as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and, within ten (10) days thereafter, the parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. The parties shall enter into a re-adjustment agreement (the "**Re-adjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this Section 2.6 and for the re-adjustment of any errors, omissions or changes in the statement of adjustments delivered on the Closing Date. All re-adjustments shall be requested in writing in a detailed manner on or before the date that is ninety (90) days after the Closing Date, after which time neither party shall have any right to request re-adjustments.

ARTICLE 3
COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor. The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date:

- (a) Authority. The Receiver is the Court-appointed receiver and manager of the assets, undertakings and remaining properties of Toronto Artscape as described in the Order and, subject to the Vendor obtaining the Approval and Vesting Order, has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- (b) Residence. Neither the Vendor nor the Receiver is a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

3.2 Representations of the Purchaser. The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date:

- (a) Corporate Status. The Purchaser is a corporation duly incorporated and subsisting under the laws of Canada and has all necessary corporate power, authority and capacity to enter this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) Authorization. The Purchaser's execution and delivery of this Agreement and all other agreements contemplated by this Agreement, and its consummation of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action; and
- (c) HST. The Purchaser will, on Closing, be an HST registrant under the *Excise Tax Act* (Canada) and be the sole "recipient" of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date and the Purchaser shall execute a form of HST undertaking and indemnity in form and substance satisfactory to the Vendor.

3.3 No Survival of Representations. The covenants, representations and warranties contained in Sections 3.1 and 3.2 of this Agreement shall not merge on Closing but will continue in full force and effect for the benefit of the party entitled thereto for a period of ninety (90) days following the Closing Date. No claim for any breach of such covenant, representation or warranty may be made by either party hereto after such ninety (90) day period.

3.4 As Is, Where Is. The Purchaser shall accept the Purchased Assets on Closing on an entirely "as is, where is" basis as it exists as of the Closing Date without regard to the state of repair, condition, use or occupation of the Property, location of fences, wires, lines, underground wells, pipes or conduits, in, on or outside of the Property, if any, including, without limitation, any special assessments, deficiencies in the reserve fund, liabilities, Claims or contingent liabilities as

may disclosed in status certificates issued in respect of the Property; the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Property; the Purchased Asset's compliance with any Applicable Laws; the size, dimension, or topography of the Property; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Property or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent). The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor with respect to the condition thereof. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including, without limitation, any representation or warranty, express or implied, with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with Applicable Laws, fitness for any particular purpose) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. Without limiting the foregoing, the Purchaser hereby releases the Vendor with respect to any Claims the Purchaser may have arising out of or in respect of the condition (including, without limitation, the environmental condition) of the Property. The provisions of this Section 3.4 shall survive the Closing of the transactions contemplated by this Agreement.

35 Disclosure and Marketing Materials

The Purchaser acknowledges and agrees that: (i) any information, documents and other materials, including, without limitation, the confidential information memorandum or other marketing materials prepared in respect of the Property (collectively the "**Disclosure Materials**"), made available or to be made available by the Vendor, the Agent or otherwise in connection with the sale of the Purchased Assets has been prepared and provided solely for the convenience of prospective purchasers; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Disclosure Materials; and (iii) the Purchaser is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Disclosure Materials the Purchaser hereby releases the Vendor from any and all claims it now has, or may in the future have, in that regard.

ARTICLE 4 CONDITIONS

4.1 Conditions of the Vendor. The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date, which conditions are for the sole benefit of the Vendor:

- (a) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (b) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to the provisions of this Agreement shall have been so executed and delivered;
- (c) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (d) Approval and Vesting Order. The Vendor shall have obtained the Approval and Vesting Order.

4.2 Conditions of the Purchaser. The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Toronto time) on the Due Diligence Date, the Purchaser shall have determined, in its sole and absolute discretion, to proceed with the transactions contemplated by this Agreement (and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Property, the Permitted Encumbrances, zoning and any other matters of interest to the Purchaser with respect to the Purchased Assets);
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 of this Agreement shall be true and accurate with the same effect as if made on and as of the Closing Date;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered;

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

43 Satisfaction of Conditions. Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 of this Agreement that are within its reasonable control.

44 Waiver of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever, each party shall be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction.

(2) Conditions for the Benefit of the Vendor. If any of the conditions set out in Section 4.1 of this Agreement are not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect whatsoever, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 of this Agreement, other than the condition contained in Section 4.1(d), in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 of this Agreement in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement are not satisfied or waived on or prior to the Closing Date, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date, in which event this Agreement shall be null and void and of no further force or effect and the Purchaser shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction. However, the Purchaser may waive compliance with any of the conditions

set out in Sections 4.2(b), 4.2(c) and 4.2(d) of this Agreement in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) of this Agreement in whole or in part.

(4) Closing Conditions. All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

4.5 Not Conditions Precedent. The conditions set out in Sections 4.1 and 4.2 of this Agreement are conditions to the obligations of the parties hereto and are not conditions precedent to the existence or enforceability of this Agreement.

4.6 Planning Act. This Agreement shall be effective to create an interest in the Property only if the provisions of the *Planning Act* (Ontario) are complied with.

4.7 Title. The Purchaser shall have until the Due Diligence Date to investigate title to the Property at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be null and void and of no further force or effect and the Deposit, together with all interest accrued thereon, if any, shall be returned to the Purchaser forthwith without deduction, and the Vendor shall have no further rights against the Purchaser in respect of the matters set out in this Agreement, whether arising under this Agreement or at law or in equity. The Purchaser agrees that, on Closing, it shall: (i) accept title to the Purchased Assets pursuant to the Approval and Vesting Order and subject to the Permitted Encumbrances, whether or not such Permitted Encumbrances have been complied with; and (ii) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances. The Purchaser shall have until Closing to requisition any title registrations that occur subsequent to the Due Diligence Date and prior to Closing.

4.8 Court Matters.

(1) Application for Approval and Vesting Order. The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible following waiver or satisfaction of the condition contained in Section 4.2(a) of this Agreement. The Vendor shall advise the Purchaser prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order.

(2) Assistance by Purchaser. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval and Vesting Order.

(3) Outside Date. This Agreement may be terminated by the Vendor or the Purchaser if the Approval and Vesting Order is not obtained by one hundred and twenty (120) days after the waiver of the Purchaser's condition set out in Section 4.2(a) herein.

ARTICLE 5 INTERIM PERIOD

5.1 Delivery of Documents. The Vendor shall deliver copies of the Leases and the Contracts to the Purchaser within five (5) Business Days following the date of this Agreement and from time to time as any Leases or Contracts shall come into the possession of the Vendor during the Interim Period.

5.2 Access by Purchaser. During the Interim Period, subject to the rights of any Tenant, the Vendor shall allow the Purchaser, its representatives and advisors to have access to the Property on reasonable prior Notice to the Vendor to allow the Purchaser to carry out such non-invasive tests and inspections of the Property as the Purchaser, its representatives or advisors may deem necessary. The Purchaser shall promptly repair, at its sole cost and expense, any damage to the Property caused by such tests and inspections. The Purchaser hereby indemnifies the Vendor from any Claims arising from or relating to the access to the Property and/or interference with any Tenant's usage of the Property or any loss or liability arising from such interference as a result of the Purchaser's access granted in this Section 5.2 and, notwithstanding anything to the contrary contained in this Agreement, the Vendor shall have recourse to the Deposit to secure this indemnity.

5.3 Governmental Authorities. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or the Purchaser's Solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Purchased Assets. The Purchaser shall not request any inspections of the Property by or on behalf of governmental authorities and the Vendor specifically does not authorize any such inspection.

5.4 Confidentiality. The Purchaser, its representatives and advisors shall keep in strict confidence, and shall not disclose, any information obtained with respect to the Purchased Assets pursuant to this Agreement until such time as the transactions contemplated by this Agreement are completed. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, bankers and solicitors (provided such directors, shareholders, advisors, bankers and solicitors are also bound by the provisions of this Section 5.4); (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if such disclosure is required by Applicable Laws.

5.5 Risk.

- (a) General. The Purchased Assets shall be at the risk of the Vendor until completion of the transactions contemplated by this Agreement. If any loss or damage to the Purchased Assets or any part thereof occurs on or before the Closing Date, the Vendor shall promptly deliver a Notice (the "**Notice of Loss**") to the Purchaser specifying the nature and extent of the loss or damage.

- (b) Damage Not Permitting Termination. If the extent of all losses and damage to the Purchased Assets will not cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser shall have no right to terminate this Agreement pursuant to this Section 5.5 and the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds.
- (c) Damage Permitting Termination. If the extent of all losses and damage to the Purchased Assets will cost in excess of twenty percent (20%) of the Purchase Price to repair, the Purchaser may, on or before the second (2nd) Business Day following delivery of the Notice of Loss, at its option, by Notice to the Vendor elect to terminate this Agreement and the Deposit shall be returned to the Purchaser. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date without any reduction of the Purchase Price, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (pursuant to the applicable insurance trust agreement in place for the condominium corporation) and the Vendor shall release its interest in any such insurance proceeds. In addition, the Purchase Price shall be reduced by the amount of the deductible under the Vendor's insurance coverage, if the Vendor has not already paid the deductible.

5.6 Leasing. The Vendor shall not enter into any new Leases of the Property, renew or extend the term of any existing Leases or amend or accept a surrender of any of the Leases after the Due Diligence Date without the prior written approval of the Purchaser, which approval may be unreasonably withheld or delayed. If the Purchaser approves of any new Leases or any renewal or extension of the term of any existing Leases or any amendment or surrender of any Lease, the Purchaser shall be responsible for and shall indemnify and hold the Vendor harmless from and against any and all leasing commissions, tenant inducements, tenant allowances, landlord's work, free rent and other landlord obligations thereunder and, to the extent that any amount relating to the foregoing has been paid for and incurred by the Vendor prior to Closing, the Vendor shall receive an adjustment for same on Closing.

5.7 Assumed Contracts. On or before the Due Diligence Date, the Purchaser shall advise the Vendor in writing of which Contracts, if any, the Purchaser wishes to assume on Closing. The Assumed Contracts, together with the Required Contracts, shall be assigned to the Purchaser pursuant to the Assignment and Assumption of Contracts. All other Contracts shall be terminated by the Vendor on or before the Closing Date, at the Vendor's expense.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Electronic Registration. The Purchaser's Solicitors and the Vendor's Solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Ontario, and are hereby authorized by the parties hereto to enter the most recent

form of document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's Solicitors and the Purchaser's Solicitors may agree, acting reasonably (the "**DRA**"), establishing the procedures and timing for completing the transactions contemplated by this Agreement, which DRA shall be exchanged between the Vendor's Solicitors and the Purchaser's Solicitors prior to the Closing Date. The delivery and exchange of all Closing Documents and other deliverables hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing Documents or other deliverables will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA. Notwithstanding Section 4 of the Joint LSUC-CBAO form of DRA, the release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed.

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6.2 Documents of the Vendor. The Vendor shall deliver to the Purchaser the following documents and other items on the Closing Date:

- (a) Approval and Vesting Order. A copy of the Approval and Vesting Order for the Property pursuant to the provisions of the Approval and Vesting Order including the Receiver's certificate to vest the Property in the name of the Purchaser;
- (b) Certificate of the Vendor. A certificate of the Vendor certifying that each of the Persons comprising the Vendor are not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Vendor;
- (d) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Vendor;
- (e) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Vendor; and
- (f) Keys. All keys and entry devices with respect to the Property and the combinations to any locks, if applicable.

6.3 Documents of the Purchaser. The Purchaser shall deliver to the Vendor the following documents on the Closing Date:

- (a) Balance of the Purchase Price. A wire transfer of immediately available funds payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b) of this Agreement;

- (b) Assignment and Assumption of Leases. The Assignment and Assumption of Leases, duly executed by the Purchaser;
- (c) Assignment and Assumption of Contracts. If applicable, the Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (d) Re-adjustment Agreement. The Re-adjustment Agreement, duly executed by the Purchaser; and
- (e) HST. The undertaking and indemnity described in Section 6.4(2) of this Agreement, duly executed by the Purchaser.

6.4 Taxes and Fees.

(1) General. The Purchaser shall be responsible for any land transfer tax, harmonized sales tax and registration fees payable in connection with registration of the Approval and Vesting Order. Each party shall pay its own legal fees with respect to the transactions contemplated by this Agreement.

(2) HST. With respect to the purchase by the Purchaser of the Purchased Assets, the Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, or will on the Closing Date be, registered for the purposes of the harmonized sales tax imposed under the *Excise Tax Act* (Canada);
- (b) the Purchaser shall be liable for, shall self-assess and, if applicable, remit directly to the Receiver General of Canada, all harmonized sales tax that is payable under the *Excise Tax Act* (Canada) in connection with the purchase of the Property; and
- (c) the representations and warranties contained in this Section 6.4(2) shall survive the Closing and be embodied in an undertaking and indemnity of the Purchaser to be delivered to the Vendor on Closing pursuant to which undertaking and indemnity the Purchaser confirms the Purchaser's HST registration number, undertakes to self-assess and, if applicable, remit all HST that is payable in respect of the purchase of the Property and agrees to indemnify the Vendor in respect of all applicable HST.

ARTICLE 7 MISCELLANEOUS

7.1 Tender. Unless expressly stated otherwise in this Agreement, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer of immediately available funds.

7.2 Relationship of the Parties. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

73 Notices.

(l) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by electronic mail to the parties at the applicable address set forth below

(a) in the case of the Vendor addressed to it at:

msi Spergel Inc.
21 King Street West
Suite 1602
Hamilton, Ontario
L8P 4W7

Attention: Trevor Pringle
Email: tpringle@spergel.ca

and to:

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

Attention: Ian Kady
Email: ikady@foglers.com

(b) in the case of the Purchaser addressed to it at:

Inspirit Foundation
180 Shaw Street, Units 312-314
Toronto, ON
M6J 2W5

Attention: Chris Lee and Jory Cohen
Email: cle@inspiritfoundation.org and jcohen@inspiritfoundation.org

and to:

Harris, Sheaffer LLP
4881 Yonge Street, 8th Floor
Toronto, ON
M2N 5X3

Attention: Robert D. Sheaffer
Email: rsheaffer@harris-sheaffer.com

(2) Change of Address for Notice. By giving to the other party at least three (3) days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

74 Dispute Resolution. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

76 Assignment. This Agreement and the benefit of all covenants contained herein and any documents delivered or interests created pursuant to the terms hereof shall not be assigned by the Purchaser without the consent of the Vendor, which consent may be granted or withheld in the sole, absolute and unfettered discretion of the Vendor.

77 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

78 No Registration of Agreement. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement against title to the Property.

79 Planning Act. This Agreement and the transactions contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario) at the Purchaser's expense.

7.10 No personal Liability of Vendor. The Vendor is signing this Agreement in its capacity as Court appointed receiver and manager of the assets and undertaking of Toronto Artscape, and the Purchaser acknowledges and agrees that the Receiver, and its agents, directors, officers and employees, shall have no personal or corporate liability whatsoever under, as a result of or in connection with any obligations of Toronto Artscape (and anyone for whom it is in law responsible) under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against Toronto Artscape's assets.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other form of electronic communication reproducing an original and the parties adopt any signatures received by such electronic communication as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward

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
to the other party an original of the executed copy of this Agreement which was so electronically communicated. **236**

7.12 Irrevocable Period. This Offer shall be open for acceptance by the Purchaser until 5:00 p.m. EDT on the 8th day of October, 2024.

[Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement.


msi SPERGEL INC., solely in its capacity as Court appointed receiver and manager of Toronto Artscape and not in its personal or corporate capacity and without personal or corporate liability


By: 
Name: Trevor Pringle
Title: Partner

By: _____
Name:
Title:

I/We have authority to bind the corporation

INSPIRIT FOUNDATION

Signed by:
By: 
Name: Sadia Zaman
Title: Authorized Signing Officer

Signed by:
By: 
Name: James Chen
Title: Authorized Signing Officer

I/We have authority to bind the corporation

SCHEDULE "A"**PROPERTY**

2.	76397-0002	UNIT 2, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO
6.	76397-0007	UNIT 7, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2397 AND ITS APPURTENANT INTEREST; TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3657726; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****General**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person.
2. Subdivision agreements, site plan control agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with government authorities or private or public utilities affecting the development or use of the Property.
3. Encumbrances respecting minor encroachments by the Property over neighbouring lands or by improvements on neighbouring lands and/or permitted under agreements with the owners of such other lands.
4. Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property for the purposes for which it is presently used.
5. Any easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner.
6. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario), except paragraphs 1, 2, 3, 5, 6, 8, 9, 11 and 14, provincial succession duties and escheats and forfeiture to the Crown.
7. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
8. Any unregistered easements, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
9. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
10. The Leases.
11. Save and except for a registration that constitutes a lien, any registration made by the condominium corporation at the Property.

Specific

- A. Instrument No. AT2570223 registered December 6, 2010, by the City of Toronto is Notice of an agreement between the Toronto District School Board, the City of Toronto, and Toronto Artscape Inc. relating to the assumption of various obligations by Toronto Artscape Inc. from the Toronto District School Board in favour of the City of Toronto.
- B. Instrument No. AT2579857 registered December 6, 2010, by Toronto Artscape Inc. is a Limiting Distance Agreement between Toronto Artscape Inc., Toronto District School

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Board and the City of Toronto whereby the Toronto District School Board has agreed that no building, addition or other structure will be constructed within the Limiting Distance Area, as such term is defined therein, within the lands owned by the Toronto District School Board.

- C. Instrument No. AT3012728 registered May 10, 2012, by Toronto Artscape Inc. is a Notice of an "Imagination, Manufacturing, Innovation and Technology Tax Increment Equivalent Grant Agreement" between Toronto Artscape Inc. and the City of Toronto.
- D. Instrument No. TCP2397 registered on August 11, 2014, is the Standard Condominium Plan.
- E. Instrument No. AT3657726 registered August 11, 2014, is the condominium declaration whereby Toronto Standard Condominium Corporation No. 2397 was created.
- F. Instrument No. AT3688673 registered September 15, 2014, is the By-law No. 1 of Toronto Standard Condominium Corporation No. 2397.
- G. Instrument No. AT3688674 registered September 15, 2014, is the By-law No. 2 of Toronto Standard Condominium Corporation No. 2397.
- H. Instrument No. AT4137121 registered February 3, 2016, by Toronto Artscape Inc. is notice of the City of Toronto Imagination, Manufacturing, Innovation and Technology, Financial Incentive Amending Agreement whereby the City of Toronto and the Owner have amended a financial incentives agreement in which the City of Toronto has provided Toronto Artscape Inc. with certain financial incentives and development grants.
- I. Instrument No. AT5546921 registered on October 15, 2020, is a Charge/Mortgage securing the principal amount of \$2,215,000.00 granted by Toronto Artscape Inc. in favour of Community Fund Forward Assistance Corp./Fond De Progress Communautaire Societe De Gestion. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- J. Instrument No. AT5729198 registered on May 6, 2021, is a Charge/Mortgage securing the principal amount of \$5,700,000.00 granted by Toronto Artscape Inc. in favour of FirstOntario Credit Union Limited. *Note: to be vested off pursuant to the Approval and Vesting Order.*
- K. Instrument No. AT5756573 registered June 3, 2021, is the By-law No. 3 of Toronto Standard Condominium Corporation No. 2397.
- L. Instrument No. AT6496748 is an Application for Court Order from the Ontario Superior Court of Justice whereby MSI Spergel Inc. was appointed the receiver for Toronto Artscape Inc. *Note: to be vested off pursuant to the Approval and Vesting Order.*

SCHEDULE "C"

REQUIRED CONTRACTS

Title	180 Shaw APS - Inspirit Foundation
File name	EXECUTION_-_Form_...ents___Inspir.pdf
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THE TORONTO-DOMINION BANK
Applicant

-and- TORONTO ARTSCAPE INC.
Respondent

Court File No. CV-23-00711609-00CL

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD – VOLUME I OF II

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