

Court File No: CV-13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondent

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

RESPONDING MOTION RECORD

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AFFIDAVIT OF CLIFFORD P. MOSS

I, **CLIFFORD P. MOSS**, of the City of Toronto, in the Province of
Ontario, **MAKE OATH AND SAY:**

1. I am the Director, Leasing Administration of Menkes GTA Industrial Holdings Inc. ("Menkes"), owner and landlord of the premises municipally known as 10 Sun Pac Boulevard, Brampton, Ontario ("premises") leased by the respondent, and as such have knowledge of the matters to which I hereinafter depose.

2. This affidavit is being filed in response to the motion of BDO Canada Limited ("receiver") for a vesting order, which order was granted on January 9, 2014 with the exception, on consent of the parties, of certain assets described in Schedule "A" to the endorsement of The Honourable Mr. Justice D.M. Brown, attached hereto as **Exhibit "A"**.

3. Menkes seeks to retain twelve Vilter ammonia compressors that the receiver included in a list of assets to be sold pursuant to this receivership matter.

A. AGREEMENTS

4. The respondent was the owner of the premises until early November 2011.

5. By agreement of purchase and sale dated November 3, 2011 ("APS"), a redacted copy of which is attached hereto as **Exhibit "B"**, the respondent sold the premises to Menkes and Menkes leased it back to the respondent on closing.

6. As article 6.1(s) of the APS provides, a portion of the proceeds from the closing shall be used by Liquibrands Inc. ("Liquibrands") for the purpose of completing its acquisition of the respondent. Liquibrands acquired the respondent on November 7, 2011.

7. Pursuant to article 1.1(e) of the APS, Menkes purchased the entire premises with the exception of tenant fixtures and chattels described in Schedule "C" attached thereto.

8. By lease agreement dated July 1, 2013 ("lease"), a copy of which is attached hereto as **Exhibit "C"**, Menkes leased the premises to the respondent.

9. Article 1.9 of the lease provides, in part, as follows:

“The Tenant shall at the expiry of the Lease remove all of the Tenant’s Fixtures and Chattels as further defined in Schedule “C” attached hereto...”

10. Schedule “C” to the lease, which lists the tenant’s fixtures and chattels, is identical to Schedule “C” appended to the APS, which lists the assets that Menkes did not purchase from the respondent. The Schedule “C” list of assets describes the tenant assets that Menkes did not purchase pursuant to the APS and that the respondent would be responsible for removing pursuant to the lease at the expiry of the lease term.

B. MENKES PROPERTY

11. Schedule “C” to both the APS and lease excludes freezer and refrigeration warehousing and storage fixtures. Menkes owns the freezer and refrigeration warehousing and storage fixtures at the premises.

12. At the time that Menkes entered into the lease with the respondent, the premises had affixed to it twelve ammonia compressors contained in a room (“compressor room”) which connect to and form part of the freezer and refrigeration warehousing. Photos of the exterior and interior of the compressor room are attached hereto as **Exhibit “D”**. Photos of the interior of the freezer warehousing are attached hereto as **Exhibit “E”**.

13. Menkes retained engineers CCI Group to examine the premises and provide an opinion with respect to whether the ammonia compressors form part of the refrigeration and freezer systems and whether those systems form part of the premises. Following his inspection, CCI Group engineer Rick Derbecker ("Derbecker") provided Menkes with an opinion letter. Derbecker advised me of the contents of the letter and I believe them to be true. A copy of Derbecker's opinion letter, and a copy of his curriculum vitae, are attached hereto as **Exhibit "F"**.

C. AGREEMENT WITH BRIDGING CAPITAL INC.

14. Pursuant to a credit agreement ("credit agreement"), Bridging Capital Inc. ("BCI") provided credit facilities to the respondent secured, in part, by the property and assets of the respondent at the premises.

15. BCI entered into an agreement with Menkes dated October 1, 2012 ("original waiver agreement") whereby Menkes, as landlord, agreed to waive, release and postpone in favour of BCI any and all rights, claims, or privileges which Menkes may have with respect to the property and assets of the tenant ("collateral"). A copy of the agreement is attached hereto as **Exhibit "G"**.

16. The original waiver agreement lists as collateral the "Tenant's property, assets and undertaking, including, without limitation, the Tenant's inventory now or hereafter on or at the Premises, and all increases, additions, accessions thereto, replacements and substitutions thereof and therefore and those fixtures and chattels set out in Schedule "C" to the Lease attached hereto." The Schedule "C" list of tenant fixtures and chattels appended to the original waiver agreement is a replica of the Schedule "C" list of tenant fixtures and chattels appended to both the APS and the lease.

17. BCI entered into a new waiver agreement with Menkes in July 2013 ("new waiver agreement"), which was intended to replace the original waiver agreement. The terms of the new waiver agreement with respect to collateral are identical to those in the original waiver agreement. The only amendment is the addition of a twelve week period of free occupation rent at the premises. A copy of the agreement is attached hereto as **Exhibit "H"**.

18. The receiver's first report filed in support of its motion returnable January 9, 2014 indicates that BCI assigned the credit agreement to the applicant in May 2013, which would render the new waiver agreement between BCI and Menkes dated July 2013 invalid.

D. PRODUCTION EQUIPMENT

19. Pursuant to the waiver agreement, the applicant has an interest in certain production and process equipment as described in Schedule "C" thereto.

20. The applicant does not have an interest in any freezer or refrigeration assets. The waiver agreement, and Schedule "C" specifically, exclude freezer and refrigeration warehousing or storage, or any type of warehousing or storage, as tenant property to which the applicant has an interest.

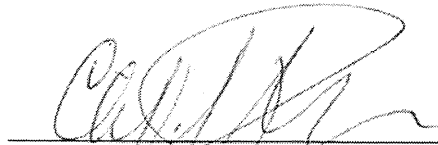
21. The freezer and refrigeration warehousing systems are distinct from production and processing systems. The respondent distinguishes between production and freezer and refrigeration warehousing in a media release of the respondent dated November 7, 2011 posted on the respondent's website, wherein it describes the premises as one "housing production as well as refrigerated, frozen, and dry warehousing." A copy of the press release is attached hereto as **Exhibit "I"**.

SWORN BEFORE ME at the City of)
Toronto, on January 17, 2014.)
)



A COMMISSIONER, ETC.

Darlene Laureen Helen Williams, a Commissioner, etc.,
Province of Ontario, for
Menkes Developments Ltd.
Expires October 7, 2014.



Clifford P. Moss

8527504 CANADA INC.
Applicant

-and-

JANUARY 9, 2014

SUN PAC FOODS LIMITED
Respondent

Court File No. CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
TORONTO

MOTION RECORD
(Sale and Vesting Order, returnable
Thursday January 9, 2014)

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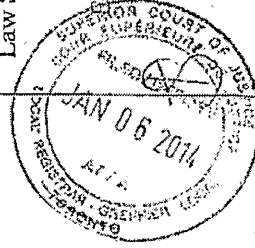
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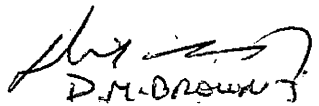
This is Exhibit "A" referred to in the
affidavit of Clifford P. Moss
sworn before me, this 17th
day of January 2014.

A COMMISSIONER FOR TAKING AFFIDAVITS
By: Lauren Helen Williams, a Commissioner, etc.,
Ontario for
deponents Ltd.
October 2014.



Jan 9/14
Kathryn wants to talk with Receiver about whether
certain equipment should be included in the sold assets.
On consent, adj'd to Jan 21/14, 1 hour, and 15 mins.
[Signature]
D. BROWN T.

Jan 9/14
Soudair has been met. The landlord disputed that the
assets identified in Sch A hereto should be included in
the vesting order. The parties have agreed that for purposes
of the order granted today, the Sch A Assets shall not be
included and the parties shall return before the court on
Jan 21/14 to argue the issue, if they have not reached it.
As to para 2 of the proposed order, liquor brands
has made the submissions found at Sch B to my
order and I attach those submissions so that
liquor brands' position is clear. Order to go in accordance
with draft filed which I have signed.
[Signature]
D. BROWN T.

Set A pay
for 9/14 endorsement 
D.M. Brown

Freezers, Vilter ammonia compressors
and related auxiliary freezer components
shall be excepted from sale until an
agreement is reached between the parties
with respect thereto or until further order
of this Honorable Court.

Schedule B by encroachment of Jan 9/17 by ^{D.A. DROWNY} 7
LIQUIBRANDS DOES NOT OBJECT TO
THE SALE ORDER. Jan 9, 2014.

LIQUIBRANDS HAS AN OUTSTANDING
ACTION AGAINST 852 + BRIDGING.
AS DOES SUN PAC. THE RECEIVER HAS
NOT ASSESSED THE SUN PAC CLAIM.
LIQUIBRANDS, SERVED WITH THE MOTION
APPEARS TO VOICE DISAGREEMENT
WITH ASSERTIONS IN PARAS. 8, 17 + 34
OF THE RECEIVER'S REPORT + TO ENSURE
THEY ARE NOT SEEN TO ACQUIESCE TO THE
ASSERTIONS OR BE ESTOPPED IN COLLATERAL
PROCEEDINGS.

LIQUIBRANDS AND OBJECTIONS
~~THEIR~~ POSITION IS SO NOTED

AND THE SALE ORDER DOES NOT ESTOP.

~~ASSUMES THAT~~ LIQUIBRANDS IS BOUND FROM ENTERING
BY OR AGREEES WITH THE ASSERTIONS?

IN PARAS. 8, 17 + 34 OF THE RECEIVER'S
REPORT IN THE LITIGATION.

AGREEMENT OF PURCHASE AND SALE

This Agreement made the 3rd day of November, 2011.

BETWEEN:

SUN PAC FOODS LIMITED
(hereinafter called the "Vendor")

- and -

MENKES GTA INDUSTRIAL HOLDINGS INC.
(hereinafter called the "Purchaser")

This is Exhibit ^{"B"} referred to in the
affidavit of Clifford P. Moss
sworn before me, this 17th
day of January, 2014.



A COMMISSIONER FOR TAKING AFFIDAVITS

Darlene Laureen Helen Williams, a Commissioner, etc.,
Province of Ontario, for
Menkes Developments Ltd.
Expires October 7, 2014.

The Purchaser in reliance on the representations and warranties contained herein, offers to purchase the Property on the terms and conditions hereinafter set forth:

ARTICLE ONE
DEFINITIONS

- 1.1 In this Agreement, including the Schedules, the following terms shall have the following meanings:
- (a) "Agreement" means this agreement, all Schedules to this Agreement, and every properly executed instrument which by its terms amends, modifies or supplements this Agreement;
 - (b) "Authority" means any federal, provincial, regional or municipal governmental authority, body, agency, department, or corporation having or claiming jurisdiction over the Property;
 - (c) "Building" means the building located on the Lands, including the Systems, and any other improvements owned by the Vendor presently erected in or upon the Lands and containing gross floor areas of approximately 349,614 square feet, respectively (excluding any mezzanine areas);
 - (d) "Business Day" shall mean any day on which the land registry office in which the Lands are registered is open;
 - (e) "Chattels" means all goods, chattels, fixtures and other tangible personal property owned by the Vendor and used exclusively by the Vendor in the operation and maintenance of the Property which are to be transferred to the Purchaser on the Closing Date but specifically excluding those listed in Schedule "C" attached hereto;
 - (f) "Closing" means the completion of the sale and purchase of the Property contemplated by this Agreement;
 - (g) "Closing Date" or "Date of Closing" means November 3rd, 2011;
 - (h) "Conditions" means the conditions set out in Section 5.1;
 - (i) "Hazardous Substance" means any substance that, if added to any water or emitted into the air, would create or contribute to the creation of a condition of such water or air that is detrimental to its use by or to the health, safety or welfare of persons or animals or causes damage to plant life or property; any radioactive material or explosive; any substance declared from time to time to be hazardous, dangerous or toxic under any applicable federal, provincial or municipal law, by-law, regulation or other enactment, including without limitation, asbestos; and any other substance which is or may become hazardous, toxic or dangerous to persons or property;
 - (j) "Lands" means the real property comprising an area of approximately 15.89 acres, more or less, located in the City of Brampton, municipally known as 10 Sun Pac Boulevard, Brampton, Ontario, as legally described in Schedule "B" attached hereto;

- (k) "Lease" has the meaning ascribed thereto in Section 5.1;
- (l) "Permitted Encumbrances" means those liens, charges and encumbrances, if any, as set out in Schedule "A" attached hereto;
- (m) "Property" means collectively the Lands, the Building and the Chattels;
- (n) "Plans and Specifications" means a set of all architectural, mechanical, electrical, site and structural plans and specifications for the Building and Systems, which are in the possession or control of the Vendor including, without limitation, all plans and specifications relating to any improvements, together with all permits and licences relating to the Building;
- (o) "Purchase Price" means the sum of
- (m) "Systems" means the mechanical and electrical systems owned by the Vendor and used in the operation and maintenance of the Building, including, without limitation, the heating, ventilating, air conditioning, electrical, fire fighting, water, plumbing, drainage, pollution control, garbage and sewage disposal systems.

**ARTICLE TWO
PURCHASE PRICE**

- 2.1 The Purchase Price for the Property shall be payable on Closing, subject to the adjustments provided for herein, if any, by bank draft, certified cheque drawn on a Canadian chartered bank or trust company or by wire transfer.

**ARTICLE THREE
ADJUSTMENTS TO PURCHASE PRICE**

- 3.1 As the Vendor will be leasing back the Property on Closing and will be responsible for all realty taxes, utilities and operating costs, there will be no adjustments on Closing.

The Vendor agrees to use its best efforts to prepay or commute all local improvement charges levied against the Property on or before the Closing Date.

**ARTICLE FOUR
PURCHASER'S EXAMINATIONS**

- 4.1 INTENTIONALLY DELETED

**ARTICLE FIVE
CONDITIONS**

- 5.1 The Purchaser's obligation to complete the agreement to be constituted by the acceptance of this offer by the Vendor shall be conditional upon the Purchaser receiving from the Vendor on Closing the following: (i) a triple net lease for the Building, entered into by the Vendor, as tenant, on the same terms as set out in Schedule "D" attached hereto (the "Lease"); (ii) evidence of the closing of the purchase of all of the shares of the Vendor by LiquiBrands Inc.; and (iii) evidence that the signatory to this Agreement has the requisite authority to bind the Vendor under the terms of this Agreement and under the terms of the Lease (collectively the "Conditions").

In the event that the forgoing Conditions are not satisfied, fulfilled or waived on Closing, then this Agreement shall become null and void and neither party shall have any further obligations to the other hereunder. The parties agree that the Conditions have been included for the sole and exclusive benefit of the Purchaser, and notwithstanding that same may be a true condition precedent the Purchaser may waive any or all of the Conditions at any time prior to Closing.

ARTICLE SIX
COVENANTS, REPRESENTATIONS AND WARRANTIES

- 6.1 The Vendor covenants and agrees with and represents and warrants to the Purchaser, with the intent that the Purchaser shall rely thereon in entering into this Agreement and in concluding the purchase and sale contemplated herein, that as of the date hereof, unless otherwise specified hereinafter, and as of the Closing Date:
- (a) The current zoning of the Property is Industrial and the Property will be zoned on the Closing Date to permit the Vendor uses in accordance with all applicable zoning bylaws and regulations of the Authorities;
 - (b) To the best of the Vendor's knowledge and belief, the Building has been constructed in accordance with the Plans and Specifications in a good and workmanlike manner without defect and in accordance with the building permits and site plan approvals therefor, all by-laws, regulations, directives and notices of all Authorities having jurisdiction, all respective covenants registered against the title to the Property and all applicable regulations or orders of the Canadian Fire Underwriters Association;
 - (c) To the best of the Vendor's knowledge and belief, except as disclosed to the Purchaser, there are no outstanding work orders, directives or deficiency notices issued by any Authority having jurisdiction with respect to the Property;
 - (d) There is sufficient access to and from the Property in order to permit the existing uses and all such access has been constructed (or will be constructed) and is presently used (or will be used) in compliance with the regulations of any Authority having jurisdiction;
 - (e) There is no litigation or other proceedings outstanding, pending or threatened with respect to the Property, or which may affect title to the Property, the continued operation of the Building or the right of the Vendor to complete this Agreement in accordance with its terms;
 - (f) The Vendor has not amended, surrendered, terminated or entered into any lease, service and/or maintenance contracts or other contracts, agreements, encumbrances or liabilities for which the Purchaser will be liable after Closing without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld;
 - (g) The Systems and Building are and shall be at the Closing Date in a good state of repair and good working order, and meet the requirements of the Authorities and, without limitation, shall have been inspected, approved and licensed, where required;
 - (h) The Vendor shall undertake to pay all material trade and current liabilities in respect of the Property outstanding on the Closing Date and undertakes to indemnify the Purchaser from any claims with respect thereto and that all material accounts owing for work, labour, materials, services and equipment in respect of or relating to the Property have been fully paid for and the Vendor is not aware of any person, firm, corporation or contractor who claims to be entitled to a claim under the *Construction Lien Act* (Ontario), as amended, or any similar legislation;
 - (i) To the best of the Vendor's knowledge and belief all municipal services and utilities necessary for the use and occupation of the Building and/or required by the Authorities including water, storm sewers, sanitary sewers, electricity, roads, sidewalks, and street lights have been full installed, completed and paid for and are not subject to local improvement levies and all levies, fees, charges and interest of any kind whatsoever levied by any Authority or any public or private utilities commission have been paid in full;
 - (j) To the best of the Vendor's knowledge and belief, neither the Property nor the lands adjacent thereto, have ever been used for the purposes of a waste disposal site, nor do same contain any Hazardous Substance and there has not been placed or deposited upon or on the Property or any lands adjacent thereto any Hazardous Substance;
 - (k) To the best of the Vendor's knowledge and belief the Property and the adjacent lands comply with all environmental protection legislation and are not subject to any

outstanding work orders or deficiency notices or requests for compliance issued by any Authority either under the *Environmental Protection Act* (Ontario), as amended, or any other applicable environmental protection legislation and that no consent is required pursuant to that Act to demolish or alter the Building;

- (l) The Lands and the Building thereon do not contain any urea formaldehyde foam insulation, polychlorinated biphenyls or asbestos;
- (m) The Vendor is not a non-resident of Canada for purposes of section 116 of the *Income Tax Act* (Canada);
- (n) As of the Closing Date, the Property shall be subject to no mortgages, liens or other encumbrances except the Permitted Encumbrances;
- (o) All of the Chattels are used by the Vendor in connection with the Property and are legally owned by the Vendor with good and marketable title thereto free from all mortgages, liens, charges, encumbrances, security interests and any other claims whatsoever;
- (p) The Vendor has not received any notice of expropriation relating to the Property nor is it aware of any expropriation proceedings that have taken place or may take place in connection with the Property;
- (q) On Closing, all agreements, whether registered or unregistered, with any Authority having jurisdiction over the Property shall be in good standing;
- (r) No portion of the Property lies within a flood plain or is within a fill line or otherwise within the jurisdiction or regulation of any conservation authority; and
- (s) The proceeds from the Closing shall be used for the operation of the business of the Vendor and shall not be distributed to any shareholders of the Vendor (for greater certainty, use of a portion of the proceeds from the Closing for the purpose of LiquiBrands Inc. completing the purchase of all of the shares of the Vendor shall be considered proceeds used for the operation of the business of the Vendor).

The statements of fact, representations and warranties made by the Vendor herein are accurate and complete. The representations and warranties of the Vendor contained herein shall be true and correct on and as of the date of this Agreement, except where otherwise specified, and as at the Closing Date as if made at and as of such time and shall survive the Closing for a period of five years.

ARTICLE SEVEN EXAMINATION OF TITLE

7.1 INTENTIONALLY DELETED

7.2 On Closing, title to the Property shall be good and marketable and free from all registered restrictions, mortgages, liens, charges and encumbrances except as otherwise specifically provided in this Agreement and save and except for:

- (a) the Permitted Encumbrances provided that same have been complied with and permit the uses by the Vendor of the Building in accordance with the Lease;
- (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; and
- (c) any minor easements for the supply of utility, telephone or similar services to the Property or adjacent properties.

7.3 INTENTIONALLY DELETED

7.4 The Property shall be and remain at the Vendor's risk until the Closing Date and the Vendor shall hold all fire insurance policies and the proceeds thereof in trust for the parties as their

respective interests may appear.

- 7.5 The Vendor shall deliver vacant possession of the Property to the Purchaser on the Closing Date subject to the rights of the Vendor under the Lease.

ARTICLE EIGHT
CLOSING ARRANGEMENTS AND DOCUMENTATION

- 8.1 The Closing will occur on the Closing Date in the Land Registry Office in which title to the Property is registered.

- 8.2 The Vendor covenants and agrees to deliver to the Purchaser's solicitors on the Closing Date duly executed copies, in registrable form wherever appropriate, of each of the following documents:

- (a) an executed Transfer/Deed of Land, including *Planning Act* (Ontario) statements;
- (b) a Statutory Declaration of an officer of the Vendor confirming:
 - (i) that the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
 - (ii) that the warranties and representations contained in this Agreement are true and correct as at the Closing Date; and
 - (iii) that the Property has not been used by any officer, director or shareholder of the Vendor as a matrimonial home as defined in the *Family Law Act* (Ontario);
- (c) a Bill of Sale transferring the Chattels to the Purchaser free and clear of any encumbrance;
- (d) an Assignment of all of the Vendor's rights under any and all warranties, guarantees or contractual obligations, in form and substance satisfactory to the Purchaser, acting reasonably, which entitle the Vendor to any rights against a contractor or supplier engaged in the construction, repair, maintenance, renovation and modification of the Property or any part thereof or any of the Chattels, insofar as such rights can be assigned, together with the right to use the Vendor's name to enforce any such unassignable warranties, guarantees or contractual benefits with any legal proceedings initiated by it in the name of the Vendor with respect thereto;
- (e) the original executed Lease;
- (f) a declaration of possession of a senior officer of the Vendor in a form acceptable to the Purchaser's solicitors, acting reasonably;
- (g) master keys and all keys and like devices in the possession and control of the Vendor;
- (h) evidence of the closing of the purchase of all of the shares of the Vendor by LiquiBrands Inc. and evidence that the signatory to this Agreement has the requisite authority to bind the Vendor under the terms of this Agreement and under the terms of the Lease; and
- (i) such further deeds, acts, things, certificates and assurances as may be required in the opinion of the Purchaser's solicitors, acting reasonably, in order to carry out the terms of this Agreement.

- 8.3 The Purchaser covenants and agrees to deliver to the Vendor's solicitors on the Closing Date duly executed copies of each of the following documents:

- (a) an Assumption of this Agreement by the ultimate transferee of the Property in the event the Purchaser hereunder will not be taking title to the Property;
- (b) a Direction re: title;

- (c) a Statutory Declaration confirming registration by the Purchaser for the purposes of self-assessment for the payment of goods and services tax;
 - (d) such further deeds, acts, things, certificates and assurances as may be required in the opinion of the Vendor's solicitors, acting reasonably, in order to carry out the terms of this Agreement; and
 - (e) the original executed Lease.
- 8.4 The closing documents set out in Section 8.2 will be prepared by the Purchaser's solicitors at the Purchaser's expense, other than the Statement of Adjustments and the Transfer/Deed of Land which shall be prepared by the Vendor's solicitors at the Vendor's expense. The closing documents set out in Section 8.3 will be prepared by the Vendor's solicitors at the Vendor's expense.

ARTICLE NINE MISCELLANEOUS

- 9.1 Time shall be of the essence of this Agreement, provided that the time for doing or completing any matter herein may be amended by an agreement in writing signed by both parties or their solicitors who are expressly authorized to execute any such agreement on their behalf.
- 9.2 Any tender of documents (other than the Transfer/Deed of Land) or money hereunder may be made upon the Vendor or the Purchaser, or upon their respective solicitors on the day fixed for completion of this transaction. Money may be tendered by bank draft, certified cheque drawn on a Canadian chartered bank or trust company or by wire transfer.
- 9.3 Inasmuch as the electronic registration system (hereinafter referred to as the "**Teraview Electronic Registration System**" or "**TERS**") is operative in the Land Titles Office in which the Lands are registered, the following provisions shall prevail, namely:
- (a) The Purchaser's solicitor and the Vendor's solicitor shall each be obliged to be authorized TERS users and in good standing with the Law Society of Upper Canada, and are hereby authorized by the parties hereto to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on September 19, 2000 or any replacement thereof (hereinafter referred to as the "**Document Registration Agreement**" or "**DRA**"), establishing the procedures and timing for completing this transaction, which DRA shall be exchanged between the Vendor's solicitor and the Purchaser's solicitor no later than ten (10) days before the Closing Date;
 - (b) The delivery and exchange of documents, monies and keys to the Lands, and the release hereof to the Vendor and the Purchaser, as the case may be:
 - (i) shall not occur contemporaneously with the registration of the Transfer/Deed of Land; and
 - (ii) shall be governed by the DRA, pursuant to which the solicitor receiving any documents, keys and/or certified funds 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;
 - (c) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Lands may be delivered to the other party hereto or its solicitor by telefax transmission (or by a similar system reproducing the original), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto. The party transmitting any such documents shall also deliver the originals of same to the recipient party or to its solicitor by overnight courier sent on the Closing Date, if same has been so requested by the recipient party or by its solicitor; and
 - (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this paragraph called the "**Tendering**

Party") upon the other party (in this paragraph called the "**Receiving Party**") when the solicitor for the Tendering Party has:

- (i) delivered all applicable closing documents, keys and/or funds to the Receiving Party's solicitor in accordance with the provisions of this Agreement and the DRA;
- (ii) advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the Transfer/Deed of Land for completeness and granted "access" to the Receiving Party's solicitor, without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

9.4 Nothing herein shall be construed so as to make the Purchaser a partner of the Vendor or an owner of the Property for any purpose including the Construction Lien Act, as amended, until the Closing Date, and the Vendor shall indemnify and save the Purchaser harmless from any and all costs, expenses, damages, claims or liabilities which may be incurred with respect to the Property prior to the Closing Date and which the Purchaser is not obligated to assume hereunder and this provision shall survive the Closing Date or the termination of this Agreement.

9.5 All notices, demands and payments required or permitted to be given hereunder shall be in writing and may be delivered personally, sent by facsimile or may be forwarded by first class prepaid mail to the addresses set forth below. Any notice delivered or sent by facsimile shall be deemed to have been given and received at the time of delivery. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of third Business Day after it is posted, addressed as follows:

(a) to the Purchaser, at:

4711 Yonge Street
Suite 1400
Toronto, Ontario
M2N 7E4

Attention: Mark Karam
Fax No. 416-491-3155

with a copy to its solicitor:

Fraser Milner Casgrain
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

Attention: Jules Mikelberg
Fax No: 416-863-4592

(b) to the Vendor, at:

10 Sun Pac Boulevard
Brampton, Ontario
L6S 4R5

Attention: Csaba Reider
Fax No. 905-792-8490

with a copy to its solicitor:

Wildeboer Dellelce LLP
365 Bay Street, Suite 800
Wildeboer Dellelce Place
Toronto, Ontario
M5H 2V1

Attention: Vaughn MacLellan
Fax No: 416-361-1790

provided that any party shall be entitled to designate another address by giving notice thereof to the other party in accordance with the terms hereof. Personal delivery or facsimile only may be utilized during periods of actual or threatened postal disruption.

- 9.6 The Purchaser shall be entitled to assign its interest in this Agreement on or before Closing. Upon notification to the Vendor of such assignment and the execution by such assignee of an agreement to assume the Purchaser's interest hereunder, the Purchaser shall be relieved of its obligations under this Agreement, and all documents contemplated by subsection 8.3 shall be provided by the Assignee.
- 9.7 This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators and other legal representatives and to the extent permitted hereunder, their respective successors and assigns.
- 9.8 This Agreement shall be read with all changes of gender or number required by the context.
- 9.9 The headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 9.10 This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.
- 9.11 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all of the representations, warranties, conditions, covenants and agreement whether direct, collateral, express or implied, of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda and negotiations between the parties.
- 9.13 All times used herein refer to current Toronto time.
- 9.14 Except as provided herein, each of the parties shall, at the cost and expense of the other party, execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement.
- 9.15 This Agreement shall create an interest in the Property only if the subdivision control provisions of the *Planning Act* (Ontario) are complied with by the Vendor on or before completion, and the Vendor hereby covenants to proceed diligently, at its own expense, to obtain any necessary consents on or before completion.
- 9.16 The invalidity in whole or in part of any of the provisions contained herein shall not affect the validity of the remaining provisions herein contained and such remaining provisions shall continue to be valid and enforceable.

IN WITNESS WHEREOF the Vendor and Purchaser have executed this Agreement as of the date first above written.

SUN PAC FOODS LIMITED

Per: 

I have authority to bind the Corporation.

MENKES GTA INDUSTRIAL HOLDINGS INC.

Per: 
Peter Menkes, Vice-President

I have authority to bind the Corporation.

SCHEDULE "A"
PERMITTED ENCUMBRANCES

NONE.

SCHEDULE "B"

LANDS

LEGAL DESCRIPTION:

Firstly:

Parcel Block 1-4, Section 43M561; Part of Block 1, Plan 43M561 being Part 1 on Reference Plan 43R13860; Brampton, being PIN 14209-0140 (LT) (Land Titles Absolute ("LTA"));

Secondly:

Parcel Block 1-1, Section 43M561; Part of Block 1, Plan 43M561 being Part 2 on Reference Plan 43R12264; Brampton, being PIN 14209-0141 (LT) (LTA); and

Thirdly:

Parcel Block 1-2, section 43M561; Part of Block 1, Plan 43M561 being Part 1 on Reference Plan 43R12264; Brampton, being PIN 14209-0142 (LT) (LTA).

SCHEDULE "C"

CHATELS

List of Excluded Tenant Fixtures and Chattels

PRODUCTION / PROCESS

All equipment, support structures, conveyors, process supply and infrastructure (including but not limited to power, compressed air, water, gas, steam, hot water)

HOT WATER / STEAM SUPPLY

All boilers, hot water heaters, pumps, associated piping, power (supply and distribution) and drainage to the floor level

ELECTRICAL POWER SUPPLY (POWER)

All distribution downstream of the prime switchgear used to power production / process / hot water / steam supply. Prime switchgear is located above or near the electrical vault.

WATER DISTRIBUTION

All piping and pumping and distribution from discharge flange of municipal water supply shut-off valve, including any municipal metering devices.

TANK FARM

All tanks, pumps, power, utilities, piping and associated equipment.

DRAINAGE

All sump pumps and water treatment facilities prior to discharge into the municipal waste system.

BATTERY CHARGERS

All battery chargers, stands, racks, power supply and distribution.

SCHEDULE "D"

LEASE

THIS IS EXHIBIT ^{"C"} TO BE FILED TO BE
affidavit of Clifford R. Moss
sworn before me, this 17th
day of January 2014.

LEASE

THIS INDENTURE made the 1st day of July, 2013;
IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

Darlene
A COMMISSIONER FOR TAKING AFFIDAVITS
Darlene Laureen Helen Williams, a Commissioner, etc.,
Province of Ontario, for
Menkes Developments Ltd.
Expires October 7, 2014.

BETWEEN:

MENKES GTA INDUSTRIAL HOLDINGS INC.

(the "Landlord")

OF THE FIRST PART

AND:

SUN PAC FOODS LIMITED

(the "Tenant")

OF THE SECOND PART

WITNESSETH that in consideration of the rents, covenants and agreements herein contained on the part of the Tenant, the Landlord hereby leases to the Tenant all of the lands and premises outlined in red on Schedule "A" attached hereto, being known municipally as 10 Sun Pac Blvd., Brampton, Ontario and all rights and appurtenances appertaining thereto, the said lands, premises, rights and appurtenances being hereinafter sometimes collectively referred to as the "Demised Premises" or the "Premises".

TERM

TO HOLD the Premises for the term of thirteen (13) years four (4) months (the "Term"), from July 3, 2013 (the "Commencement Date") until November 2, 2026, unless such Term shall be sooner terminated as hereinafter provided.

RENT

THE TENANT SHALL PAY during each of the first three (3) months of the within Term the sum of \$180,719.25 of lawful money of Canada in three(3) equal monthly instalments of \$60,239.75, in advance, the first of such instalments to become due and payable on July 3, 2013.

THE TENANT SHALL PAY during each of the next three (3) years one (1) month of the within Term the sum of \$2,045,241.90 per annum of lawful money of Canada in twelve (12) equal monthly instalments of \$170,436.83, in advance, the first of such instalments to become due and payable on October 3, 2013.

THE TENANT SHALL PAY during each of years six (6) to ten (10) inclusive of the within Term the sum of \$2,080,203.30 per annum of lawful money of Canada in twelve (12) equal monthly instalments of \$173,350.28, in advance, the first of such instalments to become due and payable on November 3, 2016.

THE TENANT SHALL PAY during each of years eleven (11) to fifteen (15) inclusive of the within Term the sum of \$2,255,010.30 per annum of lawful money of Canada in twelve (12) equal monthly instalments of \$187,917.53, in advance, the first of such instalments to become due and payable on November 3, 2021.

(collectively, the "Base Rental")

AND FURTHER PAYING as additional rental the moneys and other charges, costs and expenses herein provided to be paid by the Tenant at the several times when they become payable.

IF THE TERM COMMENCES on any day other than the first or ends on any day other than the last day of the month, the Base Rental and additional rental for the fractions of

a month at the commencement and at the end of the Term shall be adjusted pro rata. All Base Rental and additional rental payments shall be payable on the first of each month.

PREPAID RENT

THE LANDLORD ACKNOWLEDGES receipt of the sum of \$291,446.81 equal to the last months' Base Rental, additional rental and HST of the Term to be applied by the Landlord on account to the last months' Rent as it becomes due.

SECURITY DEPOSIT

THE LANDLORD FURTHER ACKNOWLEDGES receipt of the sum of \$291,446.81, to be held by the Landlord without any liability on the part of the Landlord for the payment of interest thereon as a security deposit for the faithful performance by the Tenant of the terms, covenants and conditions of this Lease during the Term and not to be applied on account of Base Rental. It is understood and agreed between the parties that any portion of this security deposit may be applied towards the payment of overdue or unpaid Base Rentals or additional rental and may also be applied as compensation to the Landlord for any loss or damage sustained with respect to the breach on the part of the Tenant of any terms, covenants and conditions of this Lease, provided in all cases, however that all the Landlord's other rights, either in law or under this Lease are observed, and the Tenant's liability hereunder is not limited to the amount of this security. If during the Term any portion of the security deposit is so applied, then the Tenant will, on written demand, provide the Landlord with a sufficient amount in cash to restore this deposit to the original sum deposited. The Landlord will refund to the Tenant forthwith after the expiry date or other termination of the within Lease any portion of the security deposit not used by the Landlord after application by the Landlord to any damage incurred by the default of the Tenant under the terms of this Lease. It is further provided that the Landlord will be discharged from any liability to the Tenant with respect to this security if it is transferred to any Purchaser of the Landlord's interest in the Demised Premises. In the event of any renewal or extension of the Term at an increased Base Rental, the Tenant covenants and agrees to deliver to the Landlord at the commencement of the renewal or extension, the amount necessary to increase the security deposit to an amount equal to the new monthly Base Rental plus additional rental and H.S.T.

AUTOMATIC WITHDRAWALS/ELECTRONIC FUNDS TRANSFER

At the Landlord's request, the Tenant shall make all payments under this Lease by way of post dated cheques, automatic withdrawals or electronic funds transfer from the Tenant's bank account and shall execute and deliver either concurrently with this Lease or from time to time within three (3) business days following request for it, such documentation as may be required by the Landlord and its bank in order to effect such payments.

ARTICLE 1 - TENANT'S COVENANTS

The Tenant covenants with the Landlord as follows:

1.1 Rent

During the Term, to pay to the Landlord the Base Rental hereby reserved and all additional rental in the manner and at the times herein provided, without deduction, abatement or set-off, all Base Rental and additional rental in arrears to bear interest at 15% above the Bank of Nova Scotia prime rate for favoured borrowers from time to time to be determined and calculated on the first day of each month. The Landlord shall be entitled to charge the Tenant a late

processing fee for any late payment of Base Rental or additional rent due under this Lease.

No payment by the Tenant or receipt by the Landlord of a lesser amount than the Base Rental and additional rental from time to time due shall be deemed to be other than on account of the earliest stipulated Base Rental and additional rental due, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment of Base Rental or additional rental be deemed an accord and satisfaction, and the Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such Base Rental or additional rental or pursue any other remedy provided in this Lease.

1.2 Taxes

To pay to the Landlord in each and every year during the Term as additional rental:

- (a) all taxes, rates, duties and assessments whatsoever including local improvement rates, whether municipal, parliamentary or otherwise, now charged, levied, rated or assessed, or hereafter to be charged, levied, rated or assessed against the Demised Premises or against the Landlord, or any similar taxes not now in existence or contemplated at any time during the Term by any competent governmental or municipal body in addition to, or in lieu of, the taxes, rates, duties or assessments hereinbefore referred to and including Capital Tax as defined herein, Commercial Concentration Tax and Large Corporations Tax;
- (b) if the taxes in respect of the Demised Premises shall be increased by reason of any installations made in or upon, or any alteration made in or to the Demised Premises by the Tenant, the amount of such increase;
- (c) if the Tenant or any person, firm or corporation occupying the Demised Premises or any part thereof shall elect to have the Demised Premises or any part thereof assessed for separate school taxes, the amount by which the separate school taxes exceed the amount which would be payable by the Landlord for school taxes, had such election not been made;
- (d) all taxes, rates, duties and assessments whatsoever, including local improvement rates now charged, levied, rated or assessed, or hereafter to be charged, levied, rated or assessed upon or in respect of the Outside Areas and Facilities (as defined in paragraph 8.2) and including, but without limiting the generality of the foregoing, all business taxes, if any, from time to time payable by the Landlord in respect of the Outside Areas and Facilities or any part thereof;
- (e) in addition to the Base Rental and additional rental payable hereunder, the Tenant covenants and agrees to pay to the Landlord, (acting as agent for the taxing authority, if applicable), or directly to the taxing authority (if required by the applicable legislation), in the manner specified by the Landlord, the full amount of all goods and services taxes, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes, and any other taxes imposed on the Tenant in respect of the Base Rental payable by the Tenant under this Lease, or in respect of the rental of space by the Tenant under this Lease (collectively and individually called "H.S.T."). H.S.T. is payable by the Tenant whether characterized as a goods and services tax, sales tax, value-added tax, multi-stage tax, business tax or otherwise. H.S.T. so payable by the Tenant will: (i) be calculated by the Landlord in accordance with the applicable legislation; (ii) be paid by the Tenant at the same times as the amounts to which the H.S.T. applies are payable to the Landlord under the terms of this Lease (or upon demand at

such other time or times as the Landlord from time to time determines); and (iii) despite anything else contained in this Lease, be considered not to be Base Rental, but the Landlord shall have all the same remedies for and rights of recovery with respect to such amounts as it has for non-payment of Base Rental under this Lease or at law; and

- (f) If, during the Term or any renewal thereof, any method of taxation should be altered, or any new type of tax shall be created affecting the Demised Premises or the lands, or the Tenant's occupation thereof, then all such taxes shall be included in determining the tax payments payable by the Tenant.

1.3 **Business Taxes**

To pay as and when the same become due and to save the Landlord in all respects harmless with respect thereto, all business taxes from time to time levied against, or payable by the Tenant in respect of the Tenant's occupancy of the Demised Premises and Outside Areas and Facilities.

The parties acknowledge that separate unit assessments are being eliminated by the Ontario Provincial Government and as a result thereof, properties will be assessed as a whole. In determining the Proportionate Share of taxes payable by the Tenant, the Landlord shall be entitled to make such allocation or allocations as it deems appropriate and equitable having regard to the principles of property assessment in force from time to time.

1.4 **Method of Payment of Taxes**

The tax payments required to be made by the Tenant to the Landlord under the provisions of Section 1.2 shall be estimated by the Landlord, and the Tenant shall pay to the Landlord in addition to the monthly payments of Base Rental hereinbefore reserved, 1/9th of the estimated annual tax payments in the months of January to September, both inclusive, in each calendar year with an adjustment being made as hereinafter set forth. If not so available, then such amount shall be estimated by the Landlord and when the property tax bill respecting the entire lands and the Demised Premises is received by the Landlord for each year, the Tenant shall forthwith pay to the Landlord such additional sums as may be required in order that out of such monthly additional payments, the Landlord may pay the whole amount of the annual taxes as the instalment thereof fall due; and if the monthly additional payments so paid by the Tenant to the Landlord exceed in total the Tenant's annual property tax bill with respect to the entire lands and the Demised Premises, then the excess shall be adjusted by the Landlord in favour of the Tenant by applying such excess on account of the monthly additional property tax payments payable by the Tenant in the succeeding or subsequent year or years and in such succeeding, additional or subsequent year or years such monthly additional payments shall be reduced accordingly. The Landlord shall forward to the Tenant copies of all notices or tax bills relating to the imposition of property taxes or other charges required hereunder to be paid as to part or all thereof by the Tenant. In the event the Landlord is unable to obtain or determine a separate allocation of taxes payable by the Tenant under this Lease, the Landlord shall have the right to make an allocation, but shall be obligated to act reasonably and not arbitrarily.

"**Capital Tax**" shall mean an imputed amount presently or hereinafter imposed from time to time on the Landlord and payable by the Landlord (or any corporation acting on behalf of the Landlord) and which is levied or assessed against the Landlord on account of its ownership of or capital employed in the Demised Premises Capital Tax shall be the amount of any capital or place of business tax levied by the provincial government, federal government or any other applicable taxing authority against the Landlord with respect to the building, whether or not known as Capital Tax, Large Corporations Tax or any other name.

1.5 **Utilities**

In each and every year during the Term, to pay, satisfy and discharge directly or indirectly all charges in connection with water, electrical current, gas, rental charges for gas or electrically operated hot water heaters and other public or private utilities or services extraordinary as well as ordinary, supplied at any time to the Demised Premises.

1.6 **Indemnity by Tenant**

To indemnify and keep indemnified the Landlord in respect of all losses, costs, charges, penalties and expenses occasioned by or arising from the non-payment of any and every tax, rate, assessment, charge, expense or fee, including any business or similar tax assessed against the Tenant or any subtenant or licensee or other persons occupying the Demised Premises or any part thereof and provided that the same shall not be a charge on the Demised Premises or in any way the ultimate responsibility of the Landlord, unless the same shall have already been paid by the Tenant to the Landlord.

1.7 **Maintenance**

The Landlord shall repair, replace and maintain the exterior of the building and the rest of the exterior portions of the Demised Premises at the Tenant's cost, which costs shall be included in additional rent, provided that if any repairs or replacements constitute capital expenditures, such costs shall be amortized over the lesser of ten (10) years or the estimated useful life of the capital item being replaced in accordance with GAAP and charged to the Tenant pro rata over the remainder of the Term (unless caused by Tenant's negligence or overt act in which case the cost shall be chargeable immediately), subject always to chargeback as provided in Section 1.23.

The Tenant shall repair, maintain and replace in a prudent manner, and at its sole expense, its process and refrigeration equipment, as reasonably necessary, and in accordance with all laws, rules and regulations of any governing jurisdiction regarding same and subject to a preventative maintenance repair and replacement schedule, as required to maintain all equipment in good working order in accordance with first class industry standards and the Landlord's reasonable directions.

The Tenant shall keep the Demised Premises in such condition as a careful and prudent owner would do, including the replacement of electrical light bulbs, tubes and starters and ballasts, and including the shampooing of all carpets yearly and painting the Demised Premises yearly. The Landlord shall provide the Tenant from time to time, with a maintenance and replacement schedule with respect to the Tenant's obligations hereunder.

Provided further that if any repairs, replacements or maintenance which are required to be performed by the Tenant under the terms of this Lease and are not performed when required, or are as a result of the Tenant's negligent or overt action, then the Landlord, in its sole discretion, shall be entitled to perform such repairs, replacements or maintenance entirely at the cost of the Tenant and the cost of same shall be paid forthwith by the Tenant to the Landlord upon demand. The cost of same shall be considered to be additional rental under this Lease.

Provided further that upon the expiration or earlier termination of this Lease, the Landlord may inspect the Demised Premises and if the Tenant is found to be in default of any of its repair and maintenance obligations hereunder, the Landlord shall be entitled to perform such maintenance, repair or replacement, and shall apply such amount of the Security Deposit to the costs incurred by the Landlord with respect thereto; provided that the Tenant shall only be responsible for its pro

rata portion of the costs of such capital repairs or replacements over the useful life in accordance with GAAP, (unless caused by Tenant's negligence or overt act in which case the cost shall be chargeable immediately).

1.8 **Inspection by Landlord**

It shall be lawful for the Landlord and its agents, at all reasonable times during normal business hours on at least 24 hours prior notice (except for ongoing scheduled maintenance obligations of the Landlord, in which case, no separate notice is required) during the Term, to enter the Demised Premises to inspect the condition thereof and the Tenant shall comply with all reasonable requirements of the Landlord with respect to the care, maintenance, replacement and repair thereof, excepting only reasonable wear and tear not inconsistent with the maintenance of the interior finishing of the Demised Premises suitable as a first-class industrial building and hazards covered by the usual extended form of fire insurance policy. Where an inspection reveals repairs or replacements are necessary, the Landlord shall give to the Tenant notice in writing and thereupon the Tenant will, within 30 days from the date of delivery of the notice, make the necessary repairs or replacements in a good and workmanlike manner. In an emergency, the Landlord may enter the Demised Premises without notice.

1.9 **Condition of Demised Premises at Expiration**

Subject to the provisions of this Lease, upon expiration or earlier termination of the Term, the Tenant will, without compensation to the Tenant, peaceably surrender, quit and deliver up the Demised Premises to the Landlord in a good state of repair and maintenance, excepting only reasonable wear and tear not inconsistent with the maintenance of the interior finishing of the Demised Premises suitable as a first-class industrial building, and hazards covered by the usual extended form of fire insurance policy. The Tenant shall at the expiry of the Lease remove all of the Tenant's Fixtures and Chattels as further defined in Schedule "C" attached hereto, and repair any damage to the Demised Premises caused by the removal thereof. The Tenant shall be fully responsible for any damage to the Demised Premises not excepted under this provision. The Landlord at its option may rectify such damage at the cost of the Tenant and the Tenant failing to perform, the Tenant shall pay to the Landlord forthwith upon demand such cost, which cost shall also include an administration fee, with interest calculated from the date of demand at 15% above the Bank of Nova Scotia prime rate for favoured borrowers from time to time to be determined and calculated on the first day of each month, with the minimum charge being \$200.00.

1.10 **Compliance with Fire and Other Regulations**

To promptly comply with and conform to the requirements of all applicable statutes, laws, by-laws, regulations, ordinances and orders from time to time, or at any time in force during the Term and affecting the condition, equipment, maintenance, use or occupation of the Demised Premises and with every applicable regulation, order and requirement of the Insurance Advisory Organization (the "I.A.O.") or any body having a similar function or any order, request or demand of any municipal fire department or other similar body, or fire insurance company by which the Landlord and the Tenant or either of them may be insured at any time during the Term. Such work shall be performed by the Tenant forthwith upon demand and failure of the Tenant to complete such work within a reasonable period of time after such demand (being at least equal to the remedy period provided herein), shall entitle the Landlord, at its sole option and in its sole discretion, to terminate this Lease or to perform such work at the cost of the Tenant and charge back the costs to the Tenant as additional rental, together with an administration fee with interest calculated from the date of demand at 15% above the Bank of Nova Scotia prime rate for favoured

borrowers from time to time to be determined and calculated on the first day of each month, and the Tenant shall pay such sum forthwith upon demand as additional rental, with the minimum charge, being \$200.00.

1.11 **Notice of Damage**

In the event of any damage to the Demised Premises by any cause, to give notice in writing to the Landlord of such damage forthwith upon the same becoming known to the Tenant.

1.12 **Entrances**

At its own expense to keep entrance-ways and all steps and platforms leading thereto clear of all snow, ice and debris.

1.13 **Nuisances**

That it will not carry on or permit to be carried on in or about the Demised Premises any business or activity which shall be deemed by the Landlord, in its sole discretion, to be a nuisance, nor will it omit to do, or permit to be omitted to be done anything in respect of the Demised Premises, the omission of which shall, be deemed to be a nuisance. The Tenant covenants and agrees that it will not permit any smells or materials of any kind to escape from the Premises and covenants that its intended use will not breach this covenant.

The Tenant covenants not to bring or allow to be deposited, added, emitted or discharged upon the Premises or any part thereof, any contaminant (as that term is defined in the Environmental Protection Act, R.S.O. 1990, as amended) or any hazardous substance including, but not limited to, pollutants, dangerous substances, liquid waste, industrial waste, hauled liquid waste, toxic substances, hazardous waste, hazardous materials, foreign materials or objectionable materials.

The Tenant shall keep the Premises and every part thereof free of any and all contaminants and hazardous or dangerous substances and will at its own cost and expense, take all necessary steps to remove such contaminants and substances from the Premises and restore the Premises so as to comply in all material respects with all federal, provincial and local environmental laws and regulations. The Tenant covenants and agrees to protect, indemnify and hold the Landlord harmless and pay all expenses and reasonable legal fees incurred or paid by the Landlord in connection with any breach of this Article. The Tenant further covenants and agrees to pay all costs and legal fees (on a solicitor and his own client basis), that may be incurred or paid by the Landlord in enforcing the terms set forth in this Article. The Landlord represents to the best of its knowledge, and subject to the phase II environmental report currently being prepared, that the Demised Premises do not contain any hazardous substances, and if during the Term or any renewal thereof, any hazardous substance not introduced by the Tenant is discovered on the Demised Premises, or any provincial, federal or municipal government authority or agency having jurisdiction requires the removal of any such hazardous substance, the Landlord shall, at Landlord's expense, other than any hazardous violation disclosed in the phase II environmental report currently being prepared which shall be at the expense of the prior owner, remove or take other accepted abatement measures with respect to such hazardous substance in compliance with or as required by all applicable laws and regulations and indemnify the Tenant for any and all costs related thereto. The indemnities contained herein shall survive the expiration or earlier termination of the Term of this Lease.

1.14 **Use of Demised Premises**

The Demised Premises shall be used only for the purpose of offices and the manufacturing, processing, packaging, warehousing and distribution of food (currently limited to croutons and bread crumbs, it being understood that the Tenant shall request the Landlord for its prior approval before expanding to other food items, such Landlord approval not to be unreasonably withheld), beverage (including both non-alcoholic and alcoholic beverages) and related products, all to be conducted in accordance with all relevant and applicable laws, bylaws, rules and regulations of any governmental authority having jurisdiction, and no assignee or sublessee shall use the Demised Premises for any other purpose whatsoever. The Demised Premises shall not be used for any auction sales, bankruptcy sales, going out of business sales, or any other sales whatsoever or any business which would, in the opinion of the Landlord, tend to alter or lower the character of the Building.

1.15 **Inspection by Mortgagees**

During the Term any stranger or strangers who are prospective purchasers or mortgagees, or within the last 6 months of the Term prospective tenants may inspect the Demised Premises or any part thereof at reasonable times on producing an order to that effect signed by the Landlord, provided that such inspections shall not impinge on the classified nature of the business of the Tenant, if any.

Six (6) months prior to the expiration of the Term or any renewal thereof, the Tenant covenants and agrees to deliver forthwith to the Landlord upon demand, a key to the Premises to permit entry by the Landlord to show the Premises to prospective tenants.

1.16 **Heating**

To assume the sole responsibility for the cost of the condition, repair, operation, maintenance, replacement of the heating equipment and air-conditioning equipment, (if any), and to heat or air-condition the Demised Premises with the heating equipment and air-conditioning equipment, (if any), within the Demised Premises supplied by the Landlord at the Tenant's own expense. The Landlord represents and warrants that it will ensure that all electrical, mechanical, ventilating and air conditioning, plumbing and heating systems and equipment are in compliance with all applicable laws and regulations and in good repair and working order as of the Commencement Date or as soon as reasonably possible thereafter, subject to chargeback to the Tenant in accordance with the terms of this Lease. Thereafter, Tenant shall follow a preventative maintenance schedule for all of such equipment in accordance with the Landlord's reasonable directions.

1.17 **Assigning and Subletting**

That it will not assign, sublet, licence or part with the possession of the Demised Premises or any part thereof, or share the occupation of the Demised Premises, or any part thereof, without the consent of the Landlord in writing first had and obtained, such consent not to be unreasonably or arbitrarily withheld. Provided that as a condition of the granting of its consent, the Landlord may require any assignee, subtenant, licensee or occupant of the Demised Premises to execute an agreement whereby he, it or they attorn to and become the tenants of the Landlord as if he, it or they had executed this Lease. The Tenant shall furnish to the Landlord copies of any assignment, sublease, licence or other agreement herein contemplated; provided that no assignment, subletting, licensing or parting with possession of the Demised Premises shall in any way release or be deemed to release the Tenant (or any guarantor hereof) from their obligations under the terms of this Lease. Provided further that the proposed assignee, subtenant, licensee or occupant of the Demised Premises shall be required to provide financial statements or other financial information as the Landlord may require. It is agreed that the Landlord may consider in determining whether to grant

consent, among other matters, the following: the personal and business history of the proposed assignee, occupant sublessee and its key employees. The Tenant agrees to pay the reasonable legal fees of the Landlord's solicitor relating to the preparation of the Landlord's consent, and determination as to whether to give the consent.

If the Tenant herein is a private corporation and if by sale, transfer or other dispositions of its shares, the control of such corporation is altered so that 51% of the shares are transferred in any manner, then same shall be deemed as an assignment and the provisions of this Section 1.17 shall apply. The Tenant covenants and agrees to advise the Landlord forthwith if such a transfer is contemplated. This provision shall not apply if the Tenant becomes a publicly traded corporation listed on a recognized North American stock exchange.

In the event of any subletting by the Tenant by virtue of which the Tenant receives a rental in the form of cash, goods, services or other considerations from the subtenant which is higher than the rental payable hereunder to the Landlord for the premises sublet, the Tenant shall pay 50% of any such excess to the Landlord in addition to all rentals and other costs payable hereunder, and such excess for the period of time during which the said subtenant remains in possession of the premises sublet to it.

If the Tenant herein shall receive from any assignee of this Lease, either directly or indirectly, any consideration for the assignment of this Lease, either in form of cash, goods or services, the Tenant shall forthwith pay an amount equivalent to 50% of such consideration to the Landlord and same shall be deemed to be further additional rental hereunder.

In the event of any proposed assignment or subletting of the Demised Premises by the Tenant, the Landlord shall not be obligated to consider such a proposal nor be required to consent to same, unless the Base Rental payable by the proposed assignee or sublessee is, in the sole discretion of the Landlord, at the then current market rate for similar space in the immediate and surrounding area.

In calculating whether there is any additional consideration payable by an assignee or sublessee as hereinbefore provided, deduction shall be made for any leasing commissions, reasonable legal fees and reasonable inducements to the assignee or sublessee.

That except in the case of an absolute assignment of this Lease, the Tenant shall obtain from any subtenant or undertenant, an acknowledgement that all the sublessee's or undertenant's estate, right and interest in and to the Demised Premises absolutely terminates upon the surrender, release, disclaimer or merger of this Lease, notwithstanding the provisions of The Landlord and Tenant Act of Ontario, R.S.O. 1990, Chapter L7 and amendments thereto with specific reference to Paragraphs 21 and 39(2) thereof, or other similar statute.

If the Landlord has granted to the Tenant, named on page 1 of this Lease, any first rights of refusal, exclusive rights or options to lease additional space or to purchase, it is agreed and understood that upon the Tenant assigning, subletting, licensing or parting with possession of the Demised Premises or any part thereof, the aforesaid rights referred to shall automatically become null and void.

Notwithstanding anything to the contrary, the Landlord's consent shall not be required for an assignment or subletting to an affiliate (within the meaning of the *Business Corporations Act* (Ontario) as amended or replaced from time to time) of the Tenant provided that the Landlord receives fourteen (14) days prior written notice in writing of such assignment or subletting; that the assignee or subtenant signs an acknowledgement in the Landlord's standard form that it will abide by the terms of the Lease; and provided that the Tenant remains fully liable for all of its obligations and covenants under this Lease.

1.18 **Roof**

That it will not place anything on the roof, whether signs or otherwise, or in any way make any opening in the roof for stacks or other purposes, or in any way alter the walls, or structure of the Demised Premises without the written consent of the Landlord, which consent shall not be unreasonably withheld.

1.19 **Insurance**

That it will during the whole of the Term pay all premiums with respect to insurance to be placed by the Landlord and described as follows:

- (a) Property of every description (Building and equipment) against the perils of "All-Risks", under form providing coverage at least equivalent to Commercial Building and Contents Broad Form I.B.C. Form No. 4037, including "Building By-Laws Endorsements", and to be insured for Replacement Cost and Stated Amount Basis;
- (b) "Rental Income" for the gross annual rental income on "All-Risks" basis, as provided under Commercial Building Broad Form I.B.C. Form No. 4037 including "Building By-Laws Endorsements", providing coverage at least equivalent to Profits Form I.B.C. Form No. 4030 with a 12-month indemnity period;
- (c) Broad Form Boiler and Machinery Policy on a blanket and replacement basis with limits for each accident in an amount not less than the replacement cost of the buildings comprising the Demised Premises and which shall cover all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned by the Landlord;

It shall also include "Rental Income" for the full gross annual income equivalent to I.A.O. Profits Form No. 551 with a 12-month indemnity period. This policy should also provide Building By-Laws Extensions;
- (d) "General Liability Insurance" on a Commercial General Form against claims for Personal and Bodily Injury and Death and/or Property Damage occurring upon or about the Demised Premises and for a limit not less than \$5,000,000.00 inclusive for any one occurrence; and
- (e) such other insurance coverage or coverages as the Landlord or its mortgagee feels necessary for protection respecting loss of or damage to the Demised Premises or liability arising therefrom.

And all such insurance coverages shall be kept and maintained or amended by the Landlord, and in no event shall the coverage be less than the amount reasonably required by any institutions then holding mortgages on the Demised Premises. The Tenant shall pay to the Landlord as additional rental, together with the monthly consecutive payments of Base Rental and estimated taxes hereinbefore provided for, an amount equal to 1/12th of the amount of the insurance premiums payable to maintain the insurance coverages herein contemplated, and if on receipt of the invoice or invoices for the insurance premiums it shall be made to appear that the monthly payments on account thereof so paid by the Tenant to the Landlord shall be less than sufficient to pay such invoice or invoices, then the Tenant shall forthwith pay to the Landlord such additional sums as may be required in order that, out of such monthly and additional payments, the Landlord shall have received the whole of the insurance premiums payable by the Tenant hereunder. The Tenant shall not do or permit to be done any act or thing whereby insurance coverages, or any of them hereinbefore contemplated, may be increased in premium or cancelled by the insurer, or the Demised Premises shall be rendered uninsurable, and if by reason

of any act done or permitted or omission, as the case may be, by the Tenant, the said insurance coverages, or any of them shall be increased in premium, then the Tenant shall be liable to pay all of such increase in premium, on demand with respect to the entire coverages, and if the Demised Premises shall be rendered uninsurable, or if the said insurance coverages, or any of them, shall be cancelled by reason of any act or omission as the case may be, by the Tenant, and shall not be susceptible of being replaced, then the Landlord, after giving the Tenant at least 14 days within which to replace the insurance coverage or coverages shall, in its absolute discretion, have the right to determine that the Term has expired and in such event the Tenant shall deliver up possession of the Demised Premises as if the Term had expired. The Tenant agrees to make such payments whether or not payment has actually been made by the Landlord.

Provided that no act required to be done by the Tenant nor any payment required to be made by the Tenant, including reimbursements of insurance premiums paid by the Landlord, shall relieve the Tenant from any liability for damage incurred by the Landlord as a result of any act or omission of the Tenant.

The Landlord shall not be responsible for any injury, damage or death of any kind or nature whatsoever that may be suffered by the Tenant, its employees, agents or customers, whether to persons or property, howsoever caused.

1.20 Tenant's Insurance

The Tenant covenants and agrees at its sole cost and expense to take out and maintain in full force and effect and pay all premiums for, throughout the Term and any renewal thereof, with an insurance company or companies in good standing and upon terms and conditions all satisfactory to the Landlord., insurance coverage for the Demised Premises as follows:

- (a) property of every description owned by the Tenant for which the Tenant is legally liable or installed by or on behalf of the Tenant in the Building, including without limitation, stock and trade, equipment, furniture, fixtures, plate glass and leasehold improvements of every nature and kind, in an amount not less than the full Replacement Cost and Stated Amount Basis;

Such coverage shall ensure against perils of "All Risk" under form providing coverage at least equivalent to Commercial Building and Contents Broad Form I.B.C. Form No. 4037;

- (b) whenever appropriate or required by the Landlord, broad form comprehensive boiler and machinery coverage on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement cost of all leasehold improvements and of all boilers, pressure-vessels, climate control equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others on behalf of the Tenant in or serving the Demised Premises;
- (c) general liability insurance on a Commercial General Form against claim for personal and bodily injury and death and/or property damage occurring upon or about the Demised Premises, including the activities conducted by the Tenant and for a limit not less than \$5,000,000.00 inclusive for any one occurrence;
- (d) business interruption insurance in such amounts as from time to time are necessary to reimburse the Tenant for direct or indirect loss of earnings; and
- (e) any other form of insurance in such amounts and against such risks as the Landlord or any mortgagee may from time to time reasonably require to protect the Landlord's or mortgagee's interest in the Demised Premises.

The Tenant covenants and agrees to provide the Landlord with evidence of insurance as required under this provision. Such evidence shall be by way of a certified copy of the insurance policy at such time or times as the Landlord may require. The Tenant agrees to provide same to the Landlord forthwith after notice has been given by the Landlord to the Tenant of its request. The Tenant's insurance policies shall contain a waiver of subrogation in favour of the Landlord and those for whom the Landlord is in law responsible.

If the Tenant at any time fails to take out, maintain in force or pay the premiums on any such insurance as required under this lease, or if the Tenant fails from time to time to deliver to the Landlord satisfactory evidence of good standing of any such insurance or payment of premiums thereon, then in such event the Landlord may, without prejudice to any of its other rights and remedies under this lease, have the right but not the obligation, in its sole discretion, to effect such insurance on behalf of the Tenant and the cost thereof together with all reasonable expenses incurred by the Landlord shall be paid by the Tenant to the Landlord forthwith upon demand as additional rent.

The Tenant agrees that in the event of damage or destruction to any of the leasehold improvements in the Demised Premises, the Tenant shall use the proceeds of its insurance for the purpose of repairing or restoring the leasehold improvements. In the event of damage or destruction of the Building entitling the Landlord to terminate the lease, then the Tenant shall forthwith pay or cause to be paid to the Landlord all the insurance proceeds relating the leasehold improvements in the Demised Premises.

The Tenant shall promptly comply with all requirements of the Insurers Advisory Organization of Canada or of any insurer now or hereinafter involved pertaining to or affecting the Demised Premises.

1.21 **Refuse and Waste**

Not to use any outside garbage or other containers or allow any ashes, refuse, garbage or other loose or objectionable material to accumulate in or about the Demised Premises, and not to store or cause to be stored outside of the building any of its inventory, stock-in-trade or raw materials. If the appropriate by-laws permit outside garbage containers, and if the Landlord's criteria permits same, and if the consent of the Landlord is first obtained, which consent may be unreasonably withheld, any such containers to be used by the Tenant shall be securely closed on top.

1.22 **Unloading**

That all loading and unloading of merchandise, supplies, materials, garbage, refuse and other chattels shall be made only through or by means of such doorways or corridors as may have been designated by the Landlord for such purposes. The Tenant shall bear the cost of any repairs or replacements necessitated by motor vehicles or equipment utilizing the Outside Areas and Facilities, such cost to be paid as additional rental forthwith upon demand.

1.23 **Common Expenses**

To pay to the Landlord as additional rental, by monthly instalment to be reasonably fixed from time to time by the Landlord, the costs of snow removal, landscaping, employee's salaries and fringe benefits, contractors fees, supplies and materials, legal fees, watchman (if any), fire sprinkler repairs, supervision, the cost of the security system for the fire sprinklers, water (if not billed directly to the Tenant), utilities including lighting(if not billed directly to the Tenant), sewage(if not billed directly to the Tenant), management fee, capital reserve, policing, painting of the outside of the entire building and service rooms and

maintenance, including repairs, maintenance and replacement of the exterior of the Demised Premises and the paving, curbs, walkways, landscaping, roof and drainage as may from time to time become necessary and all other costs which may be incurred with respect to the Outside Areas and Facilities, including any goods and services taxes thereon.

The Demised Premises and the Outside Areas and Facilities shall be maintained in a first class manner and the expenditures therefore shall be at the sole discretion of the Landlord to maintain such standard Each 12-month period ending December 31st shall be deemed to be an accounting year for adjusting the said costs respecting the Demised Premises and Outside Areas and Facilities and within a reasonable length of time after the end of each such accounting year, but in any event within 90 days, the Landlord shall compute the said costs for such accounting year and shall submit to the Tenant a statement showing such costs (together with such documentation evidencing such costs as the Tenant may request) and the said costs shall be borne by the Tenant. To the extent that such costs for such accounting year shall be greater than the total amount actually paid by the Tenant by said monthly payments in respect of such year the difference shall be paid by the Tenant to the Landlord within 10 days after receipt of such statement by the Tenant, and any excess payments made by the Tenant shall be refunded by the Landlord to the Tenant within 10 days after receipt of such statement by the Tenant, The said accounting period may be modified by the Landlord if reasonably necessary. The Tenant shall have the right to audit the Landlord's statement and claim a readjustment in respect of operating costs based upon any errors of assessment, determination or calculation thereof, if such right is exercised prior to the expiration of 60 days after the receipt by the Tenant of the statement for the subject fiscal period to which the operating costs relate.

The Tenant shall use a chartered accounting firm (acceptable to the Landlord, acting reasonably) to conduct any such audit and such auditor shall not be compensated on a contingency fee basis.

If the audit discloses a variance of greater than 5%, the Landlord shall reimburse the Tenant for its reasonable costs of such audit.

If the audit discloses a variance of less than 5%, then the Tenant shall reimburse the Landlord its reasonable cost of its staff for their time expended on the audit.

1.24 **Non-Liability of Landlord**

To save harmless the Landlord from any and all liability, costs, claims, demands or actions for damages, injury or loss suffered or sustained by any person or persons in or about the Demised Premises or any part thereof, and for damage or injury to the property of any person or persons occasioned by the Tenant, its customers, employees, servants or agents, or by their neglect, default or misconduct or occasioned by reason of any other cause or matter whatsoever, and in particular, but without in any way limiting the generality of the foregoing, the Landlord (including its officers, employees, agents, servants and those for whom the Landlord is in law responsible) shall not be liable for any damage to any such property caused by any reason whatsoever, whether by fire, explosion, steam, water, rain, snow, flood, gas or leaks from any part of the Building or from water, steam, sprinkler or drainage pipes or plumbing works or from any other place or quarter or for any damage caused by, or attributable to, the condition or arrangement of any electrical or other wiring, or from any other cause whatsoever, unless resulting from the negligence or omission of the Landlord or those for whom it is responsible at law. The covenants of indemnity herein contained in respect of damage to property, injury or death occurring during the Term shall survive any termination of this Lease, anything herein to the contrary notwithstanding. All property of the Tenant kept or stored on the Demised Premises shall be done so at the risk of the Tenant only.

1.25 **Misuse of Demised Premises**

Not to bring upon the Demised Premises or any part thereof any machinery, equipment, article or thing that by reason of its weight, size or use might damage the Demised Premises and will not at any time overload the floors of the Demised Premises, and will not cause to be stored or piled any machinery, equipment, article or thing within ten feet of masonry walls or steel columns, and that if any damage is caused to the Demised Premises by any machinery, equipment, article or thing or by overloading or by piling or storing or by any act, neglect or misuse on the part of the Tenant or of its servants, agents or employees or any person having business with the Tenant, the Tenant will, at the option of the Landlord, forthwith repair the same or pay to the Landlord the cost of making good same. The Tenant shall not bring on the Outside Areas and Facilities any heavy machinery, vehicles, or other equipment which may cause damage to the Outside Areas and Facilities. In the event of any default by the Tenant under this provision, the Landlord shall be entitled to repair the damage at the cost of the Tenant, (and at the Landlord's sole option) and the Tenant shall forthwith pay the cost of such repairs upon demand as additional rental, together with an administration fee of not less than \$200.00. At the Landlord's option, the Landlord shall be entitled to require the Tenant to make such repairs forthwith upon notice.

1.26 **Evidence of Payments by Tenant**

The Tenant shall, from time to time, at the request of the Landlord, produce to the Landlord satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Lease.

1.27 **Window Coverings**

The Tenant shall supply suitable interior window coverings for the Demised Premises at the Tenant's expense, in accordance with the Window Covering Criteria established by the Landlord, and the exterior colour and type of such coverings shall be subject to the Landlord's written approval. In the event the Tenant does not supply the required coverings within 30 days of the Tenant taking occupancy, then the Landlord shall supply the coverings and charge the Tenant accordingly, which the Tenant agrees to pay forthwith. All payments to be made by the Tenant shall be considered to be additional rental. Said window coverings shall remain, at the option of the Landlord, on the Demised Premises and ownership shall be deemed transferred automatically to the Landlord upon termination or maturation of the Term. The Landlord acknowledges and confirms that the window coverings in existence in the Premises as of the Commencement Date are acceptable.

1.28 **Air-Conditioning**

Not to place or attach anything to the outside of the windows or the exterior of the Demised Premises. No air-conditioning equipment shall be placed in the windows or shall extend from the exterior of the Demised Premises without the consent in writing of the Landlord, which consent may be arbitrarily withheld. The Landlord acknowledges and confirms that the air-conditioning equipment in existence in the Premises as of the Commencement Date is acceptable.

1.29 **Liens**

If any construction liens or other liens or Order for the payment of money shall be filed against the Demised Premises by reason, or arising out of any labour or material, work or service furnished to the Tenant or to anyone claiming through the Tenant, the Tenant shall, within 15 days after notice to the Tenant of the filing thereof, cause the same to be discharged by bonding, deposit, payment, court

order or otherwise. The Tenant shall defend all suits to enforce such lien or Order whether against the Tenant or the Landlord at the Tenant's own expense. The Tenant hereby indemnifies the Landlord against any expense or damage as a result of such lien or order.

1.30 **Application to Amend By-Laws**

The Tenant covenants with the Landlord (and the Tenant acknowledges) that it will not make any application or representation to or for any Governmental body which would have the effect of, in any way, amending or varying the provisions of any governmental by-laws, rules, regulations or requirements affecting the Demised Premises and lands, without first obtaining the written consent and authorization of the Landlord which may be arbitrarily withheld.

1.31 **Financial Statements**

The Tenant will, at the request of the Landlord, supply copies of its financial statements to the Landlord or to the mortgagees, if any, on the Demised Premises or to a prospective mortgagee within 30 days of receipt of written request of the Landlord for such statements.

1.32 **Fire Sprinkler System**

It is agreed and understood that the fire sprinkler system (if any), in the Demised Premises is for ordinary hazard use only in accordance with the requirements of the I.A.O. Standard (or their successor), and if the Tenant's use of the Demised Premises requires the Landlord to upgrade the fire sprinkler system, then the Tenant shall forthwith upon demand pay to the Landlord the entire cost of upgrading the fire sprinkler system to the standards required because of such use, and such moneys shall be payable to the Landlord as additional rental and in advance of such work being performed. The Tenant further covenants to allow the Landlord and its servants, agents, employees and representatives to enter the Demised Premises to effect such alterations to the fire sprinkler system and the Landlord shall not be responsible to the Tenant for any disturbance or business interruption which may be caused. In the event that such work would prevent or materially affect the Tenant's operation of its business on the Demised Premises, the Landlord agrees to cooperate with the Tenant to schedule and perform such work in a manner that will reasonably minimize such affect. The Tenant further covenants that in the event the fire sprinkler system at any time malfunctions the Tenant will immediately notify the Landlord. The Tenant shall be fully responsible for all increases in insurance premiums caused in and about the building and Outside Areas and Facilities until the alterations have been completed.

In the alternative, if the Landlord, in its sole discretion, does not desire to make such alterations, then the Tenant shall be obligated to pay all insurance premium increases noted above as additional rental forthwith upon demand. Payment of such increases shall be made at such time or times as the Landlord requires.

In the further alternative, the Landlord, in its sole discretion, may cause the upgrading of the fire sprinkler system to be performed by the Tenant and the Tenant agrees to do such work upon receiving notice from the Landlord. Such work shall be completed by the Tenant not later than 2 months after receipt of notice from the Landlord. The Tenant agrees that it will take instructions from the Landlord as to the nature of the upgrading and will utilize the services of such contractor as the Landlord may require. In every event, the Tenant agrees that the fire sprinkler system will be upgraded to the standards required by the I.A.O. The Tenant further agrees that in the event of the Tenant performing the work, the Landlord shall be entitled to a supervision fee of not less than \$200.00, which sum shall be paid forthwith after the work has been completed and shall be considered to be additional rental.

The Tenant covenants and agrees not to shut down the fire sprinkler system without the prior written consent of the Landlord, which consent may be arbitrarily withheld.

1.33 **Environment**

The Tenant covenants not to carry on any business or operation or permit anything to be done which contravenes any of the provisions of the Environmental Protection Act, R.S.O. 1990, as amended, and shall not permit any objectionable noise or odours, waste and damage on the Demised Premises which may be deemed as a nuisance or injurious to the Demised Premises or to any surrounding buildings or surrounding environment. The Tenant further covenants and agrees not to bring or allow to be deposited, added, emitted or discharged upon the Demised Premises, or any part thereof, any contaminant (as that term is defined in the Environmental Protection Act, R.S.O., 1990, as amended), or any hazardous substance including, but not limited to, pollutants, dangerous substances, liquid waste, industrial waste, hauled liquid waste, toxic substances, hazardous waste, hazardous materials, foreign materials or objectionable materials. The Tenant shall keep the Demised Premises and every part thereof, free of any and all contaminants and hazardous or dangerous substances and will at its own cost and expense take all necessary steps to remove such contaminants and substances for which it is responsible from the Demised Premises and restore the Demised Premises so as to comply in all material respects with all federal, provincial and local environmental laws and regulations. If the Tenant does not do so when requested forthwith upon demand, the Landlord at its sole option and in its sole discretion, may elect to perform such steps at the cost of the Tenant. The Landlord shall be responsible, at Landlord's expense, subject to the pending phase II environmental report and any rectification paid for by the previous owner of the property (if any), for any contaminants or hazardous or dangerous substances on the Demised Premises for which the Tenant is not responsible, and shall indemnify the Tenant for any and all costs related thereto.

The Landlord and its agents, servants, employees and representatives shall have the right to inspect the Demised Premises at any time or times on at least 24 hours prior notice for the purpose of determining whether the operation of the Tenant complies with the above provisions. The Tenant shall pay as additional rental any costs incurred by the Landlord in making such inspections. Such costs shall be paid forthwith upon demand. In the event that the Landlord determines, in its sole discretion, that the Tenant is in breach of the above covenant, then the Landlord shall provide the Tenant with notice in writing of the breach and the Tenant shall within 5 days after receipt of such notice immediately commence to rectify such breach at the Tenant's expense. In the event that the Tenant does not immediately commence to rectify such breach within 5 days, then the Landlord, at its option and in its sole discretion, may terminate this Lease without any further notice or may rectify such breach at the cost of the Tenant, and the Tenant shall forthwith upon demand reimburse the Landlord for the cost of rectification and such sum shall be considered to be additional rental under this Lease and collectible as additional rental. Provided further that in the event the Tenant takes action to rectify such breach as noted above, the Tenant shall complete such rectification not later than 30 days after receipt of notice given above by the Landlord or as soon thereafter as is reasonably possible. In every event, the Tenant shall be fully responsible for all damage which may be caused as a result of the breach of this Section.

ARTICLE 2

2.1 Acknowledgement of Tenant

The Tenant acknowledges that the lands and Premises hereby demised will be served by electrical, drainage, sprinkler, domestic water system and other systems and in the event that repairs or replacements are necessary to any of such systems, then the Tenant covenants to forthwith pay to the Landlord the total cost of such repairs forthwith upon receiving written demand therefor; and the Landlord's servants or agents shall have reasonable access to the Demised Premises for the purpose of making all necessary repairs or replacements to such facilities without liability for any disturbance, or business interruption which may be caused in so doing, and it is expressly agreed that if any of such systems shall have been damaged or shall have become inoperative by reason of the negligence of the Tenant, its servants or agents, then the entire cost of repairing the same shall be borne by the Tenant and including the cost of structural repairs required as a result in such event and payable forthwith upon demand.

2.2 Riser

The Tenant acknowledges that a riser may be located in the Demised Premises and accordingly the Tenant agrees to deliver a key to the Demised Premises to the Landlord at the commencement of the Term in order to permit access to the riser in the event of an emergency. If the Tenant does not deliver the said key upon request, the Tenant shall be in default under this Lease, and in addition to all other remedies available to the Landlord, the Landlord may, at its sole option, have a key made for the Demised Premises at the Tenant's expense, the cost of which shall be additional rental and payable forthwith.

In addition, if the Landlord is not in possession of a key through the Tenant's default and an emergency as aforesaid arises, the Landlord shall be entitled to take whatever steps are necessary to gain access to the Demised Premises and the cost of same including any damage resulting therefrom, shall be the sole responsibility of the Tenant. The gaining of access as aforesaid shall not be considered to be a termination of this Lease by the Landlord.

ARTICLE 3 - ADDITIONAL COVENANTS

3.1 Removal of Tenant's Fixtures

Upon expiration of the tenancy, the Tenant shall remove its trade fixtures from the Demised Premises, provided the Tenant shall not remove or carry away from the Demised Premises any part of the building, or any plumbing, heating, ventilating or lighting equipment, wiring or electric panels and services or other building services and equipment, and provided that the Tenant shall repair any damage occasioned by the installation or removal of its trade fixtures. Should the Tenant at the expiration of the Term not have removed from the Demised Premises its trade fixtures, plant, machinery and equipment then the Landlord may, at its option, remove the same, the cost of such removal, the making good of any damage which may be occasioned to the Demised Premises and/or any loss or damage which the Landlord may suffer as a result of the Landlord removing same according to the terms of this Lease, shall be borne by the Tenant and shall become immediately due and payable by the Tenant to the Landlord as rent in arrears. If the Landlord elects not to remove the Tenant's trade fixtures as it is entitled to do, then the ownership of the trade fixtures shall pass to the Landlord free of any lien or claims, and the Tenant agrees to execute an acknowledgement to this effect if required by the Landlord.

3.2 Executions, Bankruptcy

Provided that if during the Term any of the goods and chattels of the Tenant shall be at any time seized or taken in execution or in attachment by any creditor of the Tenant or if a Writ of Execution shall be issued against the goods or chattels of the Tenant, or if the Tenant shall execute any chattel mortgage or bill of sale of any of its goods or chattels other than in the ordinary course of business, or if a Receiver is appointed or if the Tenant shall make any assignment for the benefit of creditors or commit any other act of bankruptcy as defined in the Bankruptcy Act of Canada or any amendment thereto, or becoming a bankrupt or insolvent shall take the benefit of any Act which may be in force for bankrupt or insolvent debtors, or shall attempt to abandon the Demised Premises or to sell or dispose of its goods or chattels, so that there would not, in the event of such sale or disposal be, in the opinion of the Landlord, a sufficient distress on the Demised Premises for the then accruing rent and moneys accruing hereunder as rent, then the current month's rent, and any arrears of rent, together with rent for the 3 months next ensuing (and for the purposes hereof, rent shall include all moneys designated to be paid as additional rental, including, but without limiting the generality of the foregoing, monthly instalment on account of taxes, insurance premiums and maintenance of the Outside Areas and Facilities), shall immediately become due and payable and the Term shall at the option of the Landlord forthwith become forfeited and determined, in which event the Landlord may re-enter and take possession of the Demised Premises as though the Tenant, or any occupant or occupants of the Demised Premises, was or were holding over after the expiration of the Term without any right whatsoever, provided that no action by the Landlord in so doing shall be deemed to relieve the Tenant of its obligations for the payment of Base Rental and additional rental or any other moneys payable hereunder.

3.3 Removal of Goods

Provided that in the case of removal by Tenant of its goods and chattels from the Premises, the Landlord may follow the same for 30 days in the same manner as is provided for in the Commercial Tenancies Act; and notwithstanding anything contained in the Commercial Tenancies Act or any other statute or any other subsequent legislation, none of the goods or chattels of the Tenant at any time during the continuance of the Term on the Demised Premises shall be exempt from levy by distress for rent in arrears, and that upon any claim being made for any exemption by the Tenant on a distress made by the Landlord this covenant may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods, the Tenant waiving as it hereby does any exemptions from distress which might have accrued to the Tenant under the provisions of the Commercial Tenancies Act.

3.4 Re-Entry of Landlord on Non-Payment or Non-Performance of Covenants

In the event that the Tenant shall be in default of any of its covenants hereunder, in addition to any other right which the Landlord may have hereunder, the Landlord may give to the Tenant notice in writing stating the default with reasonably sufficient particulars, and requiring that the said default be remedied and that if such default is not remedied by the Tenant within 15 business days after the receipt of such notice, the Landlord may at its option either enter into and upon the Demised Premises or any part thereof and have again, repossess and enjoy the same as of its former estate and this Lease shall thereupon terminate or itself take such steps and to do or cause to be done such things as may be necessary to remedy and correct such defaults. In the event of non-payment of Base Rental or additional rental, the Tenant shall have five business days from receipt of written notice from the Landlord to remedy such default. Provided further that in the event that the Landlord shall be entitled to, and shall elect to make a re-entry as hereinbefore provided for, any re-entry or other action so taken shall not be deemed to relieve the Tenant of its obligation to pay rent

and other moneys payable as rent hereunder and such rent and other moneys payable as rent in accordance with the provisions hereof shall continue to accrue and be payable until such times as the Landlord is able to relet the Premises or otherwise deal with the same in such manner that it did not sustain any loss should the Tenant thereafter fail to pay the rent and other moneys payable as rent or otherwise under this Lease. Provided further that in addition to all other rights hereby reserved to it, the Landlord shall have the right to re-enter the Demised Premises as the agent of the Tenant either by force or otherwise, without being liable for any prosecution therefor, and to relet the whole or any portion of the Demised Premises for any period equal to or greater or less than the remainder of the then current Term of the Tenant and to receive the rent therefor, said rent to be any sum which it may deem reasonable, to any tenant which it may deem suitable and satisfactory, and for any use and purpose which it may deem appropriate, and in connection with any such lease, the Landlord may make such changes in the character of the improvements of the Demised Premises as the Landlord may determine to be appropriate or helpful in effecting such lease; but in no event shall the Landlord be under any obligation to relet the Demised Premises in whole or in part for any purpose which the Landlord may regard as injurious to the Demised Premises, or to any tenant which the Landlord, in the exercise of reasonable discretion, shall deem to be objectionable or to apply any rent derived from so reletting the Demised Premises upon account of the rent due hereunder, and the Tenant shall remain liable to the Landlord for the deficiency, if any, it being the intention hereof that nothing herein contained and no entry made by the Landlord hereunder shall in any way release the Tenant from the payment of the rent hereby reserved during the Term beyond such sum as may be realized by the Landlord by such reletting or by the proceeds of any distress made by the Landlord against the Tenant; and provided that the Landlord shall not in any event be required to pay to the Tenant any surplus of any sums received by the Landlord on a reletting of the Demised Premises in excess of the rent reserved hereunder.

3.5 **Occupational Health and Safety**

The Tenant covenants and agrees that it will ensure that a comprehensive and rigorous health and safety program to protect workers in the Demised Premises is implemented to ensure that no accidents or injuries occur in connection with the performance of any Tenant's work. The Tenant will indemnify the Landlord in respect of all claims, infractions, prosecutions, alleged infractions, losses, costs and expenses and any fines or proceedings relating to fines or other offenses under all occupational health and safety and any similar legislation that might be brought, or imposed against or suffered by the Landlord or any of its officers, directors and employees in connection with the performance of any Tenant's work. Without limiting the obligations set out above in this Section 3.5, the Tenant will do at least the following:

- (a) ensure that all obligations imposed by statute, law or regulation on "constructors" or other persons completing or co-ordinating any Tenant's work are diligently and properly completed;
- (b) co-operate with the Landlord in having any Tenant's work designated as a separate project so that the Landlord does not incur any obligations as a constructor or obligations similar to those of a constructor at law or by regulation imposed in connection with the performance of any Tenant's work;
- (c) comply with all directions that the Landlord may give to the Tenant in connection with the performance of any Tenant's work having regard to construction health and safety requirements; and
- (d) provide to the Landlord whatever rights of access, inspection, and whatever information, documents and other matters the Landlord requires

in order to ensure that the Tenant's obligations under this Section are complied with.

ARTICLE 4 - LANDLORD'S COVENANTS

4.1 Quiet Enjoyment

The Landlord covenants with the Tenant for quiet enjoyment.

4.2 Alterations by Tenant

The Landlord covenants that the Tenant shall have the right from time to time to make non-structural alterations and changes in the interior of the Demised Premises as it may find necessary for its purposes and at its own expense, provided that plans for such alterations or changes shall first be delivered to the Landlord and the consent of the Landlord in writing shall first be obtained, such consent may not be unreasonably or arbitrarily withheld. The Landlord shall be entitled to unreasonably or arbitrarily withhold its consent with respect to any proposed structural alterations. Provided that upon the termination of this Lease, the Tenant, if requested by the Landlord, shall restore the interior of the Demised Premises to their former condition immediately prior to the installation of such alterations or changes, including the restoration of such standard fixtures as may have been installed by the Landlord, and if not so requested, any such changes or alterations shall become the property of the Landlord, or alternatively, to install such comparable fixtures and materials which may then be in use. The Landlord reserves the right before approving any such alterations and changes to require the Tenant to furnish it a good and sufficient bond in an amount sufficient to save the Landlord harmless from the payment of any claims either by way of damages or liens. Whenever the Tenant makes any repairs, alterations or improvements, it shall only use union labour of a recognized building trade if so required by the Landlord, and if required, the Landlord's contractors. The Landlord shall be entitled to supervise the alterations and charge the Tenant a supervision fee which shall be paid by the Tenant as additional rental on demand which fee shall in no event be less than \$200.00, but may be greater. The Landlord shall also be entitled to charge fees for examining plans respecting proposed alterations.

ARTICLE 5 – DAMAGE

5.1 Destruction

Provided and it is hereby expressly agreed that if and whenever during the Term the Demised Premises shall be destroyed or damaged by fire, lightning, tempest, or by any of the perils insured against under the preceding provisions hereof, then and in every such event:

- (a) if the damage or destruction is such that the Demised Premises are rendered wholly unfit for occupancy or it is impossible or unsafe to use and occupy them and if in either event the damage, in the reasonable opinion of the Landlord's architect or engineer, to be given to the Tenant within 30 days of the happening of such damage or destruction, cannot be repaired with reasonable diligence within 120 days from the date the Landlord has given its opinion, then the Landlord may within 5 days next succeeding the giving of the Landlord's opinion as aforesaid terminate this Lease by giving notice to the Tenant in writing of such termination, in which event this Lease and the Term hereby demised shall cease and be at an end as of the date of such destruction or damage and the rent and all other payments for which the Tenant is liable under the terms of this Lease shall be apportioned and paid in full to the date of such destruction

or damage; in the event that the Landlord does not so terminate this Lease, then the Landlord shall repair the said Demised Premises with all reasonable speed and the rent hereby reserved shall abate from the date of the happening of the damage until the damage shall be made good to the extent of enabling the Tenant to use and occupy the Demised Premises;

- (b) if the damage be such that the Demised Premises are wholly unfit for occupancy, or if it is impossible or unsafe to use or occupy them, but if in either event the damage, in the reasonable opinion of the Landlord to be given to the Tenant within 30 days from the happening of such damage, can be repaired with reasonable diligence within 120 days from the date the Landlord has given its opinion, then the rent hereby reserved shall abate from the date of the happening of such damage until the damage shall be made good to the extent of enabling the Tenant to use and occupy the Demised Premises and the Landlord shall repair the damage with all reasonable speed;
- (c) if, in the reasonable opinion of the Landlord the damage can be made good as aforesaid within 120 days from the date the Landlord has given its opinion, and the damage is such that the Demised Premises are capable of being partially used for the purposes for which they are hereby demised, then until such damage has been repaired the rent shall abate in the proportion that the part of the Demised Premises which is rendered unfit for occupancy bears to the whole of the Demised Premises, and the Landlord shall repair the damage with all reasonable speed;
- (d) the Landlord shall not be obligated to rebuild or restore any leasehold improvements within the Demised Premises or to provide any free Base Rental or additional rental;
- (e) if the Landlord's opinion is that the Demised Premises can be rebuilt as aforesaid, the Tenant shall utilize its insurance proceeds or its own funds to rebuilding the leasehold improvements; and
- (f) if the Lease is terminated, all proceeds of insurance respecting leasehold improvements shall be assigned to the Landlord.

ARTICLE 6 – SIGNS

6.1 Landlord's Signs

The Landlord shall have the right at any time during the Term to place upon the Demised Premises a notice of reasonable dimensions and reasonably placed so as not to interfere with the Tenant's business, stating that the Demised Premises are for sale, and at any time during the last 6 months of the Term that the Demised Premises are to let and the Tenant shall not remove such notices or permit the same to be removed.

6.2 Uniformity of Signs

In order to maintain uniformity of signs on the Demised Premises, it is understood and agreed that the Landlord has made arrangements for the installation of all signs appearing on the face of the building, and that the Landlord will cause its sign company to create an appropriate sign to the reasonable specifications of the Tenant.

And that prior to installation of such sign the Tenant shall pay to the Landlord, the sum of the cost of the said sign, together with an additional 15% administrative

charge, which sums shall be payable immediately upon demand made by the Landlord to the Tenant, as additional rental.

Upon completion of the Term or any earlier termination thereof, at the option of the Landlord, the Tenant agrees to remove any sign which has been installed, erected or displayed in or about the Demised Premises, failing which the sign shall remain on the Demised Premises and ownership thereof shall be deemed transferred to the Landlord. Removal, if required, shall be at the cost of the Tenant. Failure of the Tenant to remove same at request of the Landlord shall entitle the Landlord to remove such sign at the cost of the Tenant and the Tenant shall pay such cost together with an additional administrative charge of 15% forthwith to the Landlord upon demand, as additional rental.

The Landlord's acceptance of any name on any sign will not be deemed, nor will it substitute for, the Landlord's consent as required by this Lease, to any assignment, sublease or other occupancy of the Demised Premises.

6.3 Rules and Regulations

The Landlord expressly reserves the right to regulate all signs, sign boards, posters, flags, advertisements and other decorations and any protrusions from the Demised Premises, in its sole and entire discretion, in order to maintain a uniformity in appearance of the building and outside areas and facilities and to protect the aesthetics thereof for the benefit of its own interests and those of the Tenant and other interested persons.

6.4 Removal and Indemnification

Any such signs, sign boards, posters, flags, advertisements, decorations, etc., shall remain the property of the Tenant and shall be removed by it upon the termination of the Term, following which the Demised Premises shall be restored to their original condition. The Tenant shall indemnify the Landlord against any loss or damage caused to any person, firm, corporation or thing as a result of the placing or use of any sign, sign board, poster, flag, advertisement, or other thing in or about the Demised Premises.

ARTICLE 7 - OUTSIDE AREAS AND FACILITIES

7.1 The Tenant acknowledges and agrees that the Landlord shall have the right to promulgate reasonable rules and regulations to regulate the use of the Outside Areas and Facilities about the building, including, but without limiting the generality of the foregoing the regulation of parking thereon, and the Tenant shall upon written notice from the Landlord, within 5 days, furnish to the Landlord the current provincial licence number of any vehicle owned or used by employees or persons connected with the Tenant. Provided that nothing herein contained shall require or be deemed to require the Landlord to promulgate any such rules or regulations or to regulate in any manner whatsoever the use of the Outside Areas and Facilities.

7.2 The Tenant, its employees, invitees and customers and persons connected with the Tenant (subject and except as in this Lease provided) shall have the right from time to time to use the parking areas, driveways, walkways, lawns, if any, ramps and other Outside Areas and Facilities in and about the building as may from time to time be designated by the Landlord for the use of, or benefit of, such persons or others for the purpose of ingress to and egress from the Demised Premises. The Tenant shall not unreasonably block or in any manner hinder the Landlord or persons claiming through or under the Landlord or any of them who may be authorized by the Landlord to be upon the Outside Areas and Facilities from so doing.

- 7.3 Notwithstanding anything to the contrary, contained herein the Landlord shall have the right to make such changes and improvements or alterations as the Landlord may from time to time in its absolute discretion determine in respect of the outside ways, areas and facilities, or any part thereof, including the right to change the location and layout of the parking areas. It is further agreed that the Landlord shall not be obligated under any circumstances to police the parking areas. If the Landlord desires, the Tenant shall execute whatever documentation the Landlord requires so as to have the Tenant give up the right to use any part of the Outside Area and Facilities.

ARTICLE 8 – DEFINITIONS

8.1 Demised Premises

Whenever in this Lease reference is made to the Demised Premises, it shall include that portion of the building, improvements and erections in and about the same occupied by the Tenant. The Demised Premises shall also include the area of any parts of the building such as hallways, electrical, meter rooms, etc, as determined by the Landlord, in its sole discretion, and the Tenant shall pay base and additional rental thereon.

8.2 Outside Areas and Facilities

"**Outside Areas and Facilities**" shall mean all of the lands described in Schedule "B" hereof not for the time being covered by any building (other than any service building for the general benefit of the Tenant of the said lands) and shall include any improvements thereon and thereto such as tool sheds, lighting standards, parking signs, lawns, sidewalks, parking areas, etc.

8.3 Grammatical Changes

Words importing the singular number only shall include the plural and vice-versa, and words importing the masculine gender shall include the feminine gender and words importing persons shall include firms and corporations and vice versa.

ARTICLE 9 - ADDITIONAL TERMS

9.1 Calculation of Base Rental

Deleted intentionally.

9.2 Net Net Net Lease

It is the intention of the parties that the rent herein provided to be paid shall be net net net to the Landlord and clear of all taxes, costs and charges arising from or relating to the Premises and that the Tenant shall pay all charges, impositions and expenses of every nature and kind relating to the Premises, including legal fees incurred by the Landlord to deal with any default of the Tenant, and the Tenant hereby covenants with the Landlord accordingly.

9.3 Non-Waiver by Landlord

The failure of the Landlord to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed to be a waiver of any rights or remedies that the Landlord may have and shall not be deemed to be a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions. All rights and powers reserved to the Landlord hereunder may be exercised either by the Landlord or its agents or

representatives from time to time and all such rights and powers shall be cumulative and not alternative.

9.4 **Landlord's Right to Pay Tenant's Obligations**

If the Tenant fails to pay any taxes, rates, insurance premiums, or charges which it has herein covenanted to pay, the Landlord may pay them and charge the sums paid to the Tenant who shall pay them forthwith on demand and the Landlord, in addition to any other remedies, shall have the same remedies and may take the same steps for the recovery of all such sums as if they were Base Rental in arrears. All arrears of Base Rental and any moneys paid by the Landlord hereunder, or owing by the Tenant, shall bear interest at the rate of 3% above the Bank of Nova Scotia prime rate for favoured borrowers from time to time to be determined and calculated on the 1st day of each month, from the time such sums become due until paid to the Landlord.

9.5 **Possession Prior to Commencement Date**

In the event that the Tenant takes possession of the Demised Premises prior to the commencement date of the within Lease, then the Tenant, during such prior occupancy, shall be a Tenant of the Landlord and shall be subject to the same covenants and agreements of this Lease mutatis mutandis.

9.6 **Delay**

In the event that the Landlord has not completed its required work (if any) for the Tenant at the commencement date of this Lease, then the Tenant shall take possession on such date that the said work has so been substantially completed and at such date shall pay Base Rental and all other charges herein proportionately for the broken portion of the calendar month immediately ensuing thereafter, save and except if the Landlord is delayed by the Tenant or by the Tenant's workmen, agents or independent contractors employed by the Tenant, in which event the Tenant shall pay Base Rental and additional rental from the commencement date.

9.7 **Installations and Repairs**

The Landlord and any other persons authorized by the Landlord shall have the right to install, maintain and/or repair pipes, wires, ducts or other installations in, under or through the Demised Premises, or in, under or through the Outside Areas and Facilities about the Demised Premises, or in connection with the supply of any services to the Demised Premises, but nothing herein contained shall oblige the Landlord to make such installations or do such maintenance or effect such repairs. The Landlord shall not be liable for any losses or damages which may be incurred by the Tenant as a result thereof.

9.8 **Place for Payments**

All payments required to be made by the Tenant herein shall be made to the Landlord at the Landlord's office as set out herein, or to such agent or agents of the Landlord or at such other place as the Landlord shall hereafter from time to time direct in writing.

9.9 **Assignment by Landlord**

The Landlord may assign its rights under this Lease to a lending institution as collateral security for a loan. If such assignment is made and executed by the Landlord and notification thereof is given to the Tenant by or on behalf of the Landlord this Lease shall not be cancelled or modified for any reason whatsoever except as provided for by the terms hereof or by law without the consent in writing of such lending institution.

9.10 **Acknowledgement by Tenant**

The Tenant shall, whenever reasonably so required by the Landlord, consent to and become a party to any instrument relating to this Lease which may be required by or on behalf of any Purchaser, bank mortgagee or the Landlord from time to time and to postpone its interest in the Demised Premises to any such party. The Tenant hereby appoints the Landlord as its attorney to execute and deliver any such instrument as may be required under this provision and such appointment is irrevocable. Notwithstanding anything in this Lease, the Tenant shall not be required to execute any subordination or attornment agreement until it has received from any mortgagee a non-disturbance agreement in favour of, and reasonably satisfactory to, the Tenant which shall, among other things, provide that if the mortgagee enforces its security, the Tenant will be entitled to remain in possession of the Premises and undisturbed in accordance with the terms of this Lease provided that the Tenant is not then in default under the Lease, and if the mortgagee becomes owner or mortgagee in possession of the Landlord's interest in the Premises, it shall be bound by this Lease to the same extent as if it had executed this lease as Landlord. The Landlord covenants and agrees as soon as possible, and in any event within 90 days after the Commencement Date, to use reasonable commercial efforts to obtain such agreement from any mortgagee or other party having an interest in the Premises which has priority over the interest of the Tenant under this Lease.

9.11 **Waiver of Breach**

No acceptance of rent subsequent to any breach or default hereunder by the Tenant shall be taken to operate a waiver of such breach or default or affect the rights of the Landlord hereunder, and the failure of the Landlord to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that the Landlord may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions. If the Landlord makes any error or miscalculation in the Base Rental or additional rental payable under this Lease at any time during the Term or any renewal thereof, the Landlord shall be entitled to notify the Tenant at any time thereafter, including subsequent to the termination or maturation of the Term of the Lease, and the Tenant covenants and agrees to make any such payment forthwith upon demand, upon receipt of evidence of the error.

9.12 **Impossibility of Performance**

It is understood and agreed that whenever and to the extent that either party shall be unable to fulfil or shall be delayed or restricted in the fulfilment of any obligation hereunder in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material, goods, equipment, service or labour required to enable it to fulfil such obligation, or by reason of any statute, law or order-in-council or any regulation or order passed or made pursuant thereto, or by reason of the order or direction of any administrator, comptroller, board, governmental department or officer or other authority required thereby, or by reason of any other cause beyond its control, whether of the foregoing character or not, such party shall be relieved from the fulfilment of such obligation and the other party shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned. Nothing herein contained shall excuse the prompt payment of any financial obligations pursuant to this Lease.

9.13 **Adjustment of Charges**

Taxes, local improvement rates, insurance premiums, public utility charges, maintenance charges for the Outside Areas and Facilities and other adjustable

items in respect of those portions of calendar years if any prior and subsequent to the Term shall be adjusted between the Landlord and Tenant at the commencement of the Term and again at the termination of this Lease, to the intent that the burden of any such charges shall be borne by the Landlord until the commencement of this Lease and by the Tenant thereafter until it shall deliver up possession of the Demised Premises in accordance with the provisions hereof upon the termination of this Lease or of any holding over hereunder.

9.14 **Notices**

Any notice, request or demand herein provided or permitted to be given by the Tenant to the Landlord shall be sufficiently given if mailed in Metropolitan Toronto, postage prepaid, registered or delivered to the Landlord addressed to it at:

4711 Yonge Street
Suite 1400
Toronto, Ontario
M2N 7E4

and any notice herein provided or permitted to be given by the Landlord to the Tenant shall be sufficiently given if mailed in Metropolitan Toronto, Ontario, postage prepaid, registered or delivered to the Tenant addressed to it at the Demised Premises. Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered, or on the next business day following the day upon which such notice is mailed, as the case may be. Either party may at any time give notice in writing to the other of any change of address of the party giving such notice, and from and after the giving of such notice, the address therein specified shall be deemed to be the address of such party for the giving of notices hereunder. The word "notice" in this Section shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Landlord to the Tenant or by the Tenant to the Landlord.

9.15 **Overholding**

Provided that should the Tenant remain in possession of the Demised Premises after the termination of the original Term without other special agreement, it shall be at a monthly Base Rental equal to the Base Rental and additional rental payable during the last month of the Term times two, payable on the first day of each and every month and subject in other respects to the terms of this Lease, including those provisions requiring the payment of additional rental in monthly instalment.

Notwithstanding the above, it is understood and agreed that if the Tenant provides the Landlord with written notice at least nine (9) months prior to the expiry of the original Term that it wishes to overhold for a period of six (6) months beyond the expiry of the Term, the Tenant shall pay Base Rental times 125%.

9.16 **No Representations**

The Tenant agrees that no representation or promise with respect to the Demised Premises has been made by or on behalf of the Landlord except as are herein expressly set forth, including any advertising material which may have been delivered to the Tenant.

9.17 **Time**

The parties hereto agree that time shall be of the essence of this Lease, save as is herein specifically set out.

9.18 **No Reservation**

The submission of this Lease for examination does not constitute a reservation of or option for the Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by the Landlord and Tenant.

9.19 **Applicable Law**

This Lease shall be construed under and in accordance with the laws of the Province of Ontario.

9.20 **Transfers by Landlord**

The Landlord at any time and from time to time may sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in the Premises or lands, at any time and from time to time, may enter into any mortgage of the whole or any of its interest in the lands or in the Demised Premises. If the party acquiring such interest shall have agreed to assume and so long as it holds such interest, to perform each of the covenants, obligations and agreements of the Landlord under this Lease in the same manner and to the same extent as if originally named as the Landlord in this Lease, the Landlord shall thereupon be released from all of its covenants and obligations under this Lease.

9.21 **Occupancy Permit**

Provided further that notwithstanding the commencement date of this Lease as hereinbefore set out, the Tenant shall not be permitted to enter into possession of the Demised Premises until the Tenant has obtained, at its sole expense, an occupancy permit from the proper governmental authority. The Landlord, in its sole discretion, may waive this provision. Provided further the Tenant agrees to use its best efforts to obtain same prior to occupancy.

9.22 **Headings**

The parties hereto agree that the Article and Section headings in this Lease form no part of this Lease and shall be deemed to have been inserted for convenience of reference only.

9.23 **Demised Premises**

Save and except for any work to be performed by the Landlord as specifically set out herein, the taking of possession of the Demised Premises by the Tenant shall be conclusive evidence that the Tenant accepts the Premises in an "as is" condition and that the Demised Premises were in a good and satisfactory condition at the time possession was so taken.

9.24 **Contra Proferentum**

The parties acknowledge and agree that both parties have participated in the drafting of this Lease, and any rule of law providing that ambiguities shall be construed against the drafting party shall be of no force or effect.

9.25 **Theft**

The Landlord shall not be liable for the theft of any property of the Tenant in the Demised Premises.

9.26 **Registration**

The Tenant covenants and agrees it will not register this Lease but may register a notice thereof in any Registry or Land Titles Office with the prior consent of the Landlord, as to the format and content thereof.

9.27 **Planning Act**

This Lease shall be conditional upon compliance with the Planning Act R.S.O. 1990 and the amendments thereto.

9.28 **Severability**

If any provision of this Lease is determined by a Court to be illegal or unenforceable, it shall be considered to be separate and severable from this Lease.

9.29 **Joint and Several**

The liability to pay Base Rental and additional rental and to perform all other obligations under this Lease of each individual, corporation, partnership or business association executing this Lease shall be deemed joint and several.

9.30 **Covenants**

All obligations of the Tenant, although not expressed as a covenant, shall be considered to be covenants for all purposes.

9.31 **Agents**

The Tenant acknowledges, covenants and agrees that every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Landlord or to which the Landlord is entitled hereunder shall also be available and shall extend to protect every such agent of the Landlord acting (in the course of or in connection with his employment or otherwise), and for the purposes of all of the foregoing provisions of this Clause, the Landlord is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of persons who are or might be his servants, employees or agents from time to time.

9.32 **Roof Repairs**

Notwithstanding anything to the contrary contained in this Lease, it is understood and agreed that the Landlord shall be responsible to replace at its sole cost (for the first replacement only) that part of the roof (shown shaded on the attached plan appended hereto as Schedule A) when it is deemed necessary by a third party expert to be agreed upon between the parties. It being understood and agreed that if the need for the replacement of the roof is as a result of the negligent or overt act of the Tenant, the cost of same shall be to the Tenant's account. In the meantime, the Landlord shall maintain and repair that part of the roof in accordance with the terms of this Lease and subject to chargeback to the Tenant in accordance with paragraph 1.23 herein.

9.33 **Pest Control**


The Tenant acknowledges that it will maintain a proper pest control contract at its expense and perform a proper interior and exterior garbage removal management system at its expense, all as mutually agreed by the Landlord and Tenant.

9.34 **Binding on Heirs**

This Lease and everything herein contained shall extend to and bind and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and/or permitted assigns, subject to the consent of the Landlord being obtained as hereinbefore provided to any assignment, sublease or parting with possession of the Demised Premises by the Tenant.

IN WITNESS WHEREOF the parties hereto have hereunto caused to be affixed their corporate seals duly attested to by the hands of their respective proper signing officers authorized in that behalf the day, month and year first above written.


MENKES GTA INDUSTRIAL HOLDINGS INC.

Per: 

[Authorized Signing Officer]

Per: _____
[Authorized Signing Officer]

SUN PAC FOODS LIMITED

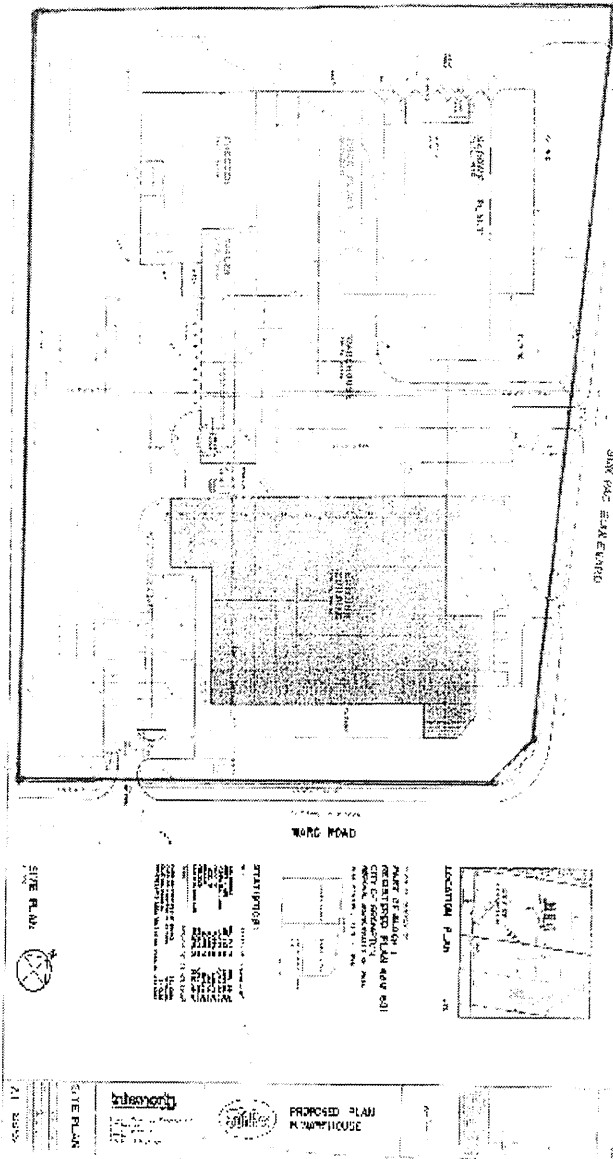
Per: 

[Authorized Signing Officer]

Per: _____
[Authorized Signing Officer]

SCHEDULE "A"

Leased Premises



SCHEDULE "B"

Legal Description

LEGAL DESCRIPTION:

Firstly:

Parcel Block 1-4, Section 43M561; Part of Block 1, Plan 43M561 being Part 1 on Reference Plan 43R13860; Brampton, being PIN 14209-0140 (LT) (Land Titles Absolute ("LTA"));

Secondly:

Parcel Block 1-1, Section 43M561; Part of Block 1, Plan 43M561 being Part 2 on Reference Plan 43R12264; Brampton, being PIN 14209-0141 (LT) (LTA); and

Thirdly:

Parcel Block 1-2, section 43M561; Part of Block 1, Plan 43M561 being Part 1 on Reference Plan 43R12264; Brampton, being PIN 14209-0142 (LT) (LTA).

SCHEDULE "C"

List of Tenant's Fixtures and Chattels

PRODUCTION / PROCESS

All equipment, support structures, conveyors, process supply and infrastructure (including but not limited to power, compressed air, water, gas, steam, hot water)

HOT WATER / STEAM SUPPLY

All boilers, hot water heaters, pumps, associated piping, power (supply and distribution) and drainage to the floor level

ELECTRICAL POWER SUPPLY (POWER)

All distribution downstream of the prime switchgear used to power production / process / hot water / steam supply. Prime switchgear is located above or near the electrical vault.

WATER DISTRIBUTION

All piping and pumping and distribution from discharge flange of municipal water supply shut-off valve, including any municipal metering devices.

TANK FARM

All tanks, pumps, power, utilities, piping and associated equipment.

DRAINAGE

All sump pumps and water treatment facilities prior to discharge into the municipal waste system.

BATTERY CHARGERS

All battery chargers, stands, racks, power supply and distribution.

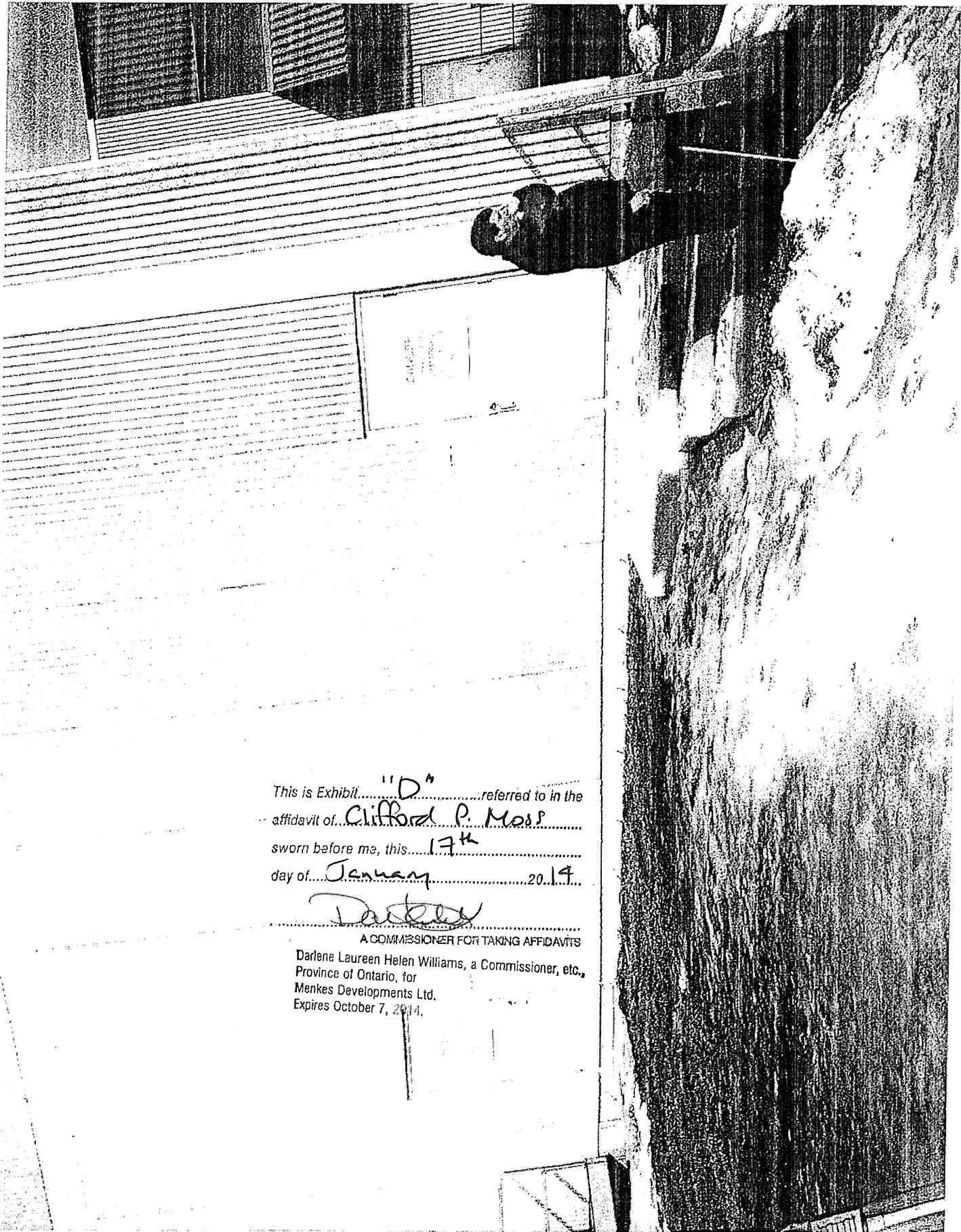
(collectively, "**Tenant's Fixtures and Chattels**")

SCHEDULE "D"

LANDLORD'S REPRESENTATIONS, WARRANTIES AND COVENANTS

The Landlord hereby represents, warrants and covenants to the Tenant, and hereby acknowledges that the Tenant is relying upon such representations, warranties and covenants in entering into this Lease, that:

- (a) it is the legal and beneficial owner of the Demised Premises and has the full right and authority to lease the Demised Premises in accordance with the terms and conditions contained herein;
- (b) it will perform and observe all covenants and obligations of the Landlord herein;
- (c) to the best of its knowledge, all structural parts of the Demised Premises, including but not limited to the foundation, roof, roof membrane and walls of the Building, and all outside permanent structures and sidewalks, meet and comply with all applicable laws and regulations and are in good condition and repair as of the Commencement Date, and shall be so maintained by the Landlord throughout the Term and any renewal thereof;
- (d) it is not party to any lease or agreement to lease with any other party with respect to the Demised Premises, and the Demised Premises are not subject to any other agreement which would have the affect of obliging the Landlord to lease or grant any right to use the Demised Premises to any other party;
- (e) the Landlord's title to the Demised Premises is not subject to any covenants, agreements, reservations, liens, easements, restrictions and/or encumbrances which would prohibit the Tenant from using the Demised Premises as set forth therein;
- (f) to the best of its knowledge, the Building was constructed in a good and workmanlike manner, in compliance with all applicable laws, by-laws (including zoning by-laws) and building codes and is free from design or construction defects.



This is Exhibit "D" referred to in the
affidavit of Clifford P. Moss
sworn before me, this 17th
day of January 20, 19

Darlene

A COMMISSIONER FOR TAKING AFFIDAVITS

Darlene Lauren Helen Williams, a Commissioner, etc.,
Province of Ontario, for
Menkes Developments Ltd.
Expires October 7, 2014.

DANGER

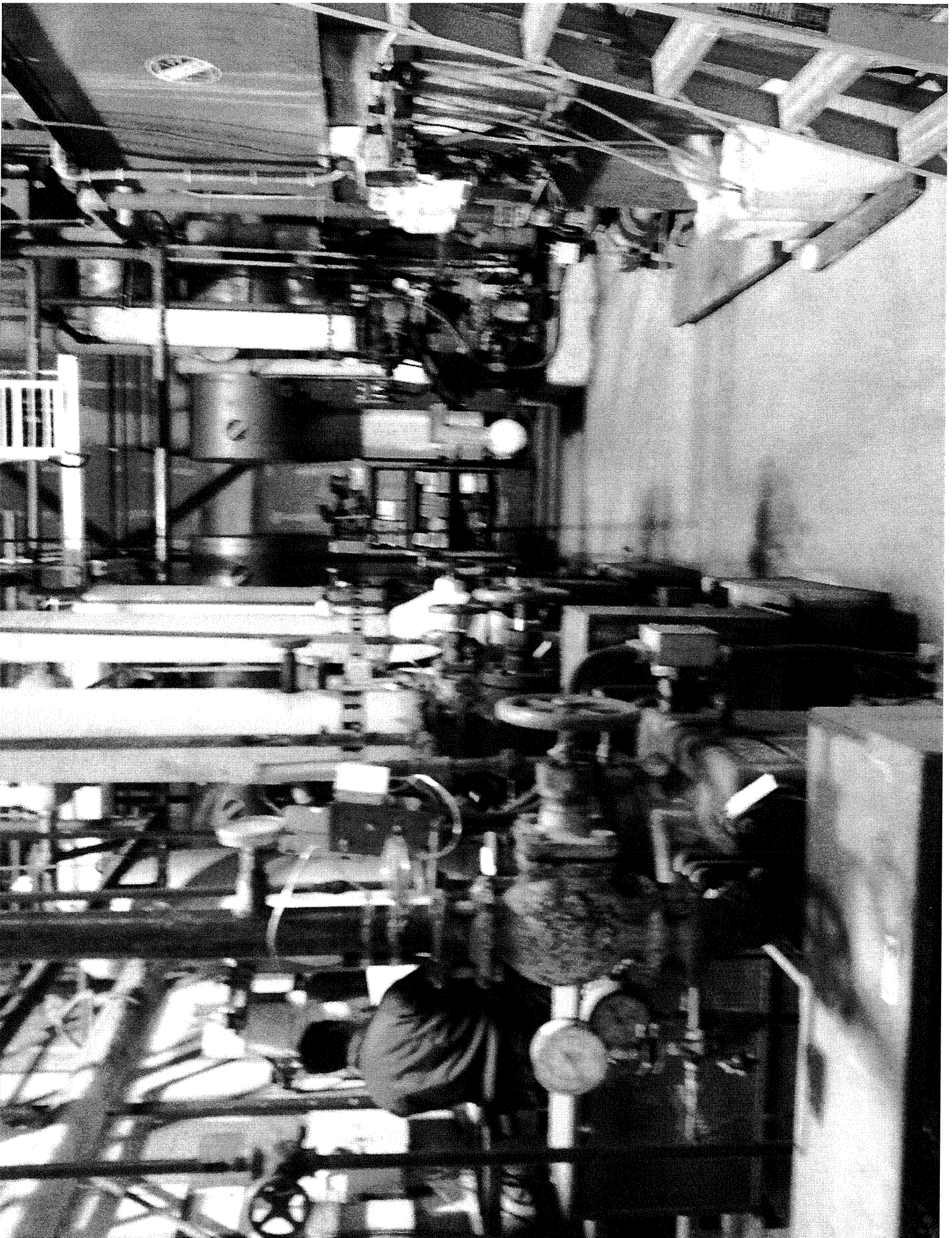
ANHYDROUS

AMMONIA

AUTHORIZED

PERSONNEL

ONLY



This exhibit VE referred to in the
affidavit of Clifford P. Moss
sworn before me this 17th
day of January 2014

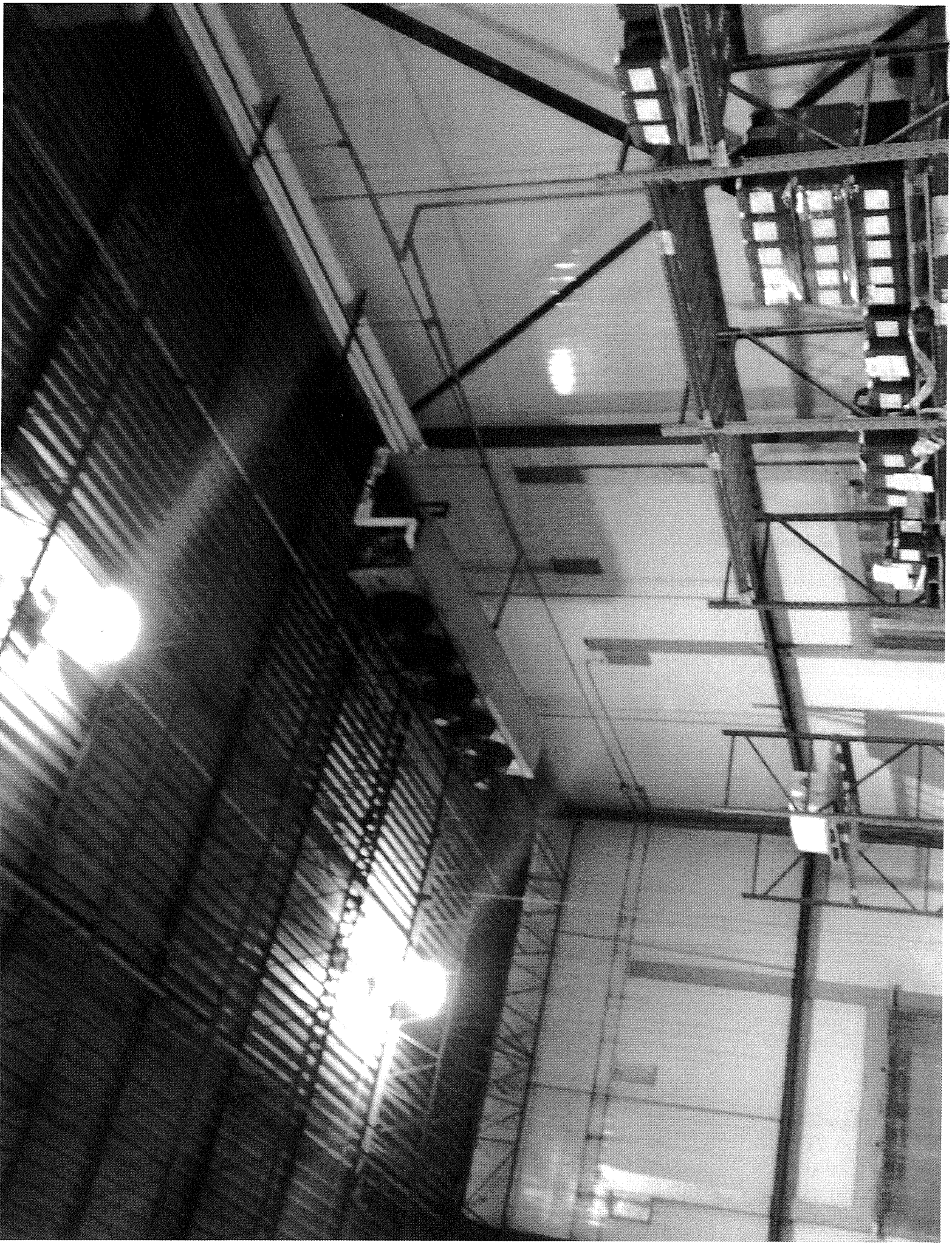
D. Davis

A COMMISSIONER FOR TAKING AFFIDAVITS
before Lauren Helen Williams, a Commissioner,
Province of Ontario, for
Home Developments Ltd.
dated October 7, 2014









January 14, 2014

Menkes Property Management Services Ltd
4711 Yonge Street, Suite 1400
Toronto, Ontario
M2N 7E4

Attention: Elena Muto, General Manager

Re: 10 Sun Pac Boulevard, Brampton
Base Building Freezer
Our Reference Number 134459

This is Exhibit "F" referred to in the
affidavit of Clifford P. Moss
sworn before me, this 17th
day of January, 2014.

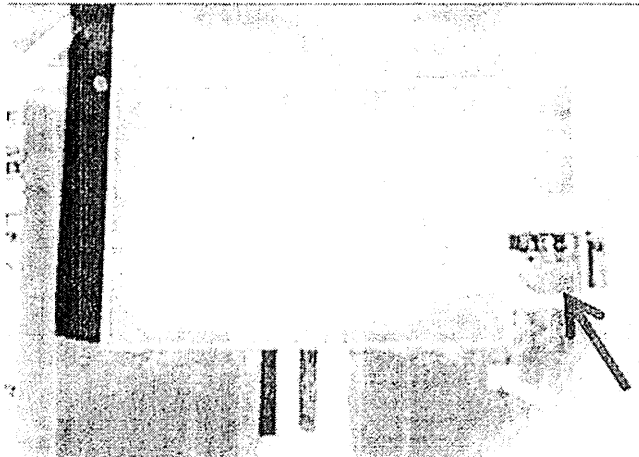
Darlene

A COMMISSIONER FOR TAKING AFFIDAVITS
Darlene Lauren Helen Williams, a Commissioner, etc.,
Province of Ontario, for
Menkes Developments Ltd.
Expires October 7, 2014.

As per your request we are happy to provide our opinion concerning the base building status of the freezer at the subject site.

The freezer at the building is cooled with an ammonia refrigeration system incorporating roof-top cooling towers. The ammonia machine room and freezer area were constructed as integral parts of the building, rather than a tenant upgrade.

The ammonia machine room (red arrow in adjacent photo) was constructed for this specific purpose with no direct access from the interior, for separation of the ammonia operation from the main building, and with structural framing specifically located to support the cooling towers. In the absence of the ammonia refrigeration equipment the room would have no functional use.



In our opinion it is clear that the refrigeration and freezer systems were a part of the base building concept and would be considered a building feature rather than a tenant fixture.

We would be happy to help you further with this issue if so needed, please feel free to contact the undersigned if required.

Yours truly,
CCI Group Inc.

A handwritten signature in black ink, appearing to read "Rick Derbecker".

Rick Derbecker, B.Tech, LEED AP, CEI, GRP
Vice President, Specialty Services

RICHARD L. DERBECKER
B.TECH, LEED AP, CEI, GRP

EMPLOYMENT HISTORY

2013 – Present CCI GROUP (The new identity of Construction Control Inc.)
Vice president, Speciality Services

- Management and review of the Specialty Services Division Business units including the Building Condition Assessment, Legal/Forensic, and Geotechnical Business units.
- Investigation of building element failures or performance issues including development of remedial repair solutions.
- Preparation of expert reports pertaining to building deficiencies and material performance issues, including provision if in-court expert testimony.
- Completion of building condition surveys including review of all building envelope elements.
- Co-ordination and review of roofing and waterproofing projects

2012 – 2013 CONSTRUCTION CONTROL INC.
Vice President, Specialty Services

- Management and review of the Specialty Services Division Business units including the Building Condition Assessment, Legal/Forensic, and Geotechnical Business units.

2006 – 2012 CONSTRUCTION CONTROL INC.
Vice President, Building Technology

- Management and review of the Building Technology Department.
- Investigation of building element failures or performance issues including development of remedial repair solutions.
- Preparation of expert reports pertaining to building deficiencies and material performance issues, including provision if in-court expert testimony.
- Review of documents and project work for submission as part of Tarion reporting for new construction.
- Completion of building condition surveys including review of all building envelope elements.
- Co-ordination and review of roofing and waterproofing projects
- Preparation and review of specifications.
- Completion and review of roof condition assessments.

1995 – 2006 **CONSTRUCTION CONTROL INC.**
Manager

- Investigation of building element failures or performance issues including development of remedial repair solutions.
- Preparation of expert reports pertaining to building deficiencies and material performance issues, including provision if in-court expert testimony.
- Review of documents and project work for submission as part of Tarion reporting for new construction.
- Completion of building condition surveys including review of all building envelope elements.
- Co-ordination and review of roofing and waterproofing projects
- Preparation and review of specifications.
- Completion and review of roof condition assessments.

1989 – 1995 **SNC-LAVALIN-WARNOCK HERSEY PROFESSIONAL SERVICES LTD.**
Building Sciences Technologist, Building Science Division

- Quality assurance inspection of building envelope assemblies.
- Prepare and co-ordinate condition surveys and technical audits of commercial and residential buildings.
- Investigate building envelope performance deficiencies.
- Preparation of drawings and specifications for roofing and waterproofing projects.
- Performance of laboratory and site tests, to ASTM and CGSB standards, on materials and assemblies including roof membranes, waterproofing systems, spray applied fireproofing, window washing safety anchors and urethane foam insulation.

1988 – 1989 **GRANOLITE CO.**

ACADEMIC TRAINING AND EXPERIENCE

1989 **RYERSON POLYTECHNIC UNIVERSITY**
Architectural Science – Major Building Science

PROFESSIONAL QUALIFICATIONS AND MEMBERSHIPS

2006 **CANADA GREEN BUILDING COUNCIL**

LEED Accredited Professional

2007 **ENVIRONMENTAL ASSESSMENT ASSOCIATION**

Certified Environmental Inspector

2009

GREEN ROOFS FOR HEALTHY CITIES

Green Roof Professional

This is Exhibit ^{"G"} referred to in the affidavit of Clifford R. Moss

AGREEMENT OF LANDLORD sworn before me, this 17th day of January 2014

TO: Bridging Capital Inc. ("BCI")

RE: Sun Pac Foods Limited (the "Tenant")

AND RE: Lease of 10 Sun Pac Blvd., Brampton, Ontario, L6S 4R5 (the "Premises") by Menkes GTA Industrial Holdings Inc. (the "Landlord") to the Tenant pursuant to a lease dated November 3, 2011 (the "Lease")

Darlene

A COMMISSIONER FOR TAKING AFFIDAVITS
Darlene Lauren Helen Williams, a Commissioner, etc.,

Province of Ontario, for
Menkes Developments Ltd.,
Expires October 7, 2014.

WHEREAS the Landlord is the owner of the Premises which have been leased to the Tenant pursuant to the Lease.

WHEREAS BCI has or will be extending credit to the Tenant and has or will obtain rights, interests, security interests or other encumbrances in and to the property and assets of the Tenant described in Schedule "A" hereto (the "Collateral").

AND WHEREAS in order to assist the Tenant in obtaining credit from BCI for as long as BCI holds a security interest in the Collateral and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord hereby agrees with BCI as follows:

1. Landlord waives, releases and postpones in favour of BCI for as long as BCI holds a security interest in the Collateral any and all rights, claims or privileges (including, without limitation, the right of distress) which the Landlord now has or hereafter may have with respect to the Collateral.
2. The Collateral shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property.
3. The Landlord agrees that it will not accept a surrender of the Lease, in whole or in part, without the prior written consent of BCI.
4. If at any time during the term of the Lease the Tenant shall be in default of any of the covenants, conditions or agreements contained in the Lease, the Landlord, before exercising any of its rights and remedies set forth in the Lease or at law (the "Rights"), shall provide BCI with ten (10) business days prior written notice of its intention to exercise such rights and remedies (the "Notice").
5. At any time after receipt of the Notice and prior to the Landlord's exercise of the Rights, BCI may, at its option, do all or any of the following provided that occupation rent calculated on a per diem basis is paid by BCI to the Landlord monthly in arrears:
 - a. BCI or its representatives may enter upon the Premises at any time to inspect, appraise or remove the Collateral, and may advertise and conduct a liquidation, public auction or private sale thereon; provided any damage to the Premises caused thereby is repaired by BCI.

- b. BCI or its representatives may carry on the business of the Tenant or maintain the Collateral at the Premises.
 - c. BCI or its representatives may assign the Lease to a purchaser of all or any part of the Collateral with the consent of the Landlord such consent not to be unreasonably withheld in accordance with the terms of the Lease. Upon such assignment, BCI or its representatives shall have no liability to the Landlord for any of the Tenant's obligations under the Lease.
 - d. BCI may terminate its occupation rights under this Section on 5 business days notice to the Landlord after which BCI shall have no liability to the Landlord for occupation rent or any of the Tenant's obligations under the Lease.
6. The Landlord agrees not to dispose of its interest in the Lease and the Premises without informing its successor of the terms of this agreement, and the Landlord shall cause its successor to agree to be bound by the provisions of this agreement prior to such disposition.
7. The Landlord confirms that the Lease is in good standing and in full force and effect, all rents due thereunder to the date hereof have been duly paid, and neither party is in default in the observance or performance of its respective covenants in the Lease to the date hereof.
8. Any notice required or permitted to be given by the Landlord to BCI must be in writing and be delivered or sent by personal delivery, facsimile or by registered mail (except during a postal disruption or threatened postal disruption) addressed to the recipient as follows:

to BCI: 95 Wellington Street West, Suite 915
Toronto, Ontario

Fax: (416) 633-4959

to the Landlord: 4711 Yonge Street, Suite 1400
Toronto, Ontario M2N 7E4

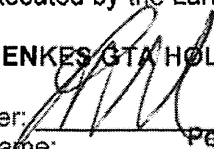
Fax: (416) 491-2304

Any notice delivered personally or by facsimile will be deemed to have been validly and effectively given on the day of delivery. Any notice sent by registered mail will be deemed to have been validly and effectively given on the third business day following the date of mailing.

9. This agreement shall be binding upon the Landlord, BCI and their successors and assigns and shall enure to the benefit of each respective party and its successors and assigns.

IN WITNESS WHEREOF this agreement has been executed by the Landlord and BCI as of the
1st day of October, 2012.

MENKES GTA HOLDINGS INC.

Per: 
Name: Peter Menkes
Title: President - Commercial/Industrial
I have authority to bind the Corporation

BRIDGING CAPITAL INC.


Per: _____
Name: _____
Title: _____
I have authority to bind the Corporation

IN WITNESS WHEREOF this agreement has been executed by the Landlord and BCI as of the
1st day of October 2012.

MENKES GTA HOLDINGS INC.

Per: _____
Name:
Title:
I have authority to bind the Corporation

BRIDGING CAPITAL INC.

Per:  _____
Name: *Natasha Sherpa*
Title: *President*
I have authority to bind the Corporation

SCHEDULE "A"

All of the Tenant's property, assets and undertaking, including, without limitation, the Tenant's inventory now or hereafter on or at the Premises, and all increases, additions, accessions thereto, replacements and substitutions thereof and therefore and those fixtures and chattels set out in Schedule "C" to the Lease attached hereto as Schedule "B".

SCHEDULE "B"

See attached.

SCHEDULE "C"

List of Tenant's Fixtures and Chattels

PRODUCTION / PROCESS

All equipment, support structures, conveyors, process supply and infrastructure (including but not limited to power, compressed air, water, gas, steam, hot water)

HOT WATER / STEAM SUPPLY

All boilers, hot water heaters, pumps, associated piping, power (supply and distribution) and drainage to the floor level

ELECTRICAL POWER SUPPLY (POWER)

All distribution downstream of the prime switchgear used to power production / process / hot water / steam supply. Prime switchgear is located above or near the electrical vault.

WATER DISTRIBUTION

All piping and pumping and distribution from discharge flange of municipal water supply shut-off valve, including any municipal metering devices.

TANK FARM

All tanks, pumps, power, utilities, piping and associated equipment.

DRAINAGE

All sump pumps and water treatment facilities prior to discharge into the municipal waste system.

BATTERY CHARGERS

All battery chargers, stands, racks, power supply and distribution.

(collectively, "Tenant's Fixtures and Chattels")

This is Exhibit "H" referred to in the affidavit of Clifford P. Moss sworn before me, this 17th day of January 2014

AGREEMENT OF LANDLORD

TO: Bridging Capital Inc. ("BCI")

RE: Sun Pac Foods Limited (the "Tenant")

AND RE: Lease of 10 Sun Pac Blvd., Brampton, Ontario, L6S 4R0 (the "Premises") by Menkes GTA Industrial Holdings Inc. (the "Landlord") to the Tenant pursuant to a lease dated July 1, 2013 (the "Lease")

Darlene Laureen Helen Williams, a Commissioner, etc., Province of Ontario, for Menkes Developments Ltd. Expires October 7, 2014

WHEREAS the Landlord is the owner of the Premises which have been leased to the Tenant pursuant to the Lease.

WHEREAS BCI has or will be extending credit to the Tenant and has or will obtain rights, interests, security interests or other encumbrances in and to the property and assets of the Tenant described in Schedule "A" hereto (the "Collateral").

AND WHEREAS in order to assist the Tenant in obtaining credit from BCI for as long as BCI holds a security interest in the Collateral and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord hereby agrees with BCI as follows:

- 1. Landlord waives, releases and postpones in favour of BCI for as long as BCI holds a security interest in the Collateral any and all rights, claims or privileges (including, without limitation, the right of distress) which the Landlord now has or hereafter may have with respect to the Collateral.
2. The Collateral shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property.
3. The Landlord agrees that it will not accept a surrender of the Lease, in whole or in part, without the prior written consent of BCI.
4. If at any time during the term of the Lease the Tenant shall be in default of any of the covenants, conditions or agreements contained in the Lease, the Landlord, before exercising any of its rights and remedies set forth in the Lease or at law (the "Rights"), shall provide BCI with five (5) business days prior written notice of its intention to exercise such rights and remedies (the "Notice").
5. At any time after receipt of the Notice and prior to the Landlord's exercise of the Rights, BCI may, at its option, do all or any of the following without payment of Occupation Rent (as hereinafter defined) or otherwise:
a. BCI or its representatives may enter upon the Premises at any time provided it first delivers satisfactory evidence of insurance to the Landlord to inspect, appraise or remove the Collateral, and may advertise and conduct a liquidation, public auction or private sale thereon, provided any damage to the Premises caused thereby is repaired by BCI, and provided that BCI covenants and agrees

to use its reasonable best efforts to maximize the proceeds obtained by the sale of the Collateral and to properly account to the Landlord as contemplated below;

- b. BCI or its representatives may carry on the business of the Tenant or maintain the Collateral at the Premises;
- c. BCI or its representatives may assign the Lease to a purchaser of all or any part of the Collateral with the consent of the Landlord such consent not to be unreasonably withheld in accordance with the terms of the Lease. Upon such assignment, BCI or its representatives shall have no liability to the Landlord for any of the Tenant's obligations under the Lease; and
- d. BCI may terminate its occupation rights under this Section on 5 business days notice to the Landlord after which BCI shall have no liability to the Landlord for occupation rent or any of the Tenant's obligations under the Lease;

provided that in the event that BCI wishes to exercise its occupation rights under this Section 5 for a period in excess of 12 weeks, commencing the beginning of the 13th week, BCI shall pay Occupation Rent (being specifically basic rent as provided for in the Lease, taxes, insurance and maintenance (of a non-capital nature)) to the Landlord calculated on a per diem basis and payable monthly in arrears; provided further that in the event that the Landlord is a creditor of the Tenant and wishes to extend or makes a request of a Receiver (private or Court appointed) or Trustee or otherwise to extend the sale process or requires an extended sale process, all Occupation Rent shall be for the account of the Landlord and all amounts up to \$6,650,000.00 owing by the Tenant to BCI shall be paid in priority to any Occupation Rent. Any monies received in excess of the lesser of the monies owed by the Tenant to BCI and \$6,650,000.00 shall be paid to the Landlord in respect of monies owing to the Landlord by the Tenant pursuant to the Lease. The Landlord agrees not to dispose of its interest in the Lease and the Premises without informing its successor of the terms of this agreement, and the Landlord shall cause its successor to agree to be bound by the provisions of this agreement prior to such disposition.

- 6. The Landlord confirms that the Lease is in good standing and in full force and effect, all rents due thereunder to the date hereof have been duly paid, and neither party is in default in the observance or performance of its respective covenants in the Lease to the date hereof.
- 7. Any notice required or permitted to be given by the Landlord to BCI must be in writing and be delivered or sent by personal delivery, facsimile or by registered mail (except during a postal disruption or threatened postal disruption) addressed to the recipient as follows:

to BCI: 95 Wellington Street West, Suite 915
Toronto, Ontario

Fax: (416) 633-4959

to the Landlord: 4711 Yonge Street, Suite 1400
Toronto, Ontario M2N 7E4

Fax: (416) 491-2304

Any notice delivered personally or by facsimile will be deemed to have been validly and effectively given on the day of delivery. Any notice sent by registered mail will be deemed to have been validly and effectively given on the third business day following the date of mailing.

8. This agreement shall be binding upon the Landlord, BCI and their successors and assigns and shall enure to the benefit of each respective party and its successors and assigns including, without limitation, any Receiver (private or Court appointed), Trustee or otherwise.

IN WITNESS WHEREOF this agreement has been executed by the Landlord and BCI as of the day of July, 2013.

MENKES GTA HOLDINGS INC.

Per: 

Name:


Peter Monkes

Title:

President Commercial/Industrial

I have authority to bind the Corporation

BRIDGING CAPITAL INC.

Per: 

Name:

Natasha Shupe

Title:

President

I have authority to bind the Corporation

Bridging Capital Inc.

SCHEDULE "A"

All of the Tenant's property, assets and undertaking, including, without limitation, the Tenant's inventory now or hereafter on or at the Premises, and all increases, additions, accessions thereto, replacements and substitutions thereof and therefore and those fixtures and chattels set out in Schedule "C" to the Lease attached hereto as Schedule "B".

SCHEDULE "B"

See attached.

SCHEDULE "C"

List of Tenant's Fixtures and Chattels

PRODUCTION / PROCESS

All equipment, support structures, conveyors, process supply and infrastructure (including but not limited to power, compressed air, water, gas, steam, hot water)

HOT WATER / STEAM SUPPLY

All boilers, hot water heaters, pumps, associated piping, power (supply and distribution) and drainage to the floor level

ELECTRICAL POWER SUPPLY (POWER)

All distribution downstream of the prime switchgear used to power production / process / hot water / steam supply. Prime switchgear is located above or near the electrical vault.

WATER DISTRIBUTION

All piping and pumping and distribution from discharge flange of municipal water supply shut-off valve, including any municipal metering devices.

TANK FARM

All tanks, pumps, power, utilities, piping and associated equipment.

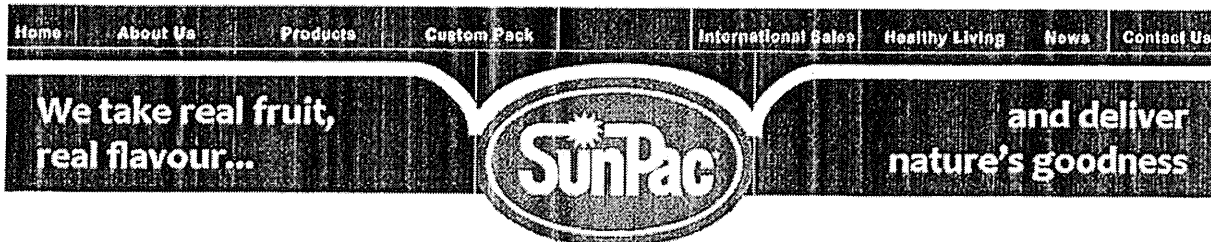
DRAINAGE

All sump pumps and water treatment facilities prior to discharge into the municipal waste system.

BATTERY CHARGERS

All battery chargers, stands, racks, power supply and distribution.

(collectively, "Tenant's Fixtures and Chattels")



Media Release

SUN PAC FOODS LTD. ACQUIRED BY LIQUIBRANDS

Beverage Industry Veteran to Lead Company with Renewed Focus on Innovation and Growth

BRAMPTON, ON, November 7, 2011 - Sun Pac Foods Limited ("Sun Pac") is pleased to announce that it has been acquired by Liquibrands Inc., a private investment firm owned by beverage industry veteran Csaba Reider. Liquibrands today assumed ownership and operation of Sun Pac's Brampton-based facility with Mr. Reider taking over the helm as President and Chief Executive Officer.

The sale ends a century of ownership by the J.S. Riddell family but ensures that the Company will continue to be a Canadian success story, able to compete globally and leverage growth opportunities across key beverage categories.

Sun Pac is best known for its brand of fruit juices, frozen juices and juice concentrates which are distributed throughout Canada, the United States and the Caribbean. The Company manufactures single and multi-serve formats in glass, plastic, aluminum, steel and Tetra Pak on seven production lines housed in a 355,000 square-foot facility which also contains refrigerated, frozen and dry warehousing. In addition to juice products, Sun Pac's capabilities include natural teas, sports drinks, energy drinks, and other innovative beverage products for both branded and private label programs to leading retailers. The Company also manufactures croutons and bread crumbs under the McDowell Ovens banner and private label brands owned by some of Canada's largest retailers.

"I want to thank the Riddell family for successfully steering Sun Pac through 100 years of change and making it a truly successful Canadian business," said new President and CEO Csaba Reider. "We look forward to working with the team of Sun Pac employees to build on the strong history of quality and customer service while taking the Company to the next level through innovation and opportunity with new customers, partners and products."

Sun Pac is well-positioned to maximize opportunities in the "better-for-you" beverage segments which have experienced double-digit growth over the past four years. With one of the largest independent hot-fill beverage facilities in North America, products ranging from disease-fighting, antioxidant-rich natural juices to nutrition-based hydration beverages are available for private label programs, co-packing partners and brand owners.

Mr. Reider is a food and beverage industry veteran with extensive experience in both branded and private label channels. He held several senior executive positions with Cott Corporation, the world's largest retailer brand beverage company, and was most recently President and CEO of Xyience, one of the fastest growing energy drink and sport nutrition companies in North America. He also sits on the Board of Directors of Associated Brands, one of North America's leading companies producing dry blended beverage and food items for branded and private label customers.

Mr. Reider's extensive networks in the international beverage industry will help him assemble a strong and talented management team to lead Sun Pac in a new era of growth, Innovation and opportunity.

ABOUT SUN PAC:

Sun Pac Foods Ltd. operates one of the largest independent hot-fill beverage facilities in North America, headquartered in a 355,000 square foot facility in Brampton, Ontario housing production as well as refrigerated, frozen and dry warehousing. A privately-owned Canadian manufacturer of private label and branded beverage products, Sun Pac produces a wide range of 'better-for-you' beverages with an emphasis on healthy, natural ingredients packaged in multiple formats including glass, PET, Tetra Pak and steel. The Company's production capabilities include juices, natural teas, sports drinks, juice concentrates, frozen juices and other innovative beverage products. Sun Pac products are distributed throughout North America and the Caribbean.

For further information or to arrange an interview, contact:

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Cell: (416) 500-5442

This is Exhibit "I" referred to in the
 affidavit of Clifford P. Moss
 sworn before me, this 17th
 day of January, 2014
Darlene
 A COMMISSIONER FOR TAKING AFFIDAVITS

8527504 CANADA INC.

-and-

Applicant

SUN PACK FOODS LIMITED
Respondent

Court File No.: CV-13-10331-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

RESPONDING MOTION RECORD

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