

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

**B&M HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTMER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED, and PAUL HERBERT PROFESSIONAL CORPORATION INC..**

Applicant

- and -

**SKYMARK PROPERTIES 1 CORPORATION  
also known as SKYMARK PROPERTIES I CORPORATION**

Respondent

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

**MOTION RECORD**

(Receiver's Motion for Sale Approval and Vesting Order)

June 19, 2018

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

B E T W E E N:

**B&M HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTMER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED, and PAUL HERBERT PROFESSIONAL CORPORATION INC..**

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- and -

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

**NOTICE OF MOTION  
(Receiver's Motion for Sale Approval and Vesting Order)**

Rosen Goldberg Inc., in its capacity as receiver and manager (in such capacity, the “**Receiver**”) without security, over lands and premises registered in the name of the Respondent (“**Skymark**” or the “**Debtor**”), municipally known as 1 William Morgan Drive, Toronto, Ontario (the “**WM Drive Property**”), and the remaining assets and undertaking of the Debtor acquired for or used in relation to the WM Drive Property, will make a motion to a Judge presiding over the Commercial List, on Friday June 22, 2018, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR AN ORDER:**

1. if necessary, abridging the time for service of the Receiver's Motion Record, validating service of the Motion Record, and dispensing with further service thereof;
2. approving of the activities and proposed activities described in the Receiver's First Report dated June 15, 2018 (the "**First Report**");
3. approving an agreement of purchase of sale (the "**WM Drive APS**") in respect of the WM Drive Property;
4. sealing an un-redacted copy of the WM Drive APS, pending the completion of the transaction contemplated under the WM Drive APS, or until further Order of the Court;
5. sealing the appraisal by Lebow Hicks of WM Drive Property commissioned by the Receiver, pending the completion of the transaction contemplated under the WM Drive APS, or until further Order of the Court;
6. sealing the lease of the sole current tenant of the the WM Drive Property, until further Order of the Court;
7. vesting all right, title and interest of the Debtor in the WM Drive Property to the purchaser under the WM Drive APS, free and clear of encumbrances, other than permitted encumbrances;
8. upon completion of the transaction contemplated under the WM Drive APS, distributing funds from the net proceeds of sale of the WM Drive Property, to the first mortgagees over the WM Drive Property in full satisfaction of their loan; and
9. such further and other relief as counsel may advise and this Honourable Court deems just.

**THE GROUNDS FOR THIS MOTION ARE:**

1. by Order of Justice McEwen dated March 19, 2018 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed receiver and manager over the WM Drive Property, and the remaining assets and undertaking of the Debtor acquired for or used in relation to the WM Drive Property;
2. this a real estate-based receivership proceeding involving a 26,245 square foot, two story, multi-tenant office building in Toronto;
3. the Applicants hold the first mortgage over the WM Drive Property, with a face amount of \$3.3 million. As of June 13, 2018, the indebtedness owing under the first mortgage was \$2,965,132.96. The *per diem* is \$629.11;
4. the only other encumbrance over the WM Drive property is a second mortgage in favour of 2455657 Ontario Inc., with a face amount of \$600,000.00;
5. however, the Debtor had not been paying the realty taxes for several years, and the municipal tax arrears currently total over \$439,000.00 (these taxes accrue at a rate of 18% *per annum*);
6. there is only one tenant at the WM Drive Property, Senior Peoples’ Resources in North York (“**Sprint**”), which occupies the entire first floor, at below market rent until 2023, and which can renew its lease for two five-year terms until 2033;
7. the Receiver conducted the sale of the WM Drive Property pursuant to the terms of the Appointment Order and a Marketing and Sale Order;

8. the marketing and sales processes implemented by the Receiver exposed the WM Drive Property to the market for a sufficient period of time to generate a purchase price reflective of the market. While the purchase price is lower than the appraised value, it is within the range set out in the listing broker's proposal, and the offer accepted by the Receiver represented the best offer available at the time it was accepted;
9. the Receiver does not believe that further marketing of the WM Drive Property will result in a superior offer;
10. no information has come to the Receiver's attention which indicates that a better result could have been achieved;
11. the Receiver therefore seeks approval the agreement of purchase and sale that it entered into in respect of the WM Drive Property (the WM Drive APS);
12. section 249 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.3;
13. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;  
and
14. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:**

1. the pre-Appointment report of the Receiver;
2. the First Report of the Receiver;
3. such further and other grounds as counsel may advise and this Honourable Court may permit.

June 19, 2018

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TO: SERVICE LIST

**B&M HANDELMAN INVESTMENTS LIMITED, ET AL.**

Applicants

and

Court File No. CV-18-593698-00CL

**SKYMARK PROPERTIES 1 CORPORATION, ET AL.**

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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# TAB 2



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-18-593698-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
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**FIRST REPORT OF ROSEN GOLDBERG INC.**

**I. INTRODUCTION**

1. By Order of the Honourable Mr. Justice McEwen dated March 19, 2018 (the “**Order**”) Rosen Goldberg Inc. was appointed receiver (the “**Receiver**”) over lands and premises registered in the name of the Respondent (“**Skymark**” or the “**Debtor**”), municipally known as 1 William Morgan Drive, Toronto, Ontario (the “**WM Drive Property**”), and the remaining assets and undertaking of the Debtor acquired for or used in relation to the WM Drive Property



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(collectively with the WM Drive Property, the “**Property**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. A copy of the Appointment Order is attached as **Appendix “A”**. An unofficial transcription of Justice McEwen’s reasons, together with His Honour’s handwritten reasons are attached as **Appendix “B”**.

## II. PURPOSE OF THIS REPORT

2. This first report of the Receiver (the “**First Report**”) will set out the factual background to assist this Honourable Court in considering the following recommendations of the Receiver:

- (a) the approval the Receiver’s activities to date;
- (b) the approval of an agreement of purchase and sale for the WM Drive Property (the “**William Morgan APS**”) entered into by the Receiver on May 15, 2018;
- (c) the vesting of all of right title and interest of Skymark in the WM Drive Property in the purchaser under the William Morgan APS, free and clear of encumbrances, other than permitted encumbrances;
- (d) the sealing of an un-redacted copy of the William Morgan APS pending completion of the sale transaction contemplated therein;
- (e) the sealing of the Sprint Lease (as defined below);
- (f) the sealing of the appraisal of the WM Drive Property commissioned by the Receiver, pending the completion of the transaction contemplated by the William Morgan APS; and



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- (g) upon completion of the transaction contemplated under the William Morgan APS, the distribution of funds from the net proceeds of sale to the first mortgagees over the WM Drive Property in full satisfaction of their loan to Skymark.

### III. TERMS OF REFERENCE

3. In preparing this First Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain of the information contained herein may refer to, or be based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Honourable Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance with respect to the Information.



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## V. BACKGROUND

4. The Receiver prepared a pre-appointment report, which is attached as **Appendix "C"**, without Appendices (the "**Pre-Appointment Report**").

### **The WM Drive Property**

5. The WM Drive Property comprises a 26,245 square foot, two storey multi-tenant office building located on a 1.23 acre piece of land (the "**Building**"). It was purchased by Skymark for \$3.8 million on or about February 10, 2015, which purchase was partially financed by a mortgage for \$3.3 million from the Applicants herein.

6. However, since the Receiver was appointed, the Building has had, and currently still has, only one tenant - Senior Peoples' Resources in North York, Ontario ("**Sprint**") - who occupy approximately 10,700 square feet on the ground floor. Sprint is a not-for-profit corporation which provides programs and services for seniors. The second floor and the basement are vacant. A copy of the Sprint Lease is attached as **Confidential Appendix "1"** (the "**Sprint Lease**").

7. The current ten-year term under the Sprint Lease expires in June, 2023, with two five-year renewal options, in 2023 and 2028. The average rent per square foot under the Sprint Lease is currently only \$10.50 (this average increases by 25 cents per square foot per year until



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2023). The listing broker for the WM Drive Property, Colliers International (“Colliers”), has advised that the rent payable by Sprint under the initial term of the Sprint Lease (i.e. to 2023) is below market, and that the average rent per square foot for its leased premises should in the range of \$16.50 per square foot. Similarly, the appraisal commissioned by the Receiver for the WM Drive Property (attached as Confidential Appendix 2 to this First Report) estimates the average market rent for the second floor of the Building at \$15.00 per square foot going forward until 2023.

8. On July 28, 2017, Sprint, commenced a legal proceeding against Skymark, seeking, among other things, a declaration that Skymark breached terms of the Sprint’s Lease and damages of \$350,000.00. A copy of the Statement of Claim is attached as **Appendix “D”** (the “Sprint Statement of Claim”)

9. The Sprint Statement of Claim alleged that Skymark had not maintained the Building, thereby causing it to be in a continuous state of disrepair, failed to pay the utility accounts, and possibly tampered with the gas supply which resulted in a gas leak. On September 18, 2017, Sprint obtained an Order, which, among other things, entitled it to set-off rent payments under the Sprint Lease against obligations that it had incurred on behalf of Skymark. A copy of the Order of the Honourable Mr. Justice Morgan is attached as **Appendix “E”**. As a result, Sprint had not been paying rent until this month.



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INSOLVENCY & RESTRUCTURING

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10. Subsequent to its appointment, the Receiver has met with representatives of Sprint for the purpose attempting to normalize the relationship and provide assurances that the Receiver would take control of the utility accounts and provide requisite management of the Building. The Receiver further reviewed an accounting of the amounts paid directly by Sprint, and determined that Sprint had paid significant arrears to the utility companies and had been keeping the accounts current. In addition, Sprint had paid other services providers as well because Skymark did not appear to have managed the Building. Sprint recommenced paying its full rent under the Sprint Lease in June 2018.

11. We note that Skymark had not been paying the realty taxes on the WM Drive Property, and as a result approximately \$439,000 is currently owing for municipal tax arrears.

#### **Encumbrances**

12. As set out in Security Opinion marked as Appendix "I" to this First Report (see para. 29 below), there are two mortgages currently registered against the WM Drive Property. A summary of charges, including the face amount of each charge and amount currently outstanding, is noted hereunder:

<b>Rank and Face Amount</b>	<b>Secured creditor</b>	<b>Approximate amount outstanding</b>
First (February 2, 2015) \$3.3 million	B&M Handelman Investments et al	\$2,965,132.96 as of June 13, 2018
Second (April 27, 2015) \$600,000	2455657 Ontario Corporation	unknown



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## V. ACTIVITIES OF THE RECEIVER

13. The activities of the Receiver since the appointment include, *inter alia*, the following:

- Attendance at the Building to take possession and secure, including changing locks;
- Dealing with insurance matters;
- Preparation of statutory receiver's report;
- Arranging of appraisal and review of same;
- Entering into listing agreement with Colliers, including meetings and other communications regarding method of sale, listing prices, progress reports, etc.;
- Ongoing communications with agent during the listing process;
- Dealing with the tenant Sprint on an ongoing basis, including meetings and other communications, review of various documentation regarding set-off of rent; maintenance issues and access issues;
- Dealing with offers for the WM Drive Property;
- Dealings with counsel for the principal of Skymark;
- Communications with the first ranking mortgagee;
- Dealing with utility accounts;
- Calls from various creditors;
- Dealing with security opinions for the Property; and
- Ongoing communications with counsel.



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14. Attached as **Appendix "F"** is the Receiver's interim statement of receipts and disbursements.

#### **VI. APPRAISAL**

15. In order to assist in informing itself of value of the WM Drive Property, the Receiver commissioned an appraisal by Lebow, Hicks Appraisal Inc. A copy of the appraisal is attached as **Confidential Appendix "2"**. In order to maintain the integrity of the sales process, the Receiver requests that the appraisal be sealed until completion of the sales transaction.

#### **VII. SALES AND MARKETING PROCESS**

16. At the time the Receiver was appointed, a sales process was also approved pursuant to the Order of the Honourable Mr. Justice McEwen dated March 19, 2018 (the "**Marketing and Sale Order**"), which is attached as **Appendix "G"**. The Receiver had received three listing proposals (from Colliers, CBRE, and Cushman & Wakefield, that were marked as Confidential Appendices to the Pre-Appointment Report), which each suggested a similar marketing plan: an MLS listing combined with aggressive, broad-based promotion. The Receiver had recommend to the Court that it be authorized to retain Colliers, and the Marketing and Sale Order authorized the Receiver to do so.

17. The Pre-Appointment Report does not discuss the proposed list price for the WM Drive Property. In the Receiver's discussions with Colliers, the intention was always to set the list price at an amount above the Colliers range of value for the WM Drive Property (which list price



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ended up being even higher than the Receiver's appraisal price). However, in preparing this First Report, the Receiver noted for the first time that the Colliers proposal actually proposed an asking price of \$1.00 on page 11. In our communications regarding the marketing of the WM Drive Property, neither the Receiver nor Colliers proceeded on that basis. That proposed \$1.00 asking price at p. 11 of the Colliers proposal must simply have been a typographical error that the Receiver accidentally overlooked, and which would have been corrected prior to the issuance of the Sales and Marketing Order if it had been noticed by the Receiver. In fact, the listing price was set at \$4.9 million following the issuance of the Marketing and Sale Order (on a related note, the Cushman & Wakefield proposal was also based on a listing price for the WM Drive Property, whereas the CBRE proposal does not address list price).

18. As a result, the Receiver entered into a listing agreement with Colliers on March 23, 2018, with a listing price of \$4.9 million.

#### **Marketing process**

19. Colliers undertook, *inter alia*, the following activities:

- Broad MLS listing;
- For Sale sign on corner of Overlea Boulevard and William Morgan Drive;
- Prepared marketing flyer;
- Prepared an information package;
- Prepared data room to communicate specific details on offering
- In person meeting with potential purchasers;



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- Direct calls to clients (users/investors);
- Answered telephone and email queries in respect of the Building ; and
- Arranged tours.

20. The results of the marketing efforts are summarized below:

Confidentiality agreements signed	29
Accessed data room	28
Property tours	11
Offers	3

#### Offer received

21. Three offers were presented for the WM Drive Property. One offer, made on May 4, 2018, for [REDACTED] which was significantly below an acceptable price and the Receiver took no further action. Another offer, made on May 6, 2018, was received after the Receiver had accepted another offer which eventually became the offer that is the subject matter of the Receiver's Sale Approval motion and is discussed below (the "[REDACTED] Offer"). While this other offer was higher than the [REDACTED] Offer that the Receiver had already accepted (by [REDACTED]), it had an unreasonably long conditional period (120 days), a relatively small deposit of only \$100,000.00, and a significant number of deliverables pertaining to the Building, most of which are not in possession of the Receiver. The potential purchaser was contacted in an attempt to reduce the conditional period and deliverables, but a revised offer was not received.



## ROSEN GOLDBERG

INSOLVENCY &amp; RESTRUCTURING

Based on the highly conditional nature of the offer and the potential risk of losing a *bona fide* purchaser, the Receiver did not further pursue this other offer.

22. The proposed deadline for bids in the Sales Process set out by the Receiver in the Pre-Appointment Report was April 25, 2018.

23. Since there had been considerable activity but no offers made, the Receiver was about to lower the list price for the WM Drive Property to \$4.5 million, when on April 27, 2018, an offer was received from [REDACTED], or an assignee (the "Purchaser"), in the amount of [REDACTED] (the [REDACTED] Offer). The offer provided for a deposit of 5% [REDACTED] of the purchase price, and although it was not specifically included in the offer to purchase, a ten day conditional period was requested.

24. On May 1, 2018, the Receiver signed back the [REDACTED] Offer in the amount of [REDACTED] [REDACTED] which was accepted by the Purchaser, subject to a ten day conditional period and court approval. The deposit was delivered to the Receiver.

25. At the expiry of the conditional period for the [REDACTED] Offer, the Purchaser presented an Amended Agreement of Purchase and sale with a purchase price of [REDACTED]. The Purchaser cited several reasons for the proposed reduction, including, *inter alia*, the ability of Sprint to renew its lease, and the state of repair of the Building, specifically the roof and the elevator. The Receiver is advised by its appraiser for the WM Drive Property that the cost of replacing the



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Building's 10,000 square foot roof would be likely be approximately \$100,000.00 (estimate of \$10.00 per square foot), and the cost of replacing the three-storey elevator would be likely in the range of \$125,000.00 to \$150,000.00 (excluding HST).

26. After further negotiation, the Receiver and the Purchaser entered into an agreement on May 1, 2015, which agreement was amended on May 11 and 15, 2018, for a purchase price of [REDACTED]. The transaction is scheduled to close on July 9, 2018. A copy of the redacted Agreement of Purchase and Sale and the amendments thereto is attached as **Appendix "H"** (the William Morgan APS).

27. In accepting the [REDACTED] amended offer, the Receiver did not believe that further marketing of the WM Drive Property would result in a superior offer. The Sprint tenancy turned out to be the significant impediment in respect of the marketing of the WM Drive Property. As set out above, the Sprint Lease potentially has a further fifteen years remaining on its term (if the two renewals are exercised), at below market rent until the expiry of the initial term in 2023. More importantly, based on an assessment of potential purchasers, the WM Drive Property was most suitable for a single user/investor, rather than for an investor. When Colliers' toured, and communicated with, pure investors, the overall comment was that the time and expense to stabilize the building to full occupancy would be cost prohibitive, given the overall return matrix, due to the amount of rent Sprint is currently paying at below market rate. While the second floor might have garnered higher rents, it only accounts for 15% of the gross floor area. The basement has some utility, but would be rented out at rates less than what Sprint is paying. The fact that



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Sprint utilizes the entire main floor, which is the optimal space in the Building, precludes the optimal purchaser from obtaining and potentially occupying the Building, possibly for as long as 15 more years. Potential investors concluded that they would not realize an acceptable return on investment. We understand that several interested parties advised Colliers that they would submit an offer, but only if vacant possession of the Building was obtained. As the Receiver could not meet this condition, these offers were not forthcoming.

#### **Receiver's Recommendation**

28. The Receiver recommends that the [REDACTED] Offer be approved by this Honourable Court for the following reasons:

- (a) The WM Drive Property was widely exposed to the marketplace in a manner that is common for a unique property of this nature;
- (b) The [REDACTED] amended offer is unconditional;
- (c) The purchase price is reasonable as compared with appraisal obtained by the Receiver, and is within the range set out in the Colliers proposal;
- (d) The first ranking mortgagee supports the transaction; and
- (e) The Receiver does not believe that further marketing of the WM Drive Property will result in a superior offer (apart from the offers summarized in paragraph 21 above, there have not been any further offers made to date for the WM Drive Property).



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

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29. If the William Morgan APS is approved and the transaction is completed, the Receiver proposes to distribute from the proceeds of sale the amount required to satisfy the loan of the first mortgagees in full. According to the opinion which the Receiver obtained from Blaney McMurtry LLP, its independent counsel in this proceeding, subject to the customary qualifications, the first mortgagee registered against the WM Drive Property is valid security and enforceable in accordance with its terms. A copy of Blaneys' opinion is attached as **Appendix "I"**.

30. The Receiver intends to deal with subsequent encumbrances and other claimants of Skymark in its next report.

31. A copy of a statement of the amount owing under the Applicants' first mortgage and dated June 13, 2018, which the Receiver has reviewed and appears to be in order (however the Receiver has not yet been provided with the legal accounts referenced therein), is attached as **Appendix "J"**.



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ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 15th day of June 2018.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER AND MANAGER  
OVER THE WM DRIVE PROPERTY, AND ALL THE ASSETS  
AND UNDERTAKINGS OF SKYMARK ACQUIRED FOR,  
OR USED IN RELATION TO THE WM DRIVE PROPERTY**

*Rosen Goldberg Inc.*

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# TAB A

# APPENDIX A

Court File No. CV-18-593698-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

JUSTICE

*M<sup>o</sup> EWEEN*

)  
)  
)

MONDAY, THE 19<sup>TH</sup>

DAY OF MARCH, 2018

**B. & M. HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTNER, SK INVESTMENTS INC., 558678 ONTARIO LIMITED and PAUL HERBERT PROFESSIONAL CORPORATION INC.**

Applicants

and



**SKYMARK PROPERTIES I CORPORATION,**  
also known as **SKYMARK PROPERTIES I CORPORATION**

Respondent

**ORDER**  
(appointing Receiver)

THIS APPLICATION brought by the Applicants for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the "Receiver") without security, over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and having the legal description set out in Schedule "A" hereto (the "Real Property") and of all of the assets and undertakings of Skymark Properties I Corporation, also known as Skymark Properties I Corporation (the "Debtor") acquired for, or used in relation to the Real Property, including all proceeds therefrom, was heard this day at 330 University Avenue, Toronto, Ontario.

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ON READING the affidavit of Stephen Handelman sworn March 9, 2018 and the exhibits thereto and on hearing the submissions of counsel for the Applicants, no one else on the service list appearing although duly served, as appears from the affidavits of service filed with the Court, and on reading the consent of Rosen Goldberg Inc. to act as the Receiver, *and the Respondent*

### SERVICE

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

### APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of the Real Property and of all of the assets and undertakings of the Debtor acquired for, or used in relation to the Real Property, including all proceeds therefrom (together with the Real Property, the "Property").

### RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

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on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

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that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

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#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including

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

#### **RECEIVER TO HOLD FUNDS**

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

#### **EMPLOYEES**

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

**PIPEDA**

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

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

**LIMITATION ON THE RECEIVER'S LIABILITY**

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

**RECEIVER'S ACCOUNTS**

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

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

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

**FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

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consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### **SERVICE AND NOTICE**

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

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orders that a Case Website shall be established in accordance with the Protocol with the following URL: [http://www.rosengoldberg.com/admin/companyview.php?company\\_id=42](http://www.rosengoldberg.com/admin/companyview.php?company_id=42)

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

#### GENERAL

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

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

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

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

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proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAR 19 2018

PER / PAR:



**SCHEDULE "A"**

PIN: 10369-0019 (LT)

Legal Description:

PCL B-2 SEC M736; PT BLK B PL M736 LEASIDE; PT BLK C PL M736 LEASIDE PT 1, 3,  
R1083; TORONTO, CITY OF TORONTO

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the Property of the Debtor, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 19<sup>th</sup> day of March, 2018 (the "Order") made in an application having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
  
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
  
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
  
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
  
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Rosen Goldberg Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

B. & M. HANDELMAN INVESTMENTS LIMITED ET AL.  
Applicants

-and-

SKYMARK PROPERTIES I CORPORATION ET AL.  
Respondents

Court File No. CV-18-593698-00CL

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

**ORDER**

**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

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**Lawyers for the Applicants**

# TAB B

# APPENDIX B

Court File No. CV-18-593698-00CL

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

BETWEEN:

**B. & M. HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTNER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED and PAUL HERBERT PROFESSIONAL CORPORATION INC.**

Applicants

and

**SKYMARK PROPERTIES 1 CORPORATION,  
also known as SKYMARK PROPERTIES I CORPORATION**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**ENDORSEMENT OF JUSTICE MCEWEN DATED MARCH 19, 2018  
(Unofficial Transcription)**

Applicants seek the appointment of a Receiver over the subject property.

The Respondent Skymark seeks a one week adjournment on the basis that it has a financing agreement in place. It provided a copy of that agreement to the court.

While normally this would constitute good reason for a brief adjournment, I am not prepared to grant one in this case for the following reasons:

1. The proposed agreement is not accompanied by an affidavit;
2. It has not been signed by Skymark;
3. It is subject to the payment of outstanding taxes and there is no evidence that this has or can be done. The outstanding realty taxes are significant and in the \$400,000 range;
4. There are significant fees and no evidence of payment or ability to pay;
5. There are other conditions concerning an appraisal/Phase I report and no evidence of when or if these can be completed.

Overall, I see nothing in the financing agreement that suggests a reasonable and legitimate ability to close in the near future.

Further, the last payment on the outstanding mortgage was made in October 2017. BIA notices were served in January 2018 and demands have been made.

The sole tenant also supports this Application. It has been in litigation with Skymark and has a consent judgment against Skymark concerning the Enbridge account and other related relief.

Last the contact for Skymark, Mr. Ara Missaghi, was recently arrested for alleged fraudulent activity concerning real estate properties.

In all of these circumstances it is my view that a Receiver ought to be appointed now to protect the asset and look to market the property.

I have reviewed the draft order appointing a Receiver with counsel. It is reasonable and shall go as per the draft filed and signed. There is no objection to the form.

I have also reviewed the sales process and sealing draft order. It shall also go as per the draft filed and signed. Sealing is reasonable given the sensitive financial/marketing information and in accordance with the Sierra Club decision.

“McEwen. J”

B. & M. HANDELMAN INVESTMENTS LIMITED ET AL.  
Applicants

-and-

SKYMARK PROPERTIES 1 CORPORATION ET AL  
Respondent

MAR 19/18 Court File No. CV-18-593698-00CL

19 March 18

Two orders shall go  
as per the drafts filed & signed  
and as per the attached with  
reasons.

McE

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

APPLICATION RECORD

CHAITONS LLP  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

George Benchetrit (LSUC No. 34163H)  
Tel: (416) 218-1141  
Fax: (416) 218-1841  
E-mail: george@chaitons.com

Michael Kril-Mascarin (LSUC No. 65583K)  
Tel: (416) 218-1123  
Fax: (416) 218-1848  
E-mail: michaelk@chaitons.com

Lawyers for the Applicants



Court File Number: CV-18-593698-00CL

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

B+M Handelman Investments et al  
Plaintiff(s)

AND

Sky mark Properties et al  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
See Counsel sheet - attached		

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

Applicants seek the appointment of a Receiver over the subject property. The Resp. Sky mark seeks a one week adjournment on the basis that it has a financing agreement in place. It provided a copy of that agreement to the Court. Likelihood normally this would constitute good reason for a brief

19 March 18

Date

McE...

Judge's Signature

Additional Pages 3

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

adjournment I am not prepared to grant one in this case for the following reasons:

- ① The proposed agreement is not accompanied by an affidavit;
- ② It has not been signed by Skymark;
- ③ It is subject to the payment of o/s taxes and there is no evidence that this has or can be done. The o/s realty taxes are significant and in the \$400,000 range;
- ④ There are significant fees and no evidence of payment or ability to pay;
- ⑤ There are other conditions concerning an appraisal / Phase 1 report and no evidence of when or if these can be completed.

Overall, I see nothing in the financing agreement that suggests a reasonable and legitimate ability

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

to close in the near future.

Further, the last payment on the of/s mortgage was made in Oct/17 BIA notices were served on in Jan, 18 and Demands have been made.

The <sup>in s06</sup> Tenant also supports the Application. It has been in litigation with Skymark and has a Consent Judgment against Skymark concerning the Embury acct and other related relief.

Last the Consent order re. Skymark Mr Ara Missaqui was recently arrested for alleged fraudulent activity concerning real estate properties.

In all of these circumstances it is my view that a Receiver ought to be appointed now to protect the asset and look to market the property.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

I have reviewed the draft order  
 with counsel. It is reasonable  
 & shall go as per the draft filed  
 & signed. There is no objection to the Form.  
 I have also reviewed the sales process  
 and sealing draft order. It shall  
 also go as per the draft filed & signed.  
 Seal is reasonable given the  
 sensitive financial information  
 & in accordance with the Sierra  
 Club decision.

MEEST

TAB C

# APPENDIX C



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

**SKYMARK PROPERTIES I CORPORATION  
REPORT OF ROSEN GOLDBERG INC.  
PROPOSED RECEIVER**



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-18-593698-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

BETWEEN:

**B. & M. HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTNER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED and PAUL HERBERT PROFESSIONAL CORPORATION INC.**

Applicants

-and-

**SKYMARK PROPERTIES 1 CORPORATION,  
also known as SKYMARK PROPERTIES I CORPORATION**

Respondent

**REPORT OF ROSEN GOLDBERG INC.**

**March 13, 2018**



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

## I INTRODUCTION

1. This report (the “**Report**”) is being filed by Rosen Goldberg Inc. as proposed receiver (the “**Proposed Receiver**”) of real property municipally known as 1 William Morgan Drive, Toronto, Ontario (the “**Real Property**”), and of all of the assets, undertakings and properties acquired for or used in relation to the Real Property (together with the Real Property, the “**Property**”).
2. The application for the appointment of the Proposed Receiver is being made by the Applicants, which are collectively owed approximately \$3.3 million by the Respondent in respect of a first-ranking mortgage registered against title to the Real Property.
3. The Proposed Receiver has consented to act as receiver of the Property.

## II PURPOSE OF THIS REPORT

4. The purposes of this Report are to:
  - a. provide background information on the proposed receivership and on the Real Property; and
  - b. recommend that this Honourable Court issue an order approving a sale process described below (the “**Sale Process**”) in respect of the Property as summarized herein,



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

thereon.

### **III BACKGROUND**

#### **The Real Property**

5. The Real Property comprises one 26,245 square foot, two-storey, multi-tenant office building set on a 1.23 acre parcel of land, located in the Don Mills-Eglinton submarket of central Toronto. Situated within a small industrial pocket, the Real Property is surrounded by retail, industrial and high-rise residential properties. The area has seen significant redevelopment, including big-box retail and a planned public transportation extension, which has led to rising property values.

### **IV PROPOSED SALE PROCESS**

6. The Proposed Receiver has considered its realization options in respect of the Property, including both listing and tender processes. In consultation with the Applicants, and after discussion with several potential listing brokers, the Proposed Receiver has determined that a listing process will likely provide the best opportunity to broadly expose the Property to the greater market, and to maximize the realization thereon.



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INSOLVENCY & RESTRUCTURING

7. The Proposed Receiver's decision to list the Property was made after consideration of the features of both the Property, and of the local area; the most relevant factor being the significant planned, and continued redevelopment of the local area, and the corresponding rising property values. It is believed that exposure to the market by listing will likely generate a larger number of offers, as well as a greater realization than a tender process.

**Potential Listing Brokers**

8. The Proposed Receiver sought the interest of several experienced local real estate brokerages, and has received listing proposals from CBRE, Colliers, and Cushman & Wakefield. Copies of the listing proposals are attached hereto as **Confidential Appendices 1, 2 and 3**. The Proposed Receiver respectfully requests that these appendices be sealed pending the completion of the Sale Process, or until such time as this Honourable Court shall order, as the public disclosure thereof could negatively impact the future marketing of the Property.
9. Salient terms of the three listing proposals are summarized hereunder.

	CBRE	Colliers	Cushman & Wakefield
Commission rate	4% - 4.5%	4% - 4.5%	4% - 5%
Recommended marketing period	6 weeks	7 weeks	90 days

10. The Proposed Receiver notes that, aside from slight differences in commission rates, the



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11. three listing proposals generally suggest a similar marketing plan: an MLS listing combined with aggressive, broad-based promotion.
12. On the basis of its listing proposal and its prior experience selling assets similar to the Property, the Proposed Receiver believes that Colliers will competently market the Property. The commission rate contemplated by Colliers is reasonable and is consistent with the rate charged by the other similarly-experienced brokerages. The Applicants support the listing of the Property with Colliers.

#### **Sale Process**

13. Upon this Honourable Court's appointment of the Proposed Receiver as receiver (in such capacity, the "**Receiver**") and approval of the Sale Process, the Receiver will immediately commence its Sale Process.
14. During the first week of the Sale Process (beginning March 19, 2018), the Receiver will provide to Colliers all necessary relevant information in its possession in respect of the Property, and Colliers will prepare its marketing materials and online data room. A five-week initial marketing period will follow with an initial deadline for bids on April 25, 2018, with the sixth and seventh weeks reserved for response to offers and negotiations thereon. Colliers anticipates that a five-week marketing period will likely produce one or several offers suitable to the Receiver. The Receiver will ultimately have the discretion to extend any of these dates if it determines that it is appropriate to do so.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Rosen Goldberg Inc.  
Licensed Insolvency Trustee  
5255 Yonge Street, Suite 804, Toronto, Ontario, M2N 6P4  
T: (416) 224-4200 / F: (416) 224-4330  
[www.rosengoldberg.com](http://www.rosengoldberg.com)



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

15. The Property will be marketed and sold on an 'as is, where is' and 'without recourse' basis, subject to the prior approval of this Honourable Court.

**Listing broker's activities**

16. As is customary in marketing properties similar to the Property, Colliers will undertake a sale process that will include:
- Meetings with the Receiver regarding the strategic elements of the sale process;
  - Creation of an information package and marketing materials in respect of the Property, all of which will be made available in an on-line data room to interested parties who sign a non-disclosure agreement;
  - Listing the Property on the MLS;
  - Arranging and conducting site visits with interested parties;
  - Presenting offers received in respect of the Property to the Receiver; and
  - Negotiating offers with interested parties.

**V RECOMMENDATION**

17. On the basis of the foregoing, and for the reasons noted hereunder, the Receiver respectfully requests that this Honourable Court grant an Order approving the Sale Process:



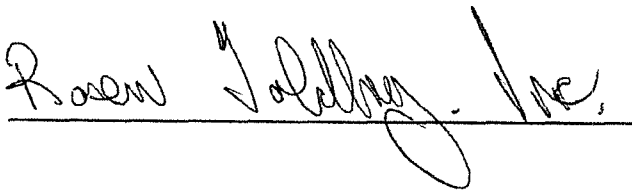
ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- a. Colliers has experience selling similar properties in the local area;
- b. The commission rate proposed by Colliers is consistent with commission rates charged by other qualified brokers;
- c. The Sale Process is a fair, open and transparent process intended to broadly expose the Property to the market in an orderly manner, and to maximize the realization; and
- d. The Applicants support the Sale Process.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 13<sup>th</sup> day of March 2018.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
PROPOSED RECEIVER OF THE RESPONDENT AND  
NOT IN A PERSONAL OR CORPORATE CAPACITY**

  
\_\_\_\_\_

TAB D

# APPENDIX D

CV 17 579 855  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**SENIOR PEOPLES' RESOURCES IN NORTH TORONTO INC.**  
carrying on business as SPRINT SENIOR CARE

Plaintiff

- and -

**SKYMARK PROPERTIES 1 CORPORATION**

Defendant



**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S)**

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

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

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

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

entitle you to ten more days within which to serve and file your statement of defence.

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

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

Date: July 28 2017

Issued by: Orla Skinnier  
Legal Registrar

Address of Court office:  
393 University Avenue  
10th Floor  
Toronto, Ontario  
M5G 1E6

TO: Skymark Properties 1 Corporation  
25 Mallard Road  
Toronto, Ontario, M3B 1S4

---

**CLAIM****1. THE PLAINTIFF CLAIMS:**

- a. A declaration that the Defendant, Skymark Properties 1 Corporation ("Skymark"), has fundamentally breached a Written Lease with the Plaintiff, Senior Peoples' Resources in North Toronto Inc. carrying on business as Sprint Senior Care ("Sprint"), for premises leased by Sprint ("Premises") located at municipal address 1 William Morgan Drive, Toronto, Ontario ("1 William Morgan Drive"), such that Sprint can, at its discretion, elect to treat the Written Lease as repudiated, in which event Sprint will be relieved from any and all obligations thereunder;
  - b. In the alternative, a declaration that the Written Lease is of no force and effect between Sprint and Skymark, and that Sprint and Skymark have agreed to a year-to-year tenancy, running from March 1 to February 28, which tenancy can be unilaterally terminated with at least six months of notice;
  - c. A declaration that Sprint is entitled to make payments directly to third-party providers of vital services to the Premises, including Enbridge Gas; Toronto Hydro; and providers of water, of garbage removal services, and of fire safety inspections; and withhold any such amounts paid from any payments otherwise due to Skymark;
-

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- d. A declaration that Sprint is entitled to make payments directly to the City of Toronto for any property taxes owing for 1 William Morgan Drive and withhold any such amounts paid from any payments otherwise due to Skymark;
  - e. A declaration that Sprint is entitled to pay to repair the roof of the building located at 1 William Morgan Drive and withhold any such amounts paid from any payments otherwise due to Skymark;
  - f. A declaration that Sprint is entitled to pay to repair and bring back into service the elevator in the building located at 1 William Morgan Drive and withhold any such amounts paid from any payments otherwise due to Skymark;
  - g. A Mandatory Order requiring that Skymark maintain the premises in a good state of repair;
  - h. Damages in the amount of \$250,000 for breach of contract;
  - i. Aggravated, punitive, and exemplary damages in the amount of \$100,000;
  - j. Pre-judgment and post-judgment interest thereon, pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - k. Costs on a substantial indemnity scale, together with HST thereon.
-

5.

pursuant to the *Customs and Excise Tax Act*, R.S.C. 1985, c. E.15; and

1. Such further and other relief as this Honourable Court may deem just.

*The Parties*

2. The Plaintiff, Sprint, is a not-for-profit corporation incorporated pursuant to the laws of the Province of Ontario. As of May 13, 2013, Sprint was the Tenant of the Premises.

3. The Defendant, Skymark, is a corporation incorporated pursuant to the laws of the Province of Ontario. As of February 10, 2015, Skymark was the registered owner of 1 William Morgan Drive and the Landlord of the Premises.

*The Premises Located at 1 William Morgan Drive*

4. The Premises comprise the ground floor of the building located at 1 William Morgan Drive; a storage space in the basement of the building; and an outdoor area.

5. From October 2006 until some point in 2014, Cinderella Productions Inc. ("Cinderella") was the owner of 1 William Morgan Drive.

6. On August 5, 2011, Cinderella gave a mortgage on 1 William Morgan Drive to The Equitable Trust Company ("Equitable Trust").

7. On May 13, 2013, Sprint entered into a written agreement to lease the Premises from William Morgan Lands Ltd. On January 1, 2014, Sprint entered into a written agreement with Cinderella to amend and confirm the earlier lease agreement. Cinderella had

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purportedly been assigned the lease by William Morgan Lands Ltd. Collectively, these two written agreements are referred to herein as "the Written Lease".

8. As contemplated by the Written Lease, Sprint fully renovated the Premises before beginning its operations at the Premises. The renovations were a significant expense for Sprint.

9. At some point in 2014, Cinderella defaulted on its mortgage with Equitable Trust.

10. In or about August 2014, 1 William Morgan Drive came under the control of a receiver, Schonfeld Inc., which appointed a property manager, Briarlane Rental Property Management Inc. ("Briarlane").

11. On or about August 20, 2014, Sprint received a Notice of Sale Under Mortgage concerning 1 William Morgan Drive. The Notice was issued by Equitable Trust.

12. On September 30, 2014, a group of seven corporations and individuals, who will be referred to herein as "the Investors", redeemed the mortgage.

13. The Investors were B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, SK Investments Inc., and 558678 Ontario Limited.

14. The Investors transferred 1 William Morgan Drive to Skymark on February 10, 2015, pursuant to a power of sale. The Investors took back a mortgage.

15. On February 12, 2015, Briarlane informed Sprint that the new owner of 1 William

Morgan Drive was Skymark.

16. On February 23, 2015, Skymark requested that Sprint make the rent cheques payable to "Canada Capital Corporation Inc." Sprint adhered to this request.

17. Sprint did not execute any written agreements with Equitable Bank, the Investors, or Skymark. Sprint never received a notice of attornment.

#### *The Written Lease*

18. Sprint pleads that Skymark assumed the Written Lease upon becoming the registered owner of 1 William Morgan Drive on February 10, 2015.

19. The Written Lease expires on December 31, 2023.

20. The annual rent payable by Sprint comprises: a Minimum Rent, determined by multiplying a net rent per square foot per annum against 10,700 square feet; rent for the basement storage space; and a "Proportionate Share of Property Taxes and reasonable Operating Costs." The annual rent is paid in 12 monthly instalments.

21. To date, Sprint's monthly rent payments to Skymark, made out to "Canada Capital Corporation Inc.", were as follows: from March through December 2015, \$19,491.54; from February through December 2016, \$19,995.35; and from February through July 2017, \$20,247.24. Sprint's monthly rent payments in January of 2016 and 2017 were \$9919.51, as Minimum Rent was excluded pursuant to the Written Lease.

22. The Written Lease provides that Sprint is entitled to peaceful and quiet enjoyment of

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the Premises.

23. Sprint has paid the rent and fully performed its obligations under the Written Lease.

24. As provided for in article 9 "Use" of Schedule "E" of the Written Lease, the Premises are to be used by Sprint for providing an adult day program for seniors or adults who are physically frail or have a cognitive impairment, in order to provide, among other things: care services such as arts, cooking, music, footcare, occupational therapy and other forms of therapy, visiting nurses for clients with diabetes, and blood pressures checks; a room for showering and bathing; a dining area with a fully functioning kitchen; and office space for counsellors and other service providers.

*Gas Supply Disconnected*

25. Skymark breached its obligation to supply gas to the Premises, beginning in May 2017.

26. Sprint pleads that the disconnection of the gas supply to the Premises in May 2017, without any reliable assurance from Skymark that the gas supply would be reconnected by the fall of 2017, was a fundamental breach of the Written Lease.

27. Skymark is obligated to heat the Premises. The Premises are heated by a gas-powered furnace.

28. Article 7.1 "Heating, Ventilating, and Air Conditioning" of the Written Lease provides that, "The Landlord shall provide processed air in quantities and at temperatures

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required to maintain conditions within a reasonable temperature range in the Premises.”

29. On May 30, 2017, Enbridge Gas (“Enbridge”) disconnected gas supply to the Premises as a result of Skymark’s failure to pay Enbridge for gas. Skymark’s arrears were over \$40,000.

30. As a result, the Premises had no hot water from May 30 to June 9, 2017. Skymark installed an electrically-powered water heater that restored, on or after June 9, 2017, hot water to the Premises.

31. If the gas supply is not reconnected by the fall of 2017 to fuel the furnace and heat the Premises, Sprint will have to cease all of its operations at the Premises.

32. Sprint’s operations, particularly its care services for elderly and disabled clients, cannot be conducted in the cold.

33. Skymark’s failure to reasonably assure Sprint that its operations at the Premises will be able to continue in the fall and winter of 2017 has endangered Sprint’s operations; created uncertainty; required the expenditure of substantial time and effort by Sprint’s Board of Directors, officers, and employees; hamstrung Sprint’s planning for the future; and required expenditures on legal costs.

34. On June 2, 2017, a Sprint employee detected a gas leak on the Premises. Emergency services were contacted and attended at the Premises.

35. Sprint learned that someone had cut Enbridge’s padlock off the gas meter and

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tampered with the gas lines, reconnecting gas service to the Premises and causing the leak.

36. The tampering created a serious danger to Sprint's clients and staff.

37. The tampering also caused damage to the gas lines, resulting in the need for a thorough inspection of the HVAC system throughout the building before Enbridge can repair the lines and restore gas supply to the Premises.

*Electricity Supply Disconnected*

38. Skymark breached its obligation to supply electricity to the Premises.

39. Article 7.2 "Electricity and Other Utilities" of the Written Lease provides that, "The Landlord shall provide and permit the Tenant to use the electricity... serving the Building".

40. On January 5 and 6, 2017, there was no electricity supply to the Premises, forcing Sprint to suspend its operations at the Premises, including the cancellation of all its care services on those days.

41. Sprint suffered a \$3,280 loss, of which Skymark only reimbursed \$1,500.

42. Sprint pleads that the loss of electricity supply was as a result of Skymark's failure to pay Toronto Hydro. By May 2017, Skymark's arrears totalled over \$23,000.

43. On May 15, 2017, a Toronto Hydro employee attended at the Premises to disconnect the electricity supply. A Sprint employee was able to convince the Toronto Hydro employee not to do so.

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44. Skymark paid the Toronto Hydro arrears on May 16, 2017.
45. Sprint reasonably expects that Skymark will again fall into arrears with Toronto Hydro in the future, threatening Sprint's operations at the Premises.

*Fire Safety Inspections Not Arranged or Paid For*

46. Skymark has breached its obligation to arrange and pay for annual fire safety inspections of the Premises.
47. Sprint has had to arrange and pay for these inspections, in order to protect its staff, clients, and operations at the Premises.
48. Skymark is obliged to arrange and pay for annual fire safety inspections, including as provided for in article 8.1 "Operation of the Building by Landlord" of the Written Lease, which reads, "The Landlord shall operate, maintain, and repair the Building in good, clean and proper condition".
49. Sprint paid an inspection company, Safety First, \$1,801.51 on November 26, 2015 for the cost of the 2015 fire safety inspection and to clear Skymark's arrears, as Skymark had refused to pay for the inspection or to clear the arrears. Safety First would not perform an inspection until the arrears were cleared.
50. Skymark did not pay Safety First the \$988.75 cost of the 2016 inspection. As a result, in early July 2017, Safety First refused to conduct the 2017 inspection, which had to be completed by July 18, 2017. Sprint paid Skymark's arrears for the 2016 inspection so

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that Safety First would conduct the 2017 inspection.

51. Sprint paid Safety First the \$1011.35 cost of the 2017 inspection, as well as the \$1102.50 cost of addressing the deficiencies in the Premises identified by the inspector.

52. Skymark has not reimbursed Sprint for any of Sprint's payments to Safety First.

53. Sprint reasonably expects that Skymark will not arrange or pay for future fire safety inspections, threatening Sprint's operations at the Premises.

*Property Taxes Not Paid*

54. Skymark breached its obligation to pay the property taxes on 1 William Morgan Drive. The 2016 property taxes owing to the City of Toronto are in arrears.

55. By email dated June 9, 2017, Skymark informed Sprint that Skymark would not be paying the 2016 property taxes until at least the end of 2017.

56. Article 6.1 "Property Taxes Payable by Landlord" of the Written Lease provides that, "The Landlord shall pay all Property Taxes, but it may defer such payments or compliance to the fullest extent permitted by law so long as it pursues in good faith any contest or appeal of any such Property Taxes with reasonable diligence."

57. Sprint pleads that Skymark's failure to pay the property taxes is not related to any contest or appeal. In the alternative, Skymark has not pursued any contest or appeal in good faith or with reasonable diligence.

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58. As a result of the property tax arrears, Sprint's application for a 2016 Property Tax Charity Rebate ("Rebate") was denied by the City of Toronto, resulting in a \$16,373.03 loss to Sprint.

59. But for Skymark's property tax arrears, Sprint would have been provided the Rebate.

60. Sprint was entitled to the Rebate. Sprint paid its proportionate share of the property taxes as part of its rent in 2016.

61. Skymark was notified on numerous occasions by Sprint that Skymark's property tax arrears would prevent Sprint from obtaining the Rebate.

62. Sprint pleads that in addition to breaching article 6.1 of the Written Lease, or in the alternative, Skymark's failure to pay the property tax arrears, knowing that Sprint would suffer a substantial loss as a result, was a breach of Skymark's duty of good faith performance.

63. Skymark performed its contractual duties capriciously and arbitrarily. Skymark's performance was not honest, candid, forthright or reasonable and was in breach of Skymark's obligation to perform the terms of the lease in good faith.

64. Skymark failed to have appropriate regard to Sprint's legitimate contractual interests, namely to receive the Rebate each year, and negligently or purposefully undermined those interests.

65. These legitimate contractual interests were contemplated in the Written Lease. As

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provided by article 6.4 "Assessment Appeals" of the Written Lease, with reference to article 2 "Realty Tax Rebate" of Schedule "E", the Landlord is to cooperate with Sprint to provide information needed to approve the Rebate.

66. Sprint reasonably expects that Skymark has no intention of paying the property tax arrears or future property taxes, and that, as a result, Sprint will not qualify for a 2017 Rebate or a Rebate in any year thereafter.

*Elevator Service Not Provided*

67. Skymark has breached its obligation to provide elevator service to the Premises.

68. Article 7.4 "Other Landlord Services" of the Written Lease provides that, "The Landlord shall provide elevator service during the Tenant's hours of operation, in common with others, except when prevented by maintenance or repairs."

69. The sole elevator on the Premises has not been in operation since February 11, 2016, when it was taken out of operation by an Inspector from the Technical Standards & Safety Authority as a result of Skymark's failure to repair and maintain it.

70. On May 19, 2017, Skymark informed Sprint that the elevator would be permanently out of service.

71. As there is no working elevator at the Premises, Sprint has not been able to effectively use the basement storage area for which it pays rent. The lack of elevator service creates a potential health and safety risk to Sprint's staff, as they have to move

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- heavy supplies up and down the stairs.

#### *Continuous State of Disrepair*

72. Skymark has generally failed to maintain the Premises in good, clean and proper condition.

73. Article 8.1 "Operation of the Building by Landlord" of the Written Lease provides that, "The Landlord shall operate, maintain, and repair the Building in good, clean and proper condition". Article 8.4 "Maintenance and Repair by Landlord" is of similar effect.

74. Among other disrepair, Sprint has reported to Skymark: multiple water leaks, many of which were traced to problems with the roof; plumbing problems; a great many instances of garbage bins overflowing; broken exterior safety lights; a hole in a wheelchair ramp which created a hazard to Sprint's clients; broken fencing; broken ceiling tiles and lighting fixtures; and unacceptable temperatures resulting from problems with the heating and air conditioning.

75. Typically, Sprint has had to make requests to Skymark for many weeks or months before a repair has been made. In some instances, Skymark has never made repairs.

#### *Fundamental Breach*

76. As set out above, Sprint pleads that some of Skymark's breaches constitute, on their own, fundamental breaches of the Written Lease.

77. In addition or in the alternative, Sprint pleads that Skymark's pattern of continually

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breaching the Written Lease constitutes a fundamental breach of the Written Lease.

78. Sprint's Board of Directors, officers, and employees have expended substantial time and energy dealing with Skymark's breaches, including pressuring Skymark to correct them.

79. Sprint pleads that Skymark's continual breaching of the Written Lease evinces an intention not to be bound by the Written Lease in the future.

80. Sprint reasonably expects Skymark's misconduct to continue in the future.

*Alternatively a Year-to-Year Lease*

81. In the alternative, Sprint pleads that the Written Lease is of no force and effect between Sprint and Skymark, as no privity of contract or estate exists between Sprint and Skymark with respect to the Written Lease.

82. If the Written Lease is of no force and effect, Sprint pleads that Sprint and Skymark have agreed to a year-to-year tenancy that runs from March 1 to February 28, terminable with six months of notice, the terms of which tenancy agreement include obligations by Skymark to pay for vital services, including gas, electricity, water, garbage removal, and fire safety inspections; to pay property taxes; to provide elevator service; and to maintain the Premises in good, clean and proper condition.

83. If a year-to-year tenancy is in effect, Sprint pleads that all of the aforementioned breaches of the Written Lease are equally breaches of the year-to-year tenancy agreement,

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and that Skymark is liable for damages as a result.

*Aggravated, Punitive, and Exemplary Damages*

84. Sprint pleads that Skymark's pattern of continually breaching numerous terms of the Written Lease, or alternatively the year-to-year tenancy agreement, as described above, is misconduct deserving of aggravated, punitive and exemplary damages because of its high-handed, reprehensible and egregious nature. Skymark's willingness to knowingly put Sprint's operations at risk by failing to pay Enbridge and Toronto Hydro was particularly egregious.

85. In addition or in the alternative, Sprint pleads that Skymark's breach of its duty of good faith performance of the terms of the Written Lease, or alternatively the year-to-year tenancy agreement, including Skymark's failure to pay for vital services and the 2016 property taxes, is a separate actionable wrong deserving of aggravated, punitive and exemplary damages.

86. Skymark's misconduct is blameworthy, as it departed to a marked degree from ordinary standards of decent behaviour by a commercial landlord.

87. There is no rational justification for Skymark's breaches of the terms of the Written Lease, or alternatively the year-to-year tenancy agreement, and its duty of good faith performance thereunder.

88. Skymark was aware of its misconduct and was aware that its misconduct breached the terms of the Written Lease, or alternatively the year-to-year tenancy agreement, and its

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duty of good faith performance thereunder.

89. Skymark's misconduct was planned and deliberate. Sprint contacted Skymark repeatedly, including about threats to the gas and electricity supply to the Premises as a result of the Enbridge and Toronto Hydro arrears, the loss Sprint would suffer if the 2016 property taxes were not paid, and a wide variety of disrepair on the Premises.

90. Skymark persisted in its misconduct over a lengthy period of time.

91. Sprint was vulnerable to Skymark's misconduct, as Sprint is a non-profit corporation, largely reliant on public funding and private donations, which had invested a significant amount of funds into renovating the Premises in anticipation of long-term occupancy.

92. Skymark's misconduct is in need of deterrence. Unless Skymark is deterred by aggravated, punitive and exemplary damages, Sprint reasonably expects that Skymark will continue its profitable misconduct.

93. Skymark obtained a windfall through its misconduct, by accepting rent while paying relatively little for operating costs and property taxes, even though approximately half of Sprint's rent is attributable to Sprint's proportionate share of operating costs and property taxes.

#### *Miscellaneous*

94. Sprint pleads that it is entitled to its costs on a substantial indemnity scale.

95. Sprint proposes that this action be tried at Toronto.

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~~28~~  
July 27, 2017

**BIRENBAUM, STEINBERG, LANDAU,  
SAVIN & COLRAINE, LLP**  
Barristers and Solicitors  
Suite 1000  
33 Bloor Street East  
Toronto, Ontario  
M4W 3H1

Craig R. Colraine (31792P)  
Tel: (416) 961-0042  
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Solicitors for the Plaintiff

---

SENIOR PEOPLES' RESOURCES IN NORTH TORONTO INC.  
Carrying on business as SPRINT SENIOR CARE  
PLAINTIFF

and

SYKMARK PROPERTIES 1 CORPORATION  
DEFENDANT

Court File No. CV 17 579 855

SUPERIOR COURT OF JUSTICE  
Proceeding commenced at TORONTO

STATEMENT OF CLAIM

BIRENBAUM, STEINBERG, LANDAU,  
SAVIN & COLRAINE, LLP  
Barrister(s) and Solicitor(s)  
33 Bloor Street East  
Suite 1000  
Toronto, Ontario  
M4W 3H1

Craig R. Colraine (31792P)  
Paul Jorgensen (65939W)  
Tel: (416) 961-4100  
Fax: (416) 961-2531

Solicitors for the Plaintiff

# TAB E

# APPENDIX E



- Enbridge to restore gas supply to the building located at 1 William Morgan Drive forthwith;
- b. The Defendant shall arrange for any inspections or repairs that Enbridge requires be performed in order for Enbridge to restore gas supply to the building located at 1 William Morgan Drive forthwith;
  - c. If the Defendant fails to provide proof, satisfactory to the Plaintiff, by 5:00 P.M. on September 18, 2017, that the gas supply will be restored by Enbridge forthwith, the Plaintiff may:
    - i. open an account with Enbridge;
    - ii. pay off any arrears said by Enbridge to be owing at the building located at 1 William Morgan Drive;
    - iii. pay for any other expenses associated with the reconnection of the gas supply, as required by Enbridge, including any necessary inspections or repairs; and
    - iv. deduct the amounts paid to Enbridge or other entities, including any repairers or inspectors, from the rent payable to the Defendant;
  - d. If the Plaintiff pays arrears or other expenses required by Enbridge to reconnect the gas supply, the Plaintiff will advise Enbridge that the Plaintiff is not the Defendant's agent or representative, that the payment of those amounts is not an admission by the Defendant that the arrears are owing, that the Plaintiff takes no position in any dispute between the Defendant and Enbridge over any arrears owing as of September 18, 2017, and that the payment is being made solely to facilitate the

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restoration of gas supply to the building located at 1 William Morgan Drive;

- e. The Plaintiff shall provide such information and documentation to the Defendant that the latter may reasonably request with respect to the Defendant's claim against Enbridge and any negotiations that it may have to resolve that claim; and
- f. Nothing in this Order prejudices any right the Defendant may have against Enbridge, including with respect to the arrears alleged by Enbridge.

**2. THIS COURT ORDERS that;**

- a. The Defendant will, within 30 days of the date of this Order, have an open account with Enbridge and will have the name of the Plaintiff's representative (as confirmed by the Plaintiff) added to the Defendant's Enbridge account and will allow the Plaintiff to have full access to the Defendant's Enbridge account information for the building located at 1 William Morgan Drive;
- b. The Defendant will provide the Plaintiff with a copy of the monthly Enbridge bill for 1 William Morgan Drive within a week of receiving said bill, and will further provide the Plaintiff proof of payment of said bill at least five business days before the due date for payment; and
- c. If the Defendant fails to provide proof of payment of the monthly Enbridge bill, as set out in paragraph 2.b., the Plaintiff may pay the overdue bill directly to Enbridge using the Defendant's account and, if

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the Plaintiff does so, will provide the Defendant with proof of payment and may deduct the amount paid to Enbridge from its rent payable to the Defendant.

**3. THIS COURT ORDERS that:**

- a. The Defendant will, within 30 days of the date of this Order, have an open account with Toronto Hydro and will have the name of the Plaintiff's representative (as confirmed by the Plaintiff) added to the Defendant's Toronto Hydro account and will allow the Plaintiff to have full access to the Defendant's Toronto Hydro account information for the building located at 1 William Morgan Drive;
- b. The Defendant will provide the Plaintiff with a copy of the monthly Toronto Hydro bill for 1 William Morgan Drive within a week of receiving said bill, and will further provide the Plaintiff proof of payment of said bill at least five business days before the due date for payment; and
- c. If the Defendant fails to provide proof of payment of the monthly Toronto Hydro bill, as set out in paragraph 3.b., the Plaintiff may pay the overdue bill directly to Toronto Hydro using the Defendant's account with Toronto Hydro and, if the Plaintiff does so, will provide the Defendant with proof of payment and may deduct the amount paid to Toronto Hydro from its rent payable to the Defendant; and

4. THIS COURT ORDERS that this Order is without prejudice to the right of the Plaintiff to seek further interlocutory relief relating to enforcement of and compliance with this Order and with the leave and of the Defendant to oppose such relief;

5. THIS COURT ORDERS that this Order can be varied on consent or by a further Order of this Court;

6. THIS COURT ORDERS that the costs of the within motion will be as determined by the Court on or after the day the within motion is heard. *Defendant shall pay Plaintiff costs of \$15,000.00; all inclusive, payable within 30 days.*

THIS ORDER BEARS INTEREST at the rate of two per cent per year commencing on the date of this Order.

ENTERED AT / INSCRIT A TORONTO:  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.  
SEP 20 2017

*[Signature]*  
MORGAN J.

PER / PAR: *[Signature]*

SENIOR PEOPLES' RESOURCES IN NORTH TORONTO INC.  
(Carrying on business as SPRINT SENIOR CARE)  
PLAINTIFF

SYKMARK PROPERTIES 1 CORPORATION

DEFENDANT

and

Court File No. CV-17-579855

**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at TORONTO

ORDER

BIRENBAUM, STEINBERG, LANDAU,  
SAVIN & COLRAINE, LLP  
Barrister(s) and Solicitor(s)  
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Solicitors for the Plaintiff

# TAB F

# APPENDIX F

Rosen Goldberg Inc.; Court Appointed Receiver and Manager of  
Skymark Properties 1 Corporation ( 1 William Morgan Drive)

**Statement of Receipts and Disbursements**

For the period March 19, 2018 to June 8, 2018

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**Receipts**

Deposit on sale of assets	210,000
Receiver's Borrowings	50,000
Rental Income	29,909
	<u>289,909</u>

**Disbursements**

Repair and maintenance	10,207
Utilities	6,560
Property management	3,017
HST paid	2,729
Appraisal	1,950
Lender's fee	1,000
Miscellaneous	372
	<u>25,835</u>
	<u><u>264,074</u></u>

The schedule has been prepared on a cash basis, and does not include the obligations of the Receiver.

TAB G

# APPENDIX G

Court File No. CV-18-593698-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )

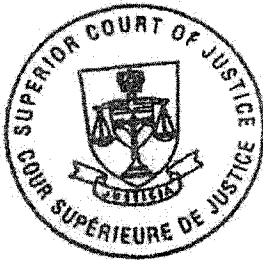
MONDAY, THE 19<sup>TH</sup>JUSTICE *MC EWEN* )

DAY OF MARCH, 2018 )

**B. & M. HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTNER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED and PAUL HERBERT PROFESSIONAL CORPORATION INC.**

Applicants

and



**SKYMARK PROPERTIES 1 CORPORATION,  
also known as SKYMARK PROPERTIES I CORPORATION**

Respondent

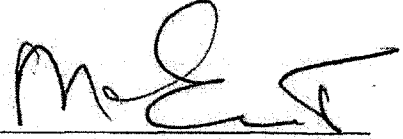
**ORDER  
(Sale Process Approval)**

**THIS APPLICATION**, brought by the Applicants for an Order, *inter alia*, (i) appointing Rosen Goldberg Inc. (“RGI”) as receiver and manager (in such capacities, the “Receiver”) without security, over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario (the “Real Property”) and of all of the assets and undertakings of the Respondent acquired for, or used in relation to the Real Property, including all proceeds therefrom (collectively with the Real Property, the “Property”); and (ii) approving a marketing and sale process for the Property as set out in the Report of RGI dated March 13, 2018 (the “Pre-Filing Report”), was heard this day at 330 University Avenue, Toronto, Ontario.

- 2 -

ON READING the affidavit of Stephen Handelman sworn March 9, 2018 and the exhibits thereto and the Pre-Filing Report, and on hearing the submissions of counsel for the Applicants, no one else on the service list appearing although duly served, as appears from the affidavits of service filed with the Court, and the Respondent *SM*

1. **THIS COURT ORDERS** that the marketing and sale process for the Property as set out in the Pre-Filing Report is hereby approved.
2. **THIS COURT ORDERS** that the confidential appendices to the Pre-Filing Report shall be sealed until the filing of a certificate by the Receiver confirming completion of a sale of all of the Property, or until further order of this Court.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAR 19 2018

PER / PAR:

*MS*

B. & M. HANDELMAN INVESTMENTS LIMITED ET AL.  
Applicants

-and-

SKYMARK PROPERTIES 1 CORPORATION ET AL.  
Respondents

Court File No. CV-18-593698-00CL

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

**ORDER**

**CHAITONS LLP**

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Toronto, Ontario M2N 7E9

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**Michael Kril-Mascarin (LSUC No. 65583K)**

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E-mail: michaelk@chaitons.com

**Lawyers for the Applicants**

TAB H

# APPENDIX H

**AGREEMENT OF PURCHASE AND SALE**

This AGREEMENT dated the 1<sup>st</sup> day of May, 2018.


BETWEEN:

Rosen Goldberg Inc., solely in its capacity as court-appointed receiver and manager over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Debtor acquired for, or used in relation thereto, including all proceeds therefrom, and not in its personal or corporate capacity and without personal or corporate liability

(the "Vendor")

OF THE FIRST PART

and

 or assignee, which shall be a company incorporated in accordance with the laws of the Province of Ontario

(the "Purchaser")



OF THE SECOND PART

WHEREAS

- A Pursuant to the Receivership Order, Rosen Goldberg Inc. was appointed receiver to, among other things, market and sell the Purchased Assets; and
- B. Subject to the Court issuing the Approval and Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the right, title and interest of the Debtor in and to the Purchased Assets on the terms and conditions set out herein.

IN CONSIDERATION of the mutual agreements contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the Vendor and the Purchaser, the Vendor and the Purchaser agree as follows:

**1. DEFINITIONS**

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) "Act" means, for purposes of Section 22 only, the *Excise Tax Act* (Canada);

- 2 -

- (b) **"Agreement"** means this agreement together with the attached schedules;
- (c) **"Approval and Vesting Order"** means an order of the Court substantially in the form attached hereto as Schedule 1(c) approving the Transaction and ordering that the Debtor's right, title and interest in the Purchased Assets be vested in the Purchaser free and clear of encumbrances, except for Permitted Encumbrances, upon satisfaction by the Purchaser of its obligations under this Agreement;
- (d) **"Buildings"** means the buildings situate on the Lands, including all improvements thereto and all fixtures forming a part thereof, and including all of the Debtor's rights and interests under leases entered into with tenants in the Buildings;
- (e) **"Business Day"** means any day other than a Saturday or a Sunday or a statutory holiday in the Province of Ontario;
- (f) **"Chattels"** means the items listed in Schedule 1(f);
- (g) **"Closing"** shall have the meaning ascribed to it in Section 9;
- (h) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (i) **"Date of Closing"** shall have the meaning ascribed to it in Section 9 hereof;
- (j) **"Debtor"** means Skymark Properties I Corporation, also known as Skymark Properties I Corporation;
- (k) **"Deposit"** shall have the meaning ascribed to it in Section 5;
- (l) **"Environmental Law"** means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;
- (m) **"Government Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal governments having or claiming to have jurisdiction over part or all of the Property, the transaction contemplated in this Agreement and/or one or both of the parties hereto;
- (n) **"HST"** shall have the meaning ascribed thereto in Section 22 hereof;
- (o) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any

- 3 -

Government Authority and any “**Contaminants**”, “**Dangerous Substances**”, “**Hazardous Materials**”, “**Hazardous Substances**”, “**Hazardous Wastes**”, “**Industrial Wastes**”, “**Liquid Wastes**”, “**Pollutants**” and “**Toxic Substances**”, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;

- (p) “**Lands**” means the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario, as legally described in Schedule 1(p);
- (q) “**Permitted Encumbrances**” means those encumbrances listed in Schedule 1(q).
- (r) “**Property**” means the Lands and all of the assets and undertakings of the Debtor acquired for, or used in relation to, the Lands, including all proceeds therefrom;
- (s) “**Purchase Price**” shall have the meaning ascribed thereto in Section 4 hereof;
- (t) “**Purchased Assets**” means the interests of the Debtor in the Buildings, Lands and Chattels;
- (u) “**Purchaser**” shall have the meaning ascribed to it on page 1 above;
- (v) “**Purchaser’s Solicitors**” means the office of Yigal Rifkind;
- (w) “**Receiver**” means Rosen Goldberg Inc. in its capacity as receiver appointed pursuant to the Receivership Order;
- (x) “**Receivership Order**” means the order of the Court dated March 19, 2017 appointing Rosen Goldberg Inc. as receiver the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Debtor acquired for, or used in relation thereto, including all proceeds therefrom;
- (y) “**Registry Office**” shall have the meaning ascribed thereto in Section 10 hereof;
- (z) “**Transaction**” means the transaction contemplated under this Agreement;
- (aa) “**Vendor**” shall have the meaning ascribed to it on page 1 above;
- (bb) “**Vendor’s Solicitors**” means the firm of Zimmerman Associates.

## 2. SCHEDULES

The following Schedules are appended to this Agreement:

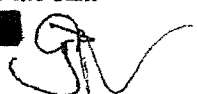
- Schedule 1(c)      Approval and Vesting Order
- Schedule 1(f)      Chattels
- Schedule 1(p)      Lands
- Schedule 1(q)      Permitted Encumbrances

3.      NATURE OF TRANSACTION

The Purchaser shall purchase and the Vendor shall sell the Purchased Assets, upon and subject to the terms of this Agreement.

4.      PURCHASE PRICE

The aggregate purchase price (the "Purchase Price") for the Purchased Assets shall be the sum of [REDACTED]



5.      METHOD OF PAYMENT

The Purchase Price shall be paid, accounted for and satisfied as follows.

- (a)      **Deposit:** A deposit equal to the amount of five percent (5%) of the Purchase Price (the "**Deposit**") to be deposited in the trust account of the Receiver, to be paid upon the execution of this Agreement. The Deposit will be held by the Receiver until completion or termination of this Agreement. The Vendor shall place the Deposit in a non-interest bearing account and no interest shall be earned, received or paid on the Deposit.
- (b)      **Balance Due at Closing:** The balance of the Purchase Price, subject to the adjustments contemplated in this Agreement, by payment at Closing to the Vendor or to the order of the Vendor.

The Deposit and the balance due on Closing shall be paid, at the option of the Vendor, by way of certified cheque, bank draft or wire drawn on or issued by a Canadian chartered bank.

The Vendor and the Purchaser acknowledge and agree that they shall each make their own allocations of the Purchase Price between the Buildings, Lands and Chattels for the purposes of the *Income Tax Act* (Canada) and any filings in accordance with the provisions thereof.

## 6. DEPOSIT

The Deposit shall be held in trust by the Vendor and shall be:

- a) returned to the Purchaser without interest or deduction if the Vendor does not accept this offer;
- b) credited to the Purchaser as an adjustment against the Purchase Price on the Closing Date if the Transaction is completed;
- c) refunded to the Purchaser without interest or deduction if the Transaction is not completed, provided that the Purchaser is not in default under this Agreement; or,
- d) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Agreement and at law, including offering the Purchased Assets for sale to another person, if the Transaction is not completed as a result of the Purchaser's breach hereunder.

## 7. APPROVAL AND VESTING ORDER

Within 7 days after the Vendor's acceptance (subject to approval of the Court) of this Agreement and payment by the Purchaser of the Deposit, the Vendor will seek an appointment with the Court for a motion to be heard within 30 days, or otherwise as soon as reasonably possible, to seek the Approval and Vesting Order.

The Vendor and the Purchaser acknowledge and agree that the above-noted term is a true condition precedent to the completion of the Transaction that cannot be waived by either party.

## 8. CLOSING ADJUSTMENTS

Adjustments shall be made, as of 12:01 a.m. on the Date of Closing, for realty taxes, local improvement rates, rental payments, municipal/provincial levies and charges, water and assessment rates, and utilities. The day of Closing shall be for the account of the Purchaser.

If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Vendor, acting reasonably, as of the Closing Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the parties. All re-adjustments shall be requested in

- 6 -

a detailed manner on or before the 60<sup>th</sup> day after the Closing Date, after which time neither party shall have any right to request re-adjustment.

#### 9. DATE OF CLOSING

The Transaction will close on the fifth Business Day following the date on which the Approval and Vesting Order is granted and not before July 10, 2018, or such other date as agreed between the Vendor and Purchaser in writing (the "Date of Closing" or "Closing"). If, prior to the Closing, the Approval and Vesting Order (or any orders dismissing appeals thereof) shall have been appealed or a proceeding shall have been commenced to restrain or prevent the completion of the Transaction, then the Date of Closing may be extended by the Vendor, in which case the Date of Closing shall mean the day that is two Business Days after the date on which any such appeals and/or proceedings are dismissed.

#### 10. ELECTRONIC REGISTRATION

- (a) In the event that the electronic registration system ("TERS") is operative in the relevant land registry office (the "Registry Office"), the following provisions shall apply:
- (i) The Purchaser shall be obliged to retain a solicitor who is both an authorized TERS user and is in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction and shall authorize such solicitor to enter into a document registration agreement with the Vendor's Solicitors in the form as agreed by the parties (the "DRA"), establishing the procedures and timing for completing this transaction.
  - (ii) The delivery and exchange of the closing documents:
    - (A) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
    - (B) shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitors shall hold all closing documents in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.
- (b) The Purchaser expressly acknowledges and agrees that the Vendor will not release the Receiver's Certificate confirming the effectiveness of the Approval and Vesting Order until the balance of funds due on Closing, in accordance with the Statement of Adjustments, are remitted by wire transfer to the Vendor's Solicitors (or in such other manner as the Vendor or Vendor's Solicitors may in writing direct).

- 7 -

- (c) 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 made by the Vendor upon the Purchaser, or by the Purchaser upon the Vendor, when the Vendor's Solicitors have:
- (i) delivered all documents required to be delivered by the Vendor to the Purchaser pursuant to Section 18 hereof;
  - (ii) advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
  - (iii) completed all steps required by TERS to complete the Transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Vendor's Solicitors,
- without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.
- (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 made by the Purchaser upon the Vendor, when the Purchaser's Solicitors have:
- (i) delivered the balance due at Closing and all the documents required to be delivered by the Purchaser to the Vendor pursuant to Section 19 hereof;
  - (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
  - (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Vendor's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Purchaser's Solicitors,
- without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.
- (e) If through no fault of the Purchaser's Solicitors or the Vendor's Solicitors TERS is unavailable on the Date of Closing, such that the Purchaser's Solicitors are unable to register the Application for Vesting Order, then the Transaction shall be

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completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitors forthwith and the parties shall arrange to complete the registration of the Approval and Vesting Order as expeditiously as possible, whereupon the escrow shall be released.

In the event of any conflict or inconsistency between the terms of this Section 10 and the terms of the DRA, the terms of this Section 10 shall prevail.

#### **11. PRE-CLOSING RISK**

The Purchased Assets are and shall remain at the Vendor's risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the parties as their respective interests may appear pending Closing. In the event that the Purchased Assets shall be materially damaged prior to Closing, then the Vendor shall promptly notify the Purchaser in writing of such damage. If the cost of rectifying such damage exceeds Five Hundred Thousand (\$500,000) Dollars, as determined by an independent third party expert appointed by the Vendor, then the Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement, by delivery of written notice to the Vendor within ten (10) Business Days following receipt of the Vendor's notice of damage, and in such event the parties hereto shall be released from all obligations and liabilities hereunder and the Deposit shall be returned to the Purchaser forthwith, without interest or deduction. If the Purchaser does not elect to terminate this Agreement as set out above, or if the cost of rectifying such damage does not exceed Five Hundred Thousand (\$500,000) Dollars, then the Transaction shall be completed and the Vendor shall release its interest in the insurance proceeds payable in respect thereof, if any, to the Purchaser.

#### **12. PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents and warrants to the Vendor that, as at the date hereof:

- (a) the Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of the Province of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement; neither the execution of this Agreement nor the performance (such performance shall include, without limitation, the exercise of any of the Purchaser's rights and compliance with each of the Purchaser's obligations hereunder) by the Purchaser of the Transaction will violate:
  - (i) the Purchaser's articles of incorporation and by-laws;
  - (ii) any agreement to which the Purchaser is bound;
  - (iii) any judgement or order of a court of competent authority or any Government Authority; or

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(iv) any applicable law;

and the Purchaser has duly taken, or has caused to be taken, all requisite corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder;

- (b) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
- (c) there are no orders or proceedings pending before any Government Authority, or threatened to be brought by or before any Government Authority by or against the Purchaser, affecting the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby by the Purchaser;
- (d) the Purchaser has made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price to the Vendor on Closing;
- (e) the Purchaser will be responsible for and will remit to or reimburse, as applicable, all taxes, including (without limitation) land transfer tax, levies or the like that arise from the sale of the Purchased Assets unless otherwise specified in this Agreement; and
- (f) either (i) the Purchaser is not a "non-Canadian", as defined in the *Investment Canada Act (Canada)* ("ICA"); or (ii) if the Purchaser is a "non-Canadian", this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

### 13. NO REPRESENTATIONS OR WARRANTIES BY VENDOR

The Purchaser acknowledges that:

- (a) it is relying entirely upon its own searches, investigations and inspections in entering into this Agreement;
- (b) the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted;

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- (c) it is satisfied with the Purchased Assets and all matters and things connected therewith or in any way related thereto;
- (d) it is purchasing the Purchased Assets on an "as is, where is" and "without recourse" basis including, without limitation, outstanding work orders, deficiency notices, compliance requests, development fee, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any governmental authority having jurisdiction over the Purchased Assets;
- (e) any documentation relating to the Purchased Assets obtained from the Vendor has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Agreement;
- (f) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Purchased Assets;
- (g) the Vendor has made no representations or warranties with respect to or in any way related to the Purchased Assets, including without limitation, the following:
  - i. the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Purchased Assets, either stated or implied;
  - ii. the environmental state of the Purchased Assets, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Purchased Assets, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), or any other statute, regulation, rule or provision of law and the existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Purchased Assets or elsewhere; and
- (h) it will ensure that any environmental and/or structural reports prepared on behalf of the Purchased Assets shall also be addressed to the Vendor and a copy of each such report shall be delivered to the Vendor promptly after the completion thereof, regardless of whether the transaction contemplated by this Agreement closes.
- (i) The obligation of the Purchaser to complete this Agreement shall be subject to the following condition:

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- (i) By the day being 10 days after acceptance this Agreement by the parties hereto at 5:00 pm (the "Due Diligence Date), the Purchaser shall have satisfied itself in its sole, absolute and subjective discretion with the Purchased Assets, including without limitation, title to the Property, the Permitted Encumbrances, the physical and environmental condition of the Property, the zoning of the Property, the leases, including the rents payable thereunder and the Purchaser's ability to finance the acquisition of the Purchased Assets;
- (ii) If by the Due Diligence Date, the Purchaser has not given notice to the Vendor that the conditions in Section 13(i)(i) have been satisfied or waived by the Purchaser, such conditions shall be deemed not to have been waived or satisfied, and this Agreement shall be terminated and the Deposit shall be returned to the Purchaser.

#### 14. ENCROACHMENTS

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Buildings or Lands, or encroachments onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting any of the Purchased Assets.

#### 15. INDEMNIFICATION

The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, agents and representatives (collectively, the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Buildings or Lands after the Closing Date, or any order, notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws after the Closing Date, or as a result of the disposal, storage, release or spill, or threat of release or spill, on or about the Lands and/or the Building, of any Hazardous Substance after the Closing Date. The obligation of the Purchaser hereunder shall survive the Closing Date.

#### 16. RELEASE

The Purchaser agrees to release and discharge the Vendor together with its directors, officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Substance relating to the Buildings or Lands. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Substance, remediate any condition or matter in, on, under or in the vicinity of the Buildings or Lands, or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials. This provision shall not expire with, or be terminated or extinguished by or merged in,

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the Closing of the Transaction and shall survive the termination of this Agreement for any reason or cause whatsoever and the closing of this transaction.

#### 17. NON-REGISTRATION

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document, instrument or court order or judgement providing evidence of this Agreement against title to the Buildings or Lands. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Buildings or Lands. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Buildings or Lands. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 17 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Buildings or Lands any of the items set out in this Section 17.

#### 18. VENDOR'S CLOSING DELIVERIES

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

- (a) the Approval and Vesting Order;
- (b) a statement of adjustments prepared in accordance with Section 8 hereof;
- (c) the Vendor's certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada); and
- (d) all master keys and duplicate keys relating to the Property in the Vendor's possession.

#### 19. PURCHASER'S CLOSING DELIVERIES

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

- (a) **Purchaser's Certificates:** the Purchaser's certificate and indemnity setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing and, if applicable, the Purchaser's certificate described in Subsection 22(b) hereof;
- (b) **HST Indemnity:** the indemnity provided for under Subsection 22(c) hereof;

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- (c) **Direction re Title:** a direction re title to confirm the name in which title to the Purchased Assets will be taken, provided that such direction must be provided to the Vendor no less than 7 days before the hearing date for the motion to obtain the Approval and Vesting Order;
- (d) **Balance Due at Closing:** the balance of the Purchase Price described in Subsection 5(b) hereof;
- (e) **Application for Vesting Order(s):** the Purchaser's solicitor will prepare the application for vesting order in Teraview in accordance with the Purchaser's direction re title; and
- (f) **Further Documentation:** any other documentation relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors.

## 20. DOCUMENTATION PREPARATION AND REGISTRATION

The Vendor shall prepare or cause to be prepared all documentation described in Sections 18 and 19 hereof and shall deliver draft documentation to the Purchaser not less than three (3) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the Transaction. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

## 21. LAND TRANSFER TAXES AND RETAIL SALES TAXES

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)) and, if applicable, all retail sales taxes (as required pursuant to the *Retail Sales Tax Act* (Ontario)) payable in connection with the transfer of the Purchased Assets pursuant to this Agreement.

## 22. HARMONIZED SALES TAX

- (a) **Application of HST to this Agreement:** The Purchaser acknowledges and agrees that the transaction contemplated hereunder shall be subject to the goods and services tax and harmonized sales tax ("HST") levied pursuant to the Act and that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the Act.
- (b) **Self-Assessment:** If:
  - (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the Act; and/or

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- (ii) the Purchaser is a "prescribed recipient" under the Act and/or is registered under the Act,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the Act or, if no such form is prescribed, then in form satisfactory to the Vendor and the Vendor's Solicitors, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the transaction contemplated hereunder. If Subsection (b)(i) hereof shall be applicable, then the Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration, as the case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor, at Closing, in addition to the balance otherwise due at Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.

- (c) **HST Indemnity:** The Purchaser shall indemnify and save harmless the Vendor, its directors, officers, employees, agents and representatives from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

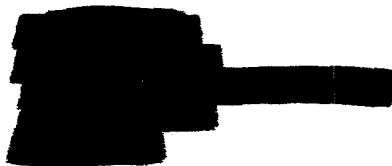
### 23. PLANNING ACT (ONTARIO)

This Agreement shall be effective to create an interest in the Buildings or Lands for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing or if a Court orders the completion of the Transaction notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario).

### 24. NOTICE

Any notice given hereunder shall be in writing and delivered or communicated by telecopier machine or e-mail to:

in the case of the Purchaser at:



with a copy to the Purchaser's Solicitors:

Yigal Rifkind  
5001 Yonge Street, Suite 301  
Toronto, Ontario M2N 6P6

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Phone: 416-222-4597  
Fax: 647-723-0546  
Attention: Yigal Rifkind  
Email: yigal@yigalrifkind.com

and in the case of the Vendor at:

Rosen Goldberg Inc.  
5255 Yonge Street, Suite 804  
Toronto, Ontario M2N 6P4

Fax: 416-224-4330  
Attention: Brahm Rosen  
Email: brosen@rosengoldberg.com

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission unless such notice is delivered or transmitted outside of usual business hours, in which event the notice shall be deemed to have been delivered or transmitted on the next Business Day. A party may change its address and/or telecopier machine number by providing notice in accordance with this Section 24.

#### **25. WAIVER OF CONDITIONS**

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting party without prejudice to the benefiting party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the Transaction by a party hereof shall be deemed to be a waiver by such party of compliance with any condition inserted for its benefit and not satisfied at Closing.

#### **26. SEVERABILITY**

If any provision contained in this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons/entities or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

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**27. DIVISION/HEADINGS**

The division of this Agreement into Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

**28. ENTIRE AGREEMENT**

This Agreement and the schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Purchased Assets. Each of the parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive the closing of the transactions contemplated by this Agreement.

**29. CUMULATIVE REMEDIES**

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

**30. INTERPRETATION**

This Agreement shall be read with all changes of gender and number as required by the context.

**31. REFERENCES TO STATUTES**

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

**32. TIME OF ESSENCE**

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

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**33. CANADIAN FUNDS**

All references to dollar amounts contained in this Agreement shall be deemed to refer to Canadian funds.

**34. TENDER**

Any tender of notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

**35. FURTHER ASSURANCES**

Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration therefor, co-operate with and take such additional actions as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

**36. CONFIDENTIALITY**

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any third party. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

**37. NON-BUSINESS DAYS**

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

**38. GOVERNING LAWS**

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario.

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### **39. ASSIGNMENT**

No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, the Purchaser shall have the right, until five (5) Business Days prior to the granting of the Approval and Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Purchased Assets hereunder to any company or companies affiliated (as that term is defined in the Ontario *Business Corporations Act*) with the Purchaser, provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

### **40. VENDOR'S CAPACITY**

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as court-appointed receiver of the assets, undertakings and properties of the Debtor and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Property.

### **41. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **42. IRREVOCABLE**

This Agreement of Purchase and Sale shall be irrevocable by the Vendor and shall be open to acceptance by the Purchaser, until 5:00 p.m. on the 3<sup>rd</sup> day of May, 2018, after which time, if it has not been accepted in writing by the Purchaser, same shall be void. Upon acceptance, this shall constitute a binding Agreement of Purchase and Sale.

[the remainder of this page has intentionally been left blank]

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DATED as of the date first mentioned above.



The Vendor hereby accepts this Agreement to purchase and its terms and agrees with the Purchaser to duly complete the transaction contemplated thereunder.

DATED at Toronto, Ontario this 1<sup>st</sup> day of May, 2018.

**Rosen Goldberg Inc., solely in its capacity as court-appointed receiver and manager over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario, and not in its personal or corporate capacity and without personal or corporate liability**

A handwritten signature in black ink, appearing to read 'Brahm Rosen', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Per: \_\_\_\_\_  
Name: Brahm Rosen  
Title: President

I have authority to bind the corporation.

## SCHEDULE 1(C)

## APPROVAL AND VESTING ORDER

Court File No. CV-18-593698-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ► ) ► DAY, THE ► DAY  
JUSTICE ► ) OF ►, 2018

BETWEEN:

**B. & M. HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTNER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED and PAUL HERBERT PROFESSIONAL CORPORATION INC.**

Applicants

and

**SKYMARK PROPERTIES I CORPORATION,  
also known as SKYMARK PROPERTIES I CORPORATION**

Respondent

## APPROVAL AND VESTING ORDER

**THIS MOTION**, made by Rosen Goldberg Inc. in its capacity as court-appointed receiver and manager over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Respondent (the "Debtor") acquired for, or used in relation thereto, including all proceeds therefrom, for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") made as of [DATE] and appended to the Report of the Receiver dated [DATE]

(the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at •.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated March 19, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule D hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule B hereto.

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

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

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

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

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

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

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

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**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-18-593698-00CL

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

**B E T W E E N:**

**B. & M. HANDELMAN INVESTMENTS LIMITED, E. MANSON INVESTMENTS LIMITED, BAMBURGH HOLDINGS LIMITED, 4055845 CANADA INC., JEFFREY GERTNER, 5K INVESTMENTS INC., 558678 ONTARIO LIMITED and PAUL HERBERT PROFESSIONAL CORPORATION INC.**

Applicants

and

**SKYMARK PROPERTIES 1 CORPORATION,  
 also known as SKYMARK PROPERTIES I CORPORATION**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice McEwen dated March 19, 2018, Rosen Goldberg Inc. was appointed as the receiver (the “Receiver”) over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Respondent (the “Debtor”) acquired for, or used in relation thereto, including all proceeds therefrom.

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Receiver and [NAME OF PURCHASER] (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase

Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

**THE RECEIVER CERTIFIES** the following:

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

**Rosen Goldberg Inc., solely in its capacity as court-appointed Receiver over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Respondent acquired for, or used in relation thereto, including all proceeds therefrom, and not in its personal or corporate capacity and without personal or corporate liability**

Per: \_\_\_\_\_  
 Name:  
 Title:

I have authority to bind the corporation.

**Schedule B – Claims to be deleted and expunged from title to Real Property**

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

1. Instrument No. A80798 registered September 29, 1961 being By-Law No. 1617
2. Instrument No. R1083 registered September 18, 1962 being a “Plan Reference”
3. Instrument No. 66BA1214 registered February 6, 1978 being a registration described as “Plan Boundaries Act”
4. Instrument No. C283656 registered May 13, 1986 being a “Notice”
5. Instrument No. AT3568422 registered April 29, 2014 being a Notice of Lease in favour of Senior Peoples' Resources In North Toronto (Sprint)

**Schedule D – Legal Description**

PIN 10369 - 0019 LT

PCL B-2 SEC M736; PT BLK B PL M736 LEASIDE; PT BLK C PL M736 LEASIDE PT 1, 3,  
R1083; TORONTO, CITY OF TORONTO

**SCHEDULE 1(f)**

**CHATELS**

**SCHEDULE 1(p)**

**LANDS**

PIN 10369 - 0019 LT

PCL B-2 SEC M736; PT BLK B PL M736 LEASIDE; PT BLK C PL M736 LEASIDE PT 1, 3,  
R1083; TORONTO, CITY OF TORONTO

**SCHEDULE 1(q)****PERMITTED ENCUMBRANCES**

1. Instrument No. A80798 registered September 29, 1961 being By-Law No. 1617
2. Instrument No. R1083 registered September 18, 1962 being a "Plan Reference"
3. Instrument No. 66BA1214 registered February 6, 1978 being a registration described as "Plan Boundaries Act"
4. Instrument No. C283656 registered May 13, 1986 being a "Notice"
5. Instrument No. AT3568422 registered April 29, 2014 being a Notice of Lease in favour of Senior Peoples' Resources In North Toronto (Sprint)

**Larry Zimmerman**

---

**From:** Yigal Rifkind <yigal@yigalrifkind.com>  
**Sent:** May 11, 2018 10:32 AM  
**To:** Larry Zimmerman  
**Subject:** RE: 1 William Morgan

Confirmed.

-yigal

**From:** Larry Zimmerman [mailto:larry@zimlaw.ca]  
**Sent:** Wednesday, May 09, 2018 1:42 PM  
**To:** Yigal Rifkind <yigal@yigalrifkind.com>  
**Subject:** 1 William Morgan

Yigal,

Please confirm the following by return email and we will treat same as an amendment to the Agreement of Purchase and Sale.

1. The Due Diligence date in section 13(i)(i) is May 16, 2018.
2. Section 7 is hereby amended as follows:

“Within 7 days after the Purchaser’s notice of satisfaction or waiver of the conditions in Section 13(i) (i) Vendor’s acceptance (subject to approval of the Court) of this Agreement and payment by the Purchaser of the Deposit, the Vendor will seek an appointment with the Court for a motion to be heard within 30 days, or otherwise as soon as reasonably possible, to seek the Approval and Vesting Order.”

Larry

Lawrence Zimmerman LLB.

\*\*\*\*\*

ZIMMERMAN ASSOCIATES

*Barristers and Solicitors*

3338 Dufferin Street

Toronto, Ontario M6A 3A4

\*\*\*\*\*

[larry@zimlaw.ca](mailto:larry@zimlaw.ca)

\*\*\*\*\*

Direct: 416-489-9222

Main: 416-489-6230

Fax: 416-489-6222

\*\*\*\*\*

NOTICE: Confidential message which may be privileged. Unauthorized use/disclosure prohibited. If received in error, please call 416-489-6230 for instructions.

AVIS: Message confidentiel dont le contenu peut être privilégié. Utilisation/divulgarion interdites sans permission. Si reçu par erreur, prière téléphoner 416-489-6230 pour des instructions.

**AMENDMENT OF AGREEMENT OF PURCHASE AND SALE**

Dated the 15<sup>th</sup> day of May, 2018.


BETWEEN:

Rosen Goldberg Inc., solely in its capacity as court-appointed receiver and manager over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Debtor acquired for, or used in relation thereto, including all proceeds therefrom, and not in its personal or corporate capacity and without personal or corporate liability

(the "Vendor")

OF THE FIRST PART

and


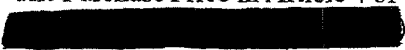
 or assignee, which shall be a company incorporated in accordance with the laws of the Province of Ontario

(the "Purchaser")

OF THE SECOND PART

WHEREAS the Vendor and the Purchaser have entered into an Agreement of Purchase and Sale dated May 1, 2018 and amended by email correspondence on May 11, 2018 (collectively the "Agreement") for the property known municipally as 1 William Morgan Drive, Toronto, Ontario (the "Property");

IN CONSIDERATION of the mutual agreements contained herein, the receipt and sufficiency of which are acknowledged by each of the Vendor and the Purchaser, the Vendor and the Purchaser agree as follows:

1. The Purchase Price in Article 4 of the Agreement is hereby amended to  .
2. The Purchaser hereby gives notice of waiver of the conditions contained in Section 13(i)(i) of the Agreement.
3. The Agreement is firm on binding upon the parties hereto in accordance with its terms.
4. All other terms of the Agreement remain the same and time continues to be of the essence.
5. This Amendment of Agreement of Purchase and Sale may be executed by the parties in

counterparts and when all parties have executed at least as many counterparts as there are parties, all of such counterparts shall be deemed to be originals and all such counterparts taken together shall constitute one and the same agreement.

DATED as of the date first mentioned above.



**Rosen Goldberg Inc., solely in its capacity  
as court-appointed receiver and manager  
over the lands and premises municipally  
known as 1 William Morgan Drive,  
Toronto, Ontario, and not in its personal or  
corporate capacity and without personal or  
corporate liability**

Per: 



Name: Brahm Rosen  
Title: President

I have authority to bind the corporation.

# TAB I

# APPENDIX I



Blaney McMurtry LLP | Lawyers  416-593-1221  
 2 Queen Street East | Suite 1500  
 Toronto, Ontario M5C 3G5  Blaney.com

June 13, 2018

Rosen Goldberg Inc.  
 5255 Yonge Street, Suite 804  
 Toronto, Ontario  
 M2N 6P4

Dear Sirs:

**Re: Opinion to Rosen Goldberg Inc. ("RG") as Court-Appointed Receiver and Manager of all of the assets, undertakings and properties of Skymark Properties 1 Corporation (also known as Skymark Properties I Corporation) (the "Borrower") regarding the validity and enforceability of security held by B. & M. Handelman Investments Limited and certain other lenders (the "Lenders") over the real property at 1 William Morgan Drive, Toronto, Ontario (the "Property")**

We have been provided with a copy of an order of the Ontario Superior Court of Justice (Commercial List) made March 19, 2018, appointing RG as receiver and manager of the Property and of all of the assets and undertakings of the Borrower acquired for, or used in relation to the Property, including all proceeds therefrom, pursuant to proceedings commenced by the Lenders (the "**Proceedings**"), and a copy of the Notice of Application filed with the Ontario Superior Court of Justice (Commercial List) on March 9, 2018 (the "**Application**"), including the Affidavit of Stephen Handelman sworn March 9, 2018 attached at Tab "2" of the Application (the "**Affidavit**").

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the "**Security**"). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the "**Security Interests**") in the personal property collateral (the "**Collateral**") to which the *Personal Property Security Act* (Ontario) ("**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or the Lenders in this matter and did not act in the preparation of the Security or the registration of it.

### **Examination of Documents**

For the purposes of the opinions set out herein, we have examined:

- (a) copies of the Security;
- (b) copies of search results conducted in the Province of Ontario against the Borrower with the Ministry of Consumer and Business Services (Ontario) and under the following statutes:
  - (i) the *Bank Act* (Canada);

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- (ii) the *Bankruptcy and Insolvency Act* (Canada);
- (iii) the *Execution Act* (Ontario); and
- (iv) the PPSA,

the results and currency of which are set out in Schedule "B";

- (c) Subsearch of title against the real property owned by the Borrower, the results of which are set out in Schedule "C". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm *Planning Act* (Ontario) compliance nor did we confirm whether there was access to the real property; and
- (d) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied without independent verification or investigation on all statements as to matters of fact contained in the certificates, documents and records we examined.

#### **Assumptions and Reliances**

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

- (a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;
- (b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;
- (c) the accuracy of the description of the Collateral set out in the Security;
- (d) that:
  - (i) the Borrower has rights in the Collateral;

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- (ii) value, as that term is defined in the PPSA, has been given to the Borrower; and
  - (iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;
- (e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;
- (f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lenders;
- (g) that the Borrower:
  - (i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;
  - (ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;
  - (iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and
  - (iv) has duly executed and delivered the Security;
- (h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;
- (i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;
- (j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;
- (k) that there are no:
  - (i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or
  - (ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Borrower of the

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Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

- (l) that the execution and delivery by the Borrower of the Security, and the performance by it of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to such Borrower or any other agreement to which such Borrower is a party;
- (m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;
- (n) that the Lenders have not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and
- (o) that the Lenders did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or its property or assets were bound, if there was such a contravention.

#### **Laws Addressed**

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario, In particular, without limiting the preceding statement, we express no opinion:

- (a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Province of Ontario; or
- (b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower only has assets in the Province of Ontario, so as

instructed by you we have limited our review to Ontario law.

### **Opinions**

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.
2. With respect only to the mortgages that are registered against title to the Property, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Property other than those that appear on the parcel register of the Property as of May 18, 2018, we confirm that the Charge (as defined in Schedule "A") is the first ranking mortgage registered against title to the Property.
3. The Security creates valid Security Interests in favour of the Lenders as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.
4. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lenders and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.

### **Qualifications and Limitations**

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.
2. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.
3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

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4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any real property or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.
5. We express no opinion regarding the priority of the Security, or other interests expressed to be created by the Security, subject to Opinion no. 2 above on the ranking of the mortgages registered against title to the Property.
6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.
7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lenders would not have a valid security interest in federal Crown debts unless that Act is complied with.
8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001*, patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.
9. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.
10. We express no opinion as to the enforceability of any provision of the Security which requires any Borrower to pay, or to indemnify the Lenders for, the costs and expenses of the Lenders in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.
11. We express no opinion on any provision in the Security which:
  - (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;
  - (b) limits rights of set-off otherwise than in accordance with applicable law;
  - (c) states that amendments or waivers of or with respect to the Security that are not in writing will be ineffective;

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- (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;
  - (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or
  - (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.
12. The enforceability of any provision in the Security which:
- (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;
  - (b) stipulates or limits the level of damages to which a party is entitled; or
  - (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;
- is subject to the discretion of a court.
13. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lenders or by a person on its behalf, whether such enforcement involves the operation of the business of a Borrower or a sale, transfer or disposition of their respective property and assets.
14. We express no opinion as to any Security Interests with respect to any property of a Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of a Borrower that are not identifiable or traceable.
15. We express no opinion as to any Security Interests in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application.
16. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, "**Special Property**") to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to a Borrower, or (iii) in growing crops.
17. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of a Borrower is subject to notice of the Security Interest and a direction to pay to the Lenders being given to that account debtor, the terms of the contract between such Borrower, and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against such Borrower, accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor

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to the extent that the debt or account is paid or otherwise discharged before notice of die Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lenders.

18. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, Security Interests in:
  - (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);
  - (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and
  - (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom a Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.
19. The financing statements registered under the PPSA to perfect the Security Interests do not list motor vehicles (as that term is defined in the PPSA) by vehicle identification number, and accordingly a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.
20. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).
21. We express no opinion regarding any issues raised in the Application and/or Affidavit (and exhibits thereto) including but not limited to those related to any litigation or potential litigation relating to the Property and/or between any parties claiming an interest therein.
22. We express no opinion regarding any guarantee with respect to the loan secured by the Charge.
23. The Charge ranks behind the construction lien and certificate of action in the amount of \$11,756.00 registered in 2014 on the Property in favour of Laser Heating & Air Conditioning Inc.
24. The general security agreement has an additional secured party, Robert Handelman, whose status is unclear. Robert Handelman is also named in the mortgage extension agreement as one of the lenders. The PPSA registration made by the Lenders does not name Robert Handelman or Paul Herbert Professional Corporation Inc. as secured parties; however, this does not affect the validity of the registration, as it is not necessary to name all secured parties in a financing statement.
25. It appears that there is no such corporation as “Skymark Properties I Corporation”. The

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correct name appears to be "Skymark Properties I Corporation". An application to correct this error in the name should be registered against title to the Property.

26. The assignment of rents that is collateral security to the Charge has not been assigned to the same Lenders as the Charge.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Yours very truly,

**Blaney McMurtry LLP**

BLANEY McMURTRY LLP

**SCHEDULE "A"****SECURITY**

1. Instrument No. AT3807422 registered on February 10, 2015, being a Charge/Mortgage (the "**Charge**") from Skymark Properties 1 Corporation to B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., and 558678 Ontario Limited in the amount of \$3,300,000.00.
2. Instrument No. AT3807423 registered February 10, 2015, being a Notice of Assignment (General) in favour of B. & M. Handelman Investments Limited and the other chargees listed in item 1 above, being further security for Charge AT3807422.
3. Instrument No. AT3837655 registered on March 23, 2015 being a Transfer of Charge from B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., and 558678 Ontario Limited to B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., 558678 Ontario Limited and Paul Herbert Professional Corporation Inc.
4. General Security Agreement granted by 2457674 Ontario Inc. in favour of B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., 558678 Ontario Limited, Robert Handelman and Paul Herbert Professional Corporation Inc. dated February 5, 2015.

**SCHEDULE "B"**

(see attached)

**SKYMARK PROPERTIES I CORPORATION**

**A. Profile Report**

The corporation profile report obtained from the Ministry of Government Services on May 16, 2018 against the name Skymark Properties I Corporation shows that it is an active Ontario corporation, incorporated October 17, 2014, with registered office at 15 West Pearce Street, Suite # 1, Richmond Hill, Ontario, Canada, L4B 1E3.

According to the profile report, the director of the corporation is:

Alijan Alijanpour

According to the profile report, the officers of the corporation are:

Alijan Alijanpour

- President, Secretary, Treasurer

The profile report discloses that the corporation does not have a current registered tradename.

**B. PPSA Search Results (certified) – current to May 15, 2018**

Searches were made in the records of the central office of the Personal Property Security Registration System in the Province of Ontario. As at May 15, 2018, the following registrations were found with respect to Skymark Properties I Corporation.

1.	737095131	20180308 1625 1590 5011	2 Years	Skymark Properties I Corporation 25 Mallard Road Toronto, ON M3B 1S4  Sonie Chahal DOB: March 30, 1987 25 Mallard Road Toronto, ON M3B 1S4	B. & M. Handelman Investments Limited 620 Wilson Avenue, Suite 150 Toronto, ON M3K 1Z3  E. Manson Investments Limited 620 Wilson Avenue, Suite 150 Toronto, ON M3K 1Z3  Bamburg Holdings Limited 620 Wilson Avenue, Suite 150 Toronto, ON M3K 1Z3  4055845 Canada Inc. 620 Wilson Avenue, Suite 150 Toronto, ON M3K 1Z3  558678 Ontario Limited	Consumer Goods, Inventory, Equipment, Accounts  Amount: \$3,300,000  General Collateral Description: General Security Agreement in favour of the above mortgagees on the security of 1 William Morgan Drive, Toronto
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					3338 Dufferin Street Toronto, ON M6A 3A4  5 K Investments Inc. 620 Wilson Avenue, Suite 120 Toronto, ON M3K 1Z3  Jeffrey Gertner 620 Wilson Avenue, Suite 150 Toronto, ON M6A 3A4
	20180309 1406 1590 5061 Amendment to add correct debtor name			Skymark Properties I Corporation 25 Mallard Road Toronto, ON M3B 1S4	
	20180309 1413 1590 5064 Amendment to add correct debtor name			Skymark Properties I Corporation 25 Mallard Road Toronto, ON M3B 1S4	

**C. s. 427 Bank Act Search**

A search was made of the notices of intention to give security under the *Bank Act* registered in the Province of Ontario. As at **May 16, 2018**, no matches were found with respect to **Skymark Properties I Corporation**.

**D. Insolvency Search**

A search against **Skymark Properties I Corporation** was conducted at the Office of the Superintendent of Bankruptcy of the public record kept by the Superintendent of Bankruptcy for all the Districts and Divisions in Canada and the public record was found to contain no facts nor any reference to the aforementioned name from 1978 to **May 14, 2018**.

**E. Execution Act**

An OWL search against **Skymark Properties I Corporation** was conducted. As at **May 16, 2018**, there were no writs of execution under the *Execution Act* against **Skymark Properties I Corporation** in the province of Ontario.

SCHEDULE "C"REAL PROPERTY SEARCHES

Municipal Address: 1 William Morgan Drive, Toronto, Ontario

Registered Owner: Skymark Properties 1 Corporation

Subsearch as of: May 18, 2018

Legal Description: PCL B-2 SEC M736; PT BLK B PL M736 LEASIDE; PT BLK C PL M736 LEASIDE PT 1, 3, R1083; TORONTO , CITY OF TORONTO , BEING all of PIN 10369-0019 (LT)

Registered Encumbrances:

1. Instrument No. A80798 registered on September 29, 1961, being a Bylaw designating subdivision control as per section 24 of The Planning Act.
2. Instrument No. R1083 registered on September 18, 1962, being a Plan of Reference.
3. Instrument 66BA1214 registered on February 6, 1978, being Plan Boundaries Act.
4. Instrument C283656 registered on May 13, 1986, being a Notice of Application to amend parcel register.
5. Instrument No. AT3557481 registered on April 14, 2014, being a Construction Lien in favour of Laser Heating & Air Conditioning Inc., in the amount of \$11,756.00.
6. Instrument No. AT3568422 registered on April 29, 2014, being a Notice of Lease from Cinderella Productions Inc., to Senior Peoples' Resources in North Toronto (Sprint).
7. Instrument No. AT3600898 registered on June 6, 2014, being a Certificate of Action in relation to Instrument no. AT3557481.
8. Instrument No. AT3807421 registered on February 10, 2015, being a Transfer by Power of Sale from B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5k Investments Inc., and 558678 Ontario Limited to Skymark Properties 1 Corporation (current registered owner) LTT was paid on \$3,800,000.00.
9. Instrument No. AT3807422 registered on February 10, 2015 being a Charge from Skymark Properties 1 Corporation to B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., and 558678 Ontario Limited in the amount of

\$3,300,000.00. This charge is further secured by a Notice of Assignment of Rents General which is registered as Instrument No. AT3807423.

10. Instrument No. AT3837655 registered on March 23, 2015 being a Transfer of Charge from B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., and 558678 Ontario Limited to B. & M. Handelman Investments Limited, E. Manson Investments Limited, Bamburgh Holdings Ltd., 4055845 Canada Inc., Jeffrey Gertner, 5K Investments Inc., 558678 Ontario Limited and Paul Herbert Professional Corporation Inc.
11. Instrument No. AT3866061 registered on April 27, 2015 being a Charge from Skymark Properties 1 Corporation to 2455657 Ontario Corporation in the amount of \$600,000.00.
12. Instrument No. AT4827785 registered on March 26, 2018, being an Application to register a Court Order appointing a receiver from Ontario Superior Court of Justice to Rosen Goldberg Inc.

# TAB J

# APPENDIX J

**MORTGAGE STATEMENT FOR DISCHARGE PURPOSES**  
As at June 13, 2018

**TO: Skymark Properties 1 Corporation**

**RE: B. & M. Handelman Investments Limited, E. Manson Investments Limited Bamburgh Holdings Ltd., 4055845 Canada Inc., 558678 Ontario Ltd., Paul Herbert Professional Corporation Inc., Robert Handelman, Jeffrey Gertner and 5K Investments Inc. (collectively the "Lender"), Loan and First Mortgage to Skymark Properties 1 Corporation (the "Borrower") secured by the property municipally known as 1 William Morgan Drive, Toronto Ontario (the "Property");**

Principal balance as at June 1, 2018		\$2,725,000.00
Arrears of Interest to June 1, 2018 (7 months)		\$145,333.36
Per diem interest on \$2,870,333.36 @ 8% June 1, 2018 to June 13, 2018 (\$629.11 x 12 days)		\$7,549.32
Insurance		\$9,525.88
Interest on insurance from June 2015		\$2,286.21
Discharge Statement (\$450.00x4)		\$1,800.00
Zimmerman Associates (estimated) Legal Fees and Disbursements HST		\$25,000.00
Chaitons LLP (estimated) Legal Fees and Disbursements HST		\$22,000.00
Bailiff (Notice of Attornment) +HST		\$254.25
Three months' interest		<u>\$54,500.01</u>
	<b>TOTAL</b>	<b>\$2,965,132.96</b>

Total as at June 13, 2018

Prepared June 13, 2018

E & O.E.

**Direction**

You are hereby authorized and directed to make funds payable in the above noted to "**Zimmerman Associates, in trust**" or as they may otherwise direct.

ROSEN GOLDBERG INC., solely in its capacity as court-appointed receiver and manager over the lands and premises municipally known as 1 William Morgan Drive, Toronto, Ontario and of all of the assets and undertakings of the Debtor acquired for, or used in relation thereto, including all proceeds therefrom, and not in its personal or corporate capacity and without personal or corporate liability

Per: \_\_\_\_\_

Name: Brahm Rosen

Title: President

I have authority to bind the corporation.

**Confidential TAB 1**

**CONFIDENTIAL APPENDIX “1”**  
Sprint Lease with Lease Agreement

Confidential TAB 2

**CONFIDENTIAL APPENDIX “2”**

Amended Agreement of Purchase and  
Sale dated May 15, 2018

**Confidential TAB 3**

**CONFIDENTIAL APPENDIX “3”**

Appraisal Report from Lebow, Hicks  
Appraisal Inc. for 1 William Morgan  
Drive dated March 30, 2018

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

**B&M HANDELMAN INVESTMENTS LIMITED, ET AL.**

Applicants

and **SKYMARK PROPERTIES 1 CORPORATION, ET AL.**

Respondent

Court File No. CV-18-593698-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

**MOTION RECORD  
(Sale Approval And Vesting Order)**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

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Lawyers for the Receiver, Rosen Goldberg Inc.