

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

**MOTION RECORD
(Returnable September 12, 2023)**

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**ONTARIO
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COMMERCIAL LIST**

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CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

**NOTICE OF MOTION
(Returnable September 12, 2023)**

THE FULLER LANDAU GROUP INC., in its capacity as court-appointed liquidator and receiver (in these capacities, the “**Liquidator**”) of the undertaking, property and assets of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. o/a Old Pro Driving Range (“**Old Pro**”, and together with Calldron are the “**Companies**”) will make a motion to the Court, on Tuesday, September 12, 2023, at 10:00 am or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☒ In person;
- ☐ By telephone conference;
- ☐ By video conference.

at 330 University Avenue, Toronto, Ontario, M5G 1R7, Courtroom Number to be provided.

THE MOTION IS FOR:

- (a) this Honourable Court's advice and direction with respect to a purported right of first refusal ("**ROFR**") in favour of Suncor Energy Products Partnership ("**Suncor**") as it relates to the property municipally known as 9980 Mississauga Road, Brampton, Ontario (the "**Mississauga Rd. Property**"), or any portion thereof;
- (b) an Order approving the Second Report of the Liquidator dated June 28, 2023 (the "**Second Report**"); and
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) Chris Kommatas ("**Chris**") and George Vastis ("**George**", and together with Chris are the "**Principals**"), are each 50% shareholders of the Companies. The Principals are also the officers and directors of the Companies;

- (b) Calldron was incorporated in 1984 and its principal business was the acquisition and development of real property;
- (c) Calldron owns the Mississauga Rd. Property, which is a 98 acre parcel of land consisting of farm land, a driving range, and a Petro-Canada branded gas station. Suncor (as successor in interest to Petro-Canada) currently occupies approximately 2 acres of the Mississauga Rd. Property for the purpose of operating the Petro-Canada branded gas station;
- (d) on October 11, 2022, after lengthy litigation involving the Principals, Justice Dietrich issued a judgment (the “**Judgment**”) that required, among other things, that all of the Companies assets (including the Mississauga Rd. Property) be liquidated and that the Companies be wound up;
- (e) on December 20, 2022, Justice Dietrich approved an Order for the winding up of the Companies (the “**Winding Up Order**”) and the appointment of the Liquidator to facilitate same;
- (f) pursuant to the Winding Up Order, the Liquidator has, among other things, begun to market and sell the Companies’ assets;

The ROFR

- (g) as noted above, Calldron entered into a lease with Suncor (as successor in interest to Petro-Canada) with respect to use of approximately 2 acres of the Mississauga Rd. Property. The original lease between Calldron and Suncor is dated March 15, 1995 (the “**Original Lease**”) and was for a 20 year term (the “**Term**”);
- (h) pursuant to two lease extension agreements dated May 15, 2014 and January 20, 2020 (collectively, the “**Lease Extension Agreements**” and with the Original Lease are the “**Mississauga Rd. Lease**”) the Term was extended until April 16, 2025;

- (i) upon review of the Mississauga Rd. Lease, the Liquidator noted that the language contained in the ROFR could result in confusion as to the ROFRs validity and enforceability;
- (j) the Liquidator presented these findings to the Principals and asked for each of their positions on whether the ROFR is valid and enforceable. The Principals have advised the Liquidator that they have different views as to whether the ROFR is valid and enforceable;
- (k) the Liquidator also presented its findings to Suncor and requested its position with respect to the ROFR. Suncor's counsel responded by confirming Suncor's position is that the ROFR remains valid and enforceable;
- (l) given the differing view of the Principals, together with Suncor's position, with respect to the ROFR and the possible deleterious effects that the ROFR may have on the sale price of the Mississauga Rd. Property, the Liquidator believes it is beneficial to obtain court advice and direction on the ROFR before embarking on a sales process for the Mississauga Rd. Property;

Miscellaneous

- (m) the Liquidator seeks this Honourable Court's approval of its Second Report which provides a factual background behind the Mississauga Rd. Property, the Mississauga Rd. Lease, and the ROFR;
- (n) the provisions of the *Bankruptcy and Insolvency Act*, the *Courts of Justice Act*, and
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Second Report of the Liquidator dated June 28, 2023, and the Appendices attached thereto; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

June 28, 2023

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Lawyers for the Liquidator

TO THE ATTACHED SERVICE LIST

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable September 12, 2023)**

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ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

BETWEEN:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

SECOND REPORT OF
THE FULLER LANDAU GROUP INC.
IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF
CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on business
as OLD PRO DRIVING RANGE

JUNE 28, 2023

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- J. Schedule “A” to Original Lease
- K. Schedule “A-1” to Original Lease
- L. Property Index Map for Mississauga Rd. Property
- M. Schedule “A” to First Extension Agreement

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

GEORGE VASTIS

Plaintiff
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CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
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INTRODUCTION

1. On December 20, 2022, the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Winding Up Order**”), appointing The Fuller Landau Group Inc. as receiver and liquidator (in these capacities, the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”). A copy of the Winding Up Order is attached as **Appendix “A”** and a copy of the endorsement of Justice Dietrich relating to the Wind Up Order (the “**Wind Up Endorsement**”) is attached as **Appendix “B”**.

2. While the Winding Up Order was granted on December 20, 2023, a signed copy of said Order was not received until December 23, 2023. As such, the Liquidator’s activities with respect to the Companies commenced on December 23, 2023.

3. On March 27, 2023, the Liquidator brought a motion to, amongst other things:
 - (a) approve the activities of the Liquidator, as outlined in it's first report dated March 17, 2023 (the "**First Report**"); and,
 - (b) approve the listing agreement (the "**Listing Agreement**") for the sale of the property located at 10733 Highway #7 and 10365 Highway #7, Acton, Ontario (the "**Acton Property**").
4. On March 27, 2023, Justice Conway granted the order approving the First Report and the Listing Agreement (the "**Approval Order**"). Attached as **Appendix "C"** is a copy of the First Report, without appendices. Attached as **Appendix "D"** is a copy of the Approval Order.
5. On May 17, 2023, the Liquidator entered into an agreement of purchase and sale for the property (the "**Derry Rd. APS**") located at 480 Derry Rd. East, Mississauga, Ontario (the "**Derry Rd. Property**"). The Derry Rd. APS is a firm agreement, subject only to the Liquidator obtaining approval of the Derry Rd. APS and vesting title of the Derry Rd. Property in and to the purchaser (the "**AVO**").
6. The Liquidator has scheduled a motion for July 12, 2023, at which time it will be seeking an AVO substantially similar to the Commercial List model AVO (the "**Derry Rd Motion**").

PURPOSE OF THE REPORT

7. This second report of the Liquidator (the "**Second Report**") is to provide the Court with the factual background behind the Liquidator's request for advice and directions with respect to a purported right of first refusal ("**ROFR**") in favour of Suncor Energy Products Partnership ("**Suncor**") together with approval of this Second Report.
8. Prior to the return of this motion, the Liquidator may serve a supplementary report which will update the court on its activities following the Derry Rd. Motion and certain other ancillary relief.

TERMS OF REFERENCE

9. In preparing this Second Report, and in making the comments herein, the Liquidator has received and relied on certain books and records, financial information, e-mails, correspondence, and discussions from Chris Kommatas ("**Chris**") and his family (the

"Kommatas Family"), George Vastis (**"George"**, and together with Chris, are the **"Principals"**) and his family (the **"Vastis Family"**), the Principals' respective counsel, the Companies' counsel, the Companies' accountants, Suncor, Suncor's counsel, and Bob Ware, amongst others.

10. Except as described in this Second Report, the Liquidator has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of information provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

11. This Second Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies' activities. Specifically, this Second Report is prepared to assist the Court in providing the Liquidator with advice and directions with respect to the validity and enforceability of the ROFR.

12. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose. The Liquidator will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Second Report in any manner other than that outlined in this paragraph.

13. All terms not defined in this Second Report shall have the meaning ascribed to them in the First Report.

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

BACKGROUND

15. At the time of the Liquidator's appointment Calldron owned four parcels of real property:

- (a) The Acton Property, which is a 343 acre parcel of land consisting of farmland, certain out buildings and a partially constructed golf course;
- (b) The Derry Rd Property consisting of an Esso branded gas station and car wash that is tenanted to Mac's Convenience Stores Inc. (**"Mac's"**);

- (c) A property municipally known as 5495 Eglinton Ave. West, Toronto, Ontario (the **"Eglinton Ave. Property"**) consisting of a Petro-Canada branded gas station and a Starbucks coffee shop. Suncor (as successor in interest to Petro-Canada) and Starbucks Coffee Canada Inc., each tenant a portion of the Eglinton Ave. Property (although the Starbucks coffee shop is not operating at this time); and
- (d) A property municipally known as 9980 Mississauga Road, Brampton, Ontario (the **"Mississauga Rd. Property"**) which is a 98 acre parcel of land consisting of farm land, a driving range, and a Petro-Canada branded gas station. Suncor (as successor in interest to Petro-Canada) currently tenants approximately 2 acres of the Mississauga Rd. Property for the purpose of operating the Petro-Canada branded gas station.

16. Historically, Old Pro operated the driving range located on the Mississauga Rd. Property (the **"Driving Range Business"**). After being appointed, the Liquidator was advised that Bob Ware managed the Driving Range Business and, as such, the Liquidator discussed various operational matters with Mr. Ware. Over time, discussions with Mr. Ware centred on the Driving Range Business operations for the 2023 season and ultimately resulted in the Liquidator entering into a lease (the **"Lease"**) with 1000488601 Ontario Inc. (a company that the Liquidator understands is controlled by Bob Ware and hereinafter referred to as **"101 Inc."**). Under the Lease, 101 Inc. leases from the Liquidator the real property and personal property required to maintain the Driving Range Business.

17. As part of the liquidation process, the Liquidator is currently marketing the Acton Property for sale, is finalizing arrangements to market the Eglinton Ave. Property for sale, and has sold the Derry Rd. Property (subject to obtaining the AVO).

MISSISSAUGA RD LEASE AND POSSIBLE ROFR

18. As noted above, Calldron has leased approximately 2 acres of the Mississauga Rd. Property to Suncor (as successor in interest to Petro-Canada). The original lease is dated March 15, 1995 (the **"Original Lease"**) and was for a 20 year term (the **"Term"**). A copy of the Original Lease is attached hereto as **Appendix "E"**.

19. Pursuant to a Lease Extension and Amending Agreement dated May 15, 2014 (the **"First Extension Agreement"**), Calldron and Suncor extended the term of the Original Lease to April 16, 2020, and provided Suncor with options to further extend the Original Lease for three

additional terms of five years each (each, an “**Extension Option**” and collectively, the “**Extension Options**”). A copy of the First Extension Agreement is attached hereto as **Appendix “F”**.

20. Pursuant to a Lease Extension Agreement dated January 20, 2020, Suncor exercised its first Extension Option, extending the Term to April 16, 2025 (the “**Second Extension Agreement**”). The Second Extension Agreement also included a further Extension Option of five years. The cumulative effect of the Extension Options is that Suncor has the ability to extend the Term in successive five year increments (assuming Suncor does not default under the terms of the Original Lease), up to April 16, 2040. A copy of the Second Extension Agreement is attached hereto as **Appendix “G”**.

21. Following its appointment, the Liquidator requested and received certain lease documents from the Shareholders relating to all real property owned by Calldron. With respect to the Mississauga Rd. Property, the Liquidator was provided with copies of the Original Lease, the First Extension Agreement and the Second Extension Agreement (collectively the “**Mississauga Rd. Lease**”).

22. In reviewing the Mississauga Rd. Lease, the Liquidator noted two provisions which created some confusion in determining whether the ROFR contained in the Original Lease is valid and enforceable. The two provisions will be described in detail below, however, at a high level:

- (a) The ROFR provision contained in the Original Lease may be temporally limited such that it may have expired; and
- (b) The definition of “Demised Premises” in the Original Lease is not clear, and becomes further confused by the use of the term “Demised Premises” in the First Extension Agreement and the Second Extension Agreement. As such, the ROFR granted may only pertain to an un-severed portion of the Mississauga Rd. Property.

23. The Liquidator has presented these findings to the Shareholders and asked for each of their positions on whether the ROFR is valid and enforceable. The Shareholders have advised the Liquidator that they have different views as to whether the ROFR is valid and enforceable.

24. The Liquidator also presented its findings to Suncor and requested its position with respect to the ROFR. Suncor's counsel responded by addressing its client's position on the two concerns referenced in paragraph 22 above and confirming its position that the ROFR remains valid and enforceable. A copy of the letter from Suncor's counsel to the Liquidator's counsel dated May 16, 2023 (the "**May 16 Letter**") is attached hereto as **Appendix "H"**.

25. Given the differing views of the Shareholders, together with Suncor's position with respect to the ROFR and the possible deleterious effects that the ROFR may have on the sale price of the Mississauga Rd. Property, the Liquidator believes it is beneficial to obtain court advice and direction on the ROFR before embarking on a sales process for the Mississauga Rd. Property.

(I) Possible Expiration of the ROFR

26. In reviewing the Original Lease, the Liquidator noted that section 15 of the Original Lease contained the ROFR. The ROFR is rather lengthy and is attached separately to this Second Report as **Appendix "I"**.

27. In reviewing the ROFR provision, the Liquidator noted the following sentence at the bottom of the first paragraph of section 15 (the "**Limiting Sentence**"):

...In the event that the time during which the Tenant may exercise its rights contained herein to meet any offer or option to purchase as hereinbefore provided equals or exceeds twenty-one (21) years, this right shall terminate twenty-one (21) years less one day from the date hereof.

28. If the Limiting Sentence applies, the ROFR expired in March 2016.

29. The May 16 Letter provides Suncor's position regarding the Limiting Sentence. Based on the May 16 Letter, the Liquidator understands Suncor's position to be that the Limiting Sentence was included to ensure compliance with the rule against perpetuities and was not intended to be a "sunset clause". While the Liquidator understands there may be case law that speaks to this point, for the purposes of this Second Report, the Liquidator notes that the rule against perpetuities, or the possibility that the ROFR may offend the rule against perpetuities, is not specifically mentioned in the ROFR.

30. The May 16 Letter also states that "the ROFRs make clear that the parties intended the ROFR to continue through any extension of the Leases or overholding". The Liquidator

acknowledges that the First Extension Agreement, dated May 15, 2014 (which is dated within 21 years of the Original Lease), contains the following provision (the “**Continuation of Lease Provision**”):

*6. **Continuation of Lease:** The parties confirm that the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. Without limitation, the restrictive covenant in Section 25 of the Lease and the right of first refusal in Section 15 of the Lease continue in full force and effect. All capitalized terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease [emphasis added]*

31. The Liquidator notes that the Second Extension Agreement (which is dated almost 25 years after the Original Lease) does not contain the Continuation of Lease provision as drafted in the First Extension Agreement. The Second Extension Agreement contains the following provision:

7. The parties confirm that the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. All capitalized terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

32. While noting all of the above, the Liquidator has also spoken to George and his counsel regarding the Limiting Sentence. George (who appears to be Calldron’s signatory for the Mississauga Rd. Lease) has advised the Liquidator that he supports Suncor’s position and that he has operated on the understanding that the ROFR remains valid and enforceable.

33. In sum, the Liquidator believes that a strict reading of the Limiting Sentence appears to temporally limit the ROFR to twenty-one years less one day. Further, while the First Extending Agreement (dated approximately 19 years and two months after the Original Lease) appears to address the ROFR, it is not clear whether the Continuation of Lease Provision: (a) was merely confirming that the ROFR continued until the conclusion of the limiting period (which would have been in March 2016); (b) extended the ROFR to the end of the First Extension Agreement (in April 2020); or (c) extended the ROFR indefinitely.

(II) Definition of “Demised Premises”

34. The Original Lease defines the “Demised Premises” as follows:

...those land and premises situate, lying and being in the City of Brampton, in the Regional Municipality of Peel, being composed of that

part of the east half of Lot 10, Concession 5, W.H.S., in the said City of Brampton as more particularly described in Schedule "A" hereto, including the gas bar and convenience store building and all other erections or structures situate thereon or appertaining thereto and all fixtures of every kind thereto belonging to the Landlord and situate on the property including, but not limited to, the equipment set forth on Schedule "B" attached hereto (the "Equipment"), hereinafter called the "Demised Premises".

35. The Original Lease contains a Schedule "A" and Schedule "A-1". Schedule "A" appears to be a legal description of the Mississauga Rd. Property and Schedule "A-1" appears to be a separate (and different) legal description of the Mississauga Rd. Property, which appears to exclude certain lands that were expropriated for road widening purposes (and appears relevant to the restrictive covenants portion of the Original Lease). Schedule "A" and Schedule "A-1" of the Original Lease are attached as **Appendix "J"** and **Appendix "K"** respectively.

36. As noted above, Callidron and Suncor executed the First Extension Agreement in May 2014. The First Extension Agreement contains a definition for Demised Premises and a separate definition for "Landlord's Lands". These definitions in the First Extension Agreement are as follows:

- (a) *Demised Premises* – certain lands and premises legally described on Schedule "A" attached to the Leases and municipally known as 9980 Mississauga Road, in the City of Brampton, in the Province of Ontario; and
- (b) *Landlord's Lands* – the Demised Premises are part of the lands owned by the Landlord, now described as Part of Lot 10, Concession 5 WHS Chinguacousy as in Instrument No. VS 276607 except Part 1, Plan VS 81821, Part 3, Plan 43R-16796, Parts 1, 2, 3, 4, 5, 6 and 7, Plan 43R-27286 and Parts 1 and 5 Expropriation Plan PR-2078646 (being PIN 14092-0320(LT)).

The Liquidator's counsel has provided a Property Index Map for the Mississauga Rd. Property. The red outline on the Property Index Map indicates the Landlord's Lands, and the "X" on the Property Index Map is the approximate location of the Demised Premises. A copy of the Property Index Map, as marked to indicate the approximate location of the Demised Premises is attached as **Appendix "L"**.

37. In addition to extending the term of the Original Lease, section 5 of the First Extension Agreement includes a provision entitled "Right to Lease Expansion Lands". Section 5 states, amongst other things, that:

[p]rovided the Tenant is not in default under the Lease or this Agreement beyond any applicable cure period and provided that the Tenant exercises its right to the first Future Extension Term, the Tenant shall have the one time right to expand the Demised Premises to include an additional area of the Landlord's Lands on not less than six (6) months and not more than eighteen (18) months' written notice to the Landlord...[emphasis added]

38. Further subsection 5(a)(iii) of the First Extension Agreement clarifies the maximum area of the Expansion Lands when it states:

5(a) the expansion lands of the Demised Premises (the "**Expansion Lands**") shall be to the west of the Demised Premises within the area cross hatched on Schedule "A" and subject to and provided that:

...

(iii) the aggregate area of the current Demised Premises and the Expansion Lands shall not exceed approximately 2 acres [emphasis added]

A copy of Schedule "A" to the First Extension Agreement is attached as **Appendix "M"**, and the Liquidator has noted the approximate location of the Expansion Lands on the Property Index Map in Appendix "L" as a "Y".

39. The Liquidator notes that a definition of the Demised Premises as a subset (of up to 2 acres) of the Mississauga Rd. Property seems to be in accordance with the historical use of the Mississauga Rd. Property. As noted above, in addition to the gas station, the Mississauga Rd. Property consists of a driving range business (which, until recently, was operated by Old Pro) and farm land. All of these activities used portions of the Mississauga Rd. Property.

40. It is the Liquidator's understanding that if the Demised Premises does not consist of the entirety of the Mississauga Rd. Property, it will be difficult, if not impossible, for Suncor to exercise the ROFR, as the ROFR would be over an un-severed portion of the Mississauga Rd. Property.

41. As a result (and in the event that the ROFR has not expired), the Liquidator is seeking advice and directions on whether: (a) the ROFR applies to the entirety of the Mississauga Rd.

Property; and (b) if the ROFR does not apply to the entirety of the Mississauga Rd. Property, is the ROFR enforceable over an un-severed portion of the Mississauga Rd. Property.

RELIEF REQUESTED

42. The Liquidator respectfully requests the Court's advice and direction with respect to the purported ROFR in favour of Suncor over the Mississauga Rd. Property (or any portion thereof).

All of which is respectfully submitted this 28th day of June, 2023.

The Fuller Landau Group Inc.,
in its capacity as Court appointed Liquidator of
Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
and not in its personal capacity

Per: 
David Filice
Senior Vice President

Court File No. CV-20-00644241-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE DIETRICH)
20TH DAY OF DECEMBER 2022

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

and

HELEN VASTIS

Plaintiff

and

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

and

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on
business as OLD PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

WINDING UP ORDER

THIS MOTION made by the Parties for an Order further to the Reasons for Judgment and Judgment of Justice Dietrich dated October 11, 2022, and section 207 of the *Business Corporations Act*, R.S.O., 190, c.B.16 as amended (“**OBCA**”) appointing The Fuller Landau Group Inc. (“**Fuller Landau**”) receiver and liquidator (the “**Receiver**”) without security, for the purpose of conducting a wind-up, sales process, and the distribution of the proceeds of all assets, undertakings and properties of the Defendants, Calldron Gas Bars Ltd. and 1195705 Ontario Inc. cob as Old Pro Driving Range (the “**Companies**”) under the supervision of the court, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the consent of David Filice signed on behalf of The Fuller Landau Group Inc. to act as Receiver and on hearing the submissions of counsel for George Vastis and Helen Vastis, and for Christos Kommatas, and for The Fuller Landau Group Inc.,

SERVICE

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

APPOINTMENT OF THE RECEIVER

2. THIS COURT ORDERS that pursuant to the Reasons for Judgment and Judgment of Justice Dietrich dated October 11, 2022, and section 207 of the *OBCA*, The Fuller Landau Group Inc. is hereby appointed Receiver, without security, of all assets, undertakings and properties of the Companies for the purposes of conducting a wind-up, sales process, and the distribution of the proceeds under the supervision of this Court.

3. THIS COURT ORDERS that the Companies shall be wound-up pursuant to section 207 of the *OBCA*.

THE RECEIVER’S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- a) to take possession of and exercise control over the estate and effects of the Companies, including the assets, undertakings and properties of the Companies, of every nature and kind whatsoever, and wherever situate, including any and all proceeds, receipts and disbursements arising thereof (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, engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to manage, operate, and carry on the business of the Companies, 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 Companies;
- d) register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- e) 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;
- f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Companies or any part or parts thereof;
- g) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of

the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies;

- h) to settle, extend or compromise any indebtedness owing to the Companies;
- i) obtain any and all applicable clearance certificates from governmental authorities, as may be required;
- j) 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 Companies, for any purpose pursuant to this Order;
- k) 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 Companies, 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;
- l) 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, and as may be approved by the Court;
- m) to recommend a sales process as to any of the Property, including the real estate assets, either individually or as a whole, and to establish a process whereby each of George Vastis and Chris Kommatas may participate in the bidding process to purchase any of the Property, to be approved by the Court;

- n) after the affairs of the Companies have been fully wound up, make an application to the Court for an order dissolving the Companies;
- o) 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- p) 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;
- q) 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 winding-up of the Companies, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable, and as may be approved by the Court;
- r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Companies;

- s) to exercise any shareholder, partnership, joint venture or other rights which the Companies may have; and
- t) 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 Companies, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Companies, (ii) all of their 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 request.

6. 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 Companies, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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 as applicable, or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Companies 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 Companies 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 Companies, 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 nothing in this paragraph shall (i) empower the Receiver or the Companies to carry on any business which the Companies are not lawfully entitled to carry on, (ii) exempt the Receiver, or the Companies 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 Companies, 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 Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Companies 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 Companies' 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 Companies or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, 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 " **Receiver Accounts**") and the monies standing to the credit of such Receiver 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 Companies shall remain the employees of the Companies until such time as the Receiver, on the Companies' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Receiver may specifically agree in writing to pay, or as may be obligated to be paid on behalf of the Companies in accordance with the Companies' statutory, or common law, obligations.

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 Companies, 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 manage, by taking possession (“**Possession**”) of any of the Property that might be environmentally contaminated, 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.

RECEIVER’S ACCOUNTS AND CHARGE

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 “**Administration 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. The Administration 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.

19. THIS COURT ORDERS that the Receiver and their legal counsel shall pass their 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 WINDING-UP

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 consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**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 Administration Charge.

22. THIS COURT ORDERS that neither the 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 "A" hereto (the "**Liquidator'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 Liquidator'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 Liquidator's Certificates.

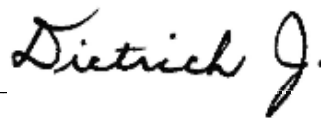
SERVICE AND NOTICE

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 orders that a Case Website shall be established in accordance with the Protocol with the following URL '<<https://fullerllp.com/active-engagements/Calldron-Gas-Bars-Ltd-and-1195705-Ontario-Inc/>>'.
'.</p>
</div>
<div data-bbox="112 544 889 771" data-label="Text">
<p>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 Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies 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.</p>
</div>
<div data-bbox="112 794 216 811" data-label="Section-Header">
<h3>GENERAL</h3>
</div>
<div data-bbox="112 826 889 897" data-label="Text">
<p>27. THIS COURT ORDERS that the Receiver shall from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, including as it relates to the winding-up of the Companies which shall be supervised by this Court.</p>
</div>
<div data-bbox="112 941 431 962" data-label="Page-Footer">
<p>DOCSTOR: 1771742/9
TC:00549188-ITC:00548968-ITC:00546519-1</p>
</div>
<div data-bbox="855 952 889 969" data-label="Page-Footer">
<p>30</p>
</div>

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and Liquidator and their 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 and Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and Liquidator and their agents in carrying out the terms of this Order.

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

30. THIS COURT ORDERS that 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.

_____

SCHEDULE "A"

BD

LIQUIDATOR'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that The Fuller Landau Group Inc., the Receiver (the "**Liquidator**") of certain of the assets, undertakings and properties of acquired for, or used in relation to a business carried on by the Companies, including all proceeds thereof appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Liquidator from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Liquidator 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 Liquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, and the right of the Receiver (as defined in the Order) and Liquidator to indemnify themselves out of such Property in respect of its liabilities, 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

Liquidator 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 and Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Liquidator 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__.

The Fuller Landau Group Inc. solely in its
capacity as Liquidator, and not in its personal
capacity

Per: _____

Name:

Title:

GEORGE VASTIS et al.
Plaintiffs
CHRISTOS KOMMATAS
Plaintiff by Counterclaim

-and- CHRISTOS KOMMATAS et al.
Defendants
-and- GEORGE VASTIS
Defendant to the Counterclaim

Court File No. CV-20-00644241-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Defendants, Calltron Gas Bars Ltd. and
1195705 Ontario Inc., carrying on business as OLD PRO
DRIVING RANGE and the Defendant (Plaintiff by
Counterclaim), Christos Kommatas

Email for parties served:
Kevin Fisher: kfisher@grllp.com



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-20-00644241-00CL

DATE: December 20, 2022

NO. ON LIST: 1

TITLE OF PROCEEDING: VASTIS ET AL. v. KOMMATAS ET AL.

BEFORE JUSTICE: B. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Kevin Fisher	George & Helen Vastis	kfisher@grllp.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Catherine Allen	Christos Kommatas	callen@teplitskycolson.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Dom Magisano	Counsel to proposed Receiver	dmagisano@lernalers.ca
Spencer Jones (Co-Counsel)	Counsel to proposed Receiver	sjones@lernalers.ca
D. Filice	Proposed Receiver	dfilice@fullerllp.com

ENDORSEMENT OF JUSTICE DIETRICH:

A case conference was held in this matter today, December 20, 2022.

Order Appointing a Receiver

David Filice of The Fuller Landau Group Inc. ("Fuller Landau") has executed a consent to act as receiver. Fuller Landau has confirmed that it is clear of conflicts. It has retained Domenico Magisano to act as its legal counsel.

Counsel to Mr. Vastis and counsel to Mr. Kommatas having been working on a form of order to appoint Fuller Landau as receiver for the purpose of conducting a wind-up, sales process, and the distribution of all assets, undertakings and properties of Calldron Gas Bars Ltd. and 1195705 Ontario Inc.

The parties came to an impasse on two matters a) whether the receiver should be permitted to encumber the property for the purposes of making distributions to the shareholders; and b) whether the receiver should be required to establish a process whereby each of George Vastis and Chris Kommatas, as well as a corporate entity owned or controlled by them, should be permitted to participate in the bidding process to purchase any of the property to be sold by the receiver.

On the matter of the receiver's authority to encumber the property for the purposes of making distributions, counsel to the receiver and the court were of the same view. The decision on whether the receiver should encumber the property for the purposes of making distributions to the shareholders ought not be made by the receiver but by the court. Such decision would be made on a motion, on notice to the other shareholder and the receiver, with the benefit of a full record.

My reasons for judgment specifically granted each of the shareholders the right to bid on any property sold in the receivership. The reasons did not grant them a right of first refusal or permit them any other preference. Accordingly, this right to bid does not need to be extended to any entity owned or controlled by them. Any such entity would be free to bid in the normal course.

With this guidance, the parties will work to finalize the draft order so a motion may be brought for an order appointing Fuller Landau as receiver.

Distribution of Funds

On consent of each of Mr. Vastis and Mr. Kommatas, a distribution of \$100,000 to each of them (for a total distribution of \$200,000) shall be made as soon as possible from the bank accounts of Calldron Gas Bars Ltd. and 1195705 Ontario Inc.

A handwritten signature in cursive script, appearing to read "Dietrich J.", is written in black ink.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

**Plaintiff
(Defendant to the Counterclaim)**

- and –

HELEN VASTIS

Plaintiff

- and –

CHRISTOS KOMMATAS

**Defendant
(Plaintiff to the Counterclaim)**

- and –

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

**Defendants
(Defendant to the Counterclaim)**

**FIRST REPORT OF
THE FULLER LANDAU GROUP INC.
IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF
CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on business
as OLD PRO DRIVING RANGE**

March 17, 2023

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Appendices

“A”	-	Winding Up Order dated December 20, 2022
“B”	-	Endorsement dated December 20, 2022
“C”	-	Judgment dated October 11, 2022
“D”	-	Bi-Weekly Email Summaries
“E”	-	Old Pro Lease dated March 14, 2023
“F”	-	Emails received from Mr. Tidd and Mr. Schramm
“G”	-	Liquidator’s Invitation for Realtor Proposals
“H”	-	Listing Agreement for sale of the Acton Property
“I”	-	Fiscal 2022 Financial Statements for the Companies
“J”	-	VDP Summaries for Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
“K”	-	Email Exchanges between counsel
“L”	-	Email Exchanges regarding additional documents
“M”	-	Email Exchanges between Company Counsel, Liquidator, and Mr Kommatas’ counsel
“N”	-	Affidavit of Fees of David Filice dated March 16, 2023
“O”	-	Affidavit of Fees of Spencer Jones dated March 17, 2023

Confidential Appendix “1” - Summary of Realtor Proposals

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and –

HELEN VASTIS

Plaintiff

- and –

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and –

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

INTRODUCTION

1. On December 20, 2022 the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Winding Up Order**”), appointing The Fuller Landau Group Inc. as receiver and liquidator (in these capacities, the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”). A copy of the Winding Up Order is attached as **Appendix “A”** and a copy of the endorsement of Justice Dietrich relating to the Wind Up Order (the “**Wind Up Endorsement**”) is attached as **Appendix “B”**.

2. While the Winding Up Order was granted on December 20, 2023, a signed copy of said Order was not received until December 23, 2023. As such, the Liquidator's activities with respect to the Companies commenced on December 23, 2023.

PURPOSE OF THE REPORT

3. The purpose of this first report to court (the "**First Report**") is to report on the Liquidator's:
 - a. activities since its appointment under the Winding Up Order;
 - b. efforts to manage and maintain the driving range operations (the "**Driving Range Business**") located at 9980 Mississauga Road, Brampton, Ontario (the "**Mississauga Road Property**");
 - c. efforts in soliciting listing proposals from realtors for the marketing and sale of the real property municipally known as 10733 Highway #7 and 10365 Highway #7, Acton Ontario (the "**Acton Property**");
 - d. discussions and correspondence with the Accountants (as defined below) regarding finalization and filing of the Companies' fiscal 2022 financial statements and tax filings; and
 - e. discussions and correspondence regarding Company Counsel's (as defined below) engagement relating to the VDP Submissions (as defined below).
4. In the First Report, the Liquidator is recommending that the Court make an order:
 - a. approving a lease agreement between the Liquidator and Old Pro Managing Management Consulting Ltd. (the "**Tenant**") dated March 14, 2023 (the "**Old Pro Lease**") and authorizing the Liquidator to enter into same;
 - b. approving a listing agreement between the Liquidator and CBRE Limited for the listing of the Acton Property for sale (the "**Listing Agreement**") and authorizing the Liquidator to enter into same;
 - c. authorizing J&J, Chartered Professional Accountants, the Companies' accountants (the "**Accountants**") to finalize the fiscal 2022 financial statements

for the Companies and authorizing the Accountants to prepare tax filings for the Companies for the fiscal 2022 year end;

- d. sealing the Liquidator's summary of listing proposals until the earlier of: (i) the closing a sale of the Acton Property; or (ii) further Order of the Court;
- e. approving the fees and disbursements of the Liquidator and its counsel; and
- f. for such further and other relief as the Honourable Court may deem just.

TERMS OF REFERENCE

- 5. In preparing this First Report, and in making the comments herein, the Liquidator has received and relied on certain books and records, financial information, e-mails, correspondence and discussions from Chris Kommatas ("**Chris**") and his family (the "**Kommatas Family**"), George Vastis ("**George**" and together with Chris are the "**Principals**") and his family (the "**Vastis Family**"), the Principals' respective counsel, Company Counsel, the Accountants and Bob Ware, amongst others.
- 6. Except as described in this First Report, the Liquidator has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of information provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
- 7. The Liquidator has prepared this First Report for use by the Court in connection with the relief sought herein. The First Report should not be relied upon for any other purpose.
- 8. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.

BACKGROUND

- 9. The Liquidator was appointed following lengthy litigation between the Principals (the "**Shareholder Litigation**") which culminated in a judgment issued by Justice Dietrich on October 11, 2022 (the "**Judgment**"). A copy of the Judgment is attached as **Appendix "C"**.

10. The litigation giving rise to the Judgment related to the management and operation of the Companies. The Principals are 50 percent shareholders, officers and directors of the Companies.
11. Calldron was incorporated in 1984 and its principal business was the acquisition and development of real property. The real property currently owned by Calldron (the “**Calldron Real Property**”) is as follows:
 - a. the Acton Property which is a 343 acre parcel of land consisting of farmland, certain out buildings and a partially constructed golf course;
 - b. the Mississauga Road Property which is a 98 acre parcel of land consisting of farm land, the Driving Range Business, and a leased gas station operating under the “Petro-Canada” banner;
 - c. 5495 Eglinton Avenue West, Toronto, Ontario (the “**Eglinton Ave Property**”) which consists of a leased Petro Canada branded gas station and a Starbucks coffee shop. Of note, during the pandemic the Starbucks coffee shop ceased operations but has continued to pay rent for the premises; and
 - d. 480 Derry Road East, Mississauga, Ontario (the “**Derry Rd Property**”) which consists of a leased Esso branded gas station and car wash.
12. Old Pro was incorporated in 1996 and its principal business was managing the Driving Range Business. Robert Ware had been the general manager of the Driving Range Business since 2005. In addition to Mr. Ware, Old Pro would engage seasonal employees to operate the Driving Range Business.
13. The Liquidator continues to receive rent from all tenants on the Calldron owned real estate and, as further described below, and has made arrangements for the continued operation of the Driving Range Business.

LIQUIDATOR'S ACTIVITIES

(A) General

14. At the inception of its appointment, the Liquidator advised counsel to the Principals that it would provide bi-weekly e-mail summaries of its activities. The e-mail summaries provided are attached as **Appendix "D"**.
15. As part of the Wind Up Endorsement, the Principals were granted an interim distribution of \$100,000 each (the "**Interim Disbursement**") from funds held in the Companies' bank accounts at Royal Bank of Canada (the "**RBC Accounts**"). The Liquidator has received the funds from the RBC Accounts and has now delivered the Interim Disbursement to each of the Principals.
16. Upon its appointment, the Liquidator also engaged with the tenants at the Calldron Real Property generally, and specifically with the gas station tenants at the Mississauga Road Property, the Eglington Ave. Property, and the Derry Rd. Property (the "**Gas Station Tenants**"). As noted above, all of the tenants at the Calldron Real Property continue to pay rent.
17. The Liquidator has been examining the best method to liquidate all of the Calldron Real Property. As further described below, the Liquidator is recommending that it list the Acton Property for sale forthwith. The remaining properties are all partially, or completely, occupied by the Gas Station Tenants.
18. The Liquidator has been provided with copies of leases relating to each of the Gas Station Tenants. All of the leases contain language which the Gas Station Tenants assert, provides them with a right of first refusal ("**ROFR**") with respect to purchase of the underlying real property. The Liquidator continues to have discussions with the Gas Station Tenants regarding the ROFR regarding possible resolutions to this matter. If suitable arrangements cannot be made, the Liquidator may require further direction from the court regarding the applicability and enforceability of the ROFRs in question as they may impact the sales process employed.

(B) **Driving Range Business**

19. At the time of the Liquidator's appointment in December 2022, the Driving Range Business was largely dormant. However, the Liquidator noted that the Driving Range Business had revenues of approximately \$450,000 in 2022 with approximately \$105,000 in net income. With that in mind, the Liquidator began considering options for the continued operation of the Driving Range Business.
20. After taking possession of the Mississauga Rd. Property, the Liquidator engaged in discussions with Robert Ware regarding the Driving Range Business specifically, and the Mississauga Rd. Property, generally. Mr. Ware was generally responsive and cooperative during these meetings and discussions.
21. In assessing the options for operation of the Driving Range Business, the Liquidator was cognisant that it would not be cost-effective for it to be at the Mississauga Road Premises operating and overseeing the Driving Range Business. As such, a third party operator would be required to manage the Driving Range Business in a profitable manner.
22. The Liquidator is aware that Robert Ware is familiar with the Driving Range Business as he has operated said business since 2005. However, the Liquidator is cognisant of allegations made in the Shareholder Litigation regarding management of the Driving Range Business and disclosure of cash receipts. As such, if the Driving Range Business was to operate in 2023, the Liquidator preferred a rental arrangement that contemplates a fixed payment to the Liquidator for use of a portion of the Mississauga Rd. Property and the Old Pro equipment in operating the Driving Range Business (the "**Rental Arrangement**").
23. The Liquidator engaged Mr. Ware in discussions surrounding the Rental Arrangement. Mr. Ware indicated his interest, but asked to conduct some due diligence relating to financial information, and specifically, expenses associated in operating the Driving Range Business.

24. The negotiations between the Liquidator and Mr. Ware resulted in the Old Pro Lease being drafted. A copy of the Old Pro Lease is attached as **Appendix “E”**.
25. The Old Pro Lease contains the following substantive terms:
- a. the Tenant (which the Liquidator understands is owned and operated by Robert Ware) will lease the Driving Range Business’ personal property and the portion of the Mississauga Rd. Property used for the Driving Range Business from the Liquidator;
 - b. the Lease will be for a seven month term commencing on April 1, 2023 at an all-inclusive monthly rent of \$17,360. Gross revenue from the Lease during the seven month period is expected to be \$121,520;
 - c. Mr. Ware will not be an employee of the Companies;
 - d. any people hired by the Tenant will be for the Tenant’s account;
 - e. the Driving Range Business’ equipment will be used by the Tenant on an “as is, where is” basis and the Tenant is responsible for repairs to same;
 - f. the Lease will permit the Liquidator access to the Mississauga Rd. Property during the term of the Old Pro Lease. Further the Liquidator will be authorized to close, or partially close, the Driving Range Business for up to a maximum 5 days, if needed, and there will be no abatement of rent under the Old Pro Lease. This will allow the Liquidator to allow potential purchasers, representatives of the purchasers, or other parties to access the Mississauga Rd. Property without interference from the Driving Range Business; and,
 - g. the Liquidator has the right to terminate the Lease upon 30 days’ notice.
26. Following completion of negotiations with the Tenant on terms for the Old Pro Lease, the Liquidator and its counsel received e-mails from George Tidd and Gary Schramm who represented themselves as the controlling partners of Double Eagle Golf Ltd. Mr. Tidd advised of his company’s interest in managing the Driving Range Business. Copies of the e-mails received from Mr. Tidd and Mr. Schramm are attached as **Appendix “F”**.

27. The Liquidator was contacted by Mr. Schramm to speak about particulars relating to the Driving Range Business and specifically what the Driving Range Business would do for revenue. Mr. Schramm advised the Liquidator that his people would do a drive-by inspection and get back to the Liquidator. On March 17, 2023, Mr. Schramm advised that they were not in a position to make an offer to lease the Driving Range Business.
28. The Liquidator recommends approval of the Lease and the execution of same for the following reasons:
- a. the financial terms of the Old Pro Lease are comparable to net income that were historically reported in Old Pro's financial statements and tax returns;
 - b. the Old Pro Lease will provide the Liquidator with a fixed revenue from the Driving Range Business without having to account for staffing, weather or other variables in operating the Driving Range Business;
 - c. the Old Pro Lease will limit the Liquidator's involvement with the Driving Range Business thus limiting the Liquidator's costs in managing operations;
 - d. the Liquidator will be able to focus its efforts on maximizing recovery from all of the Calldron Real Property;
 - e. while a formal marketing process was not held for the Driving Range Business the Liquidator, in consultation with other golf industry professionals, believes that the Old Pro Lease provides the best opportunity to maximize net income with the least business risk; and,
 - f. the Old Pro Lease provides liberal access to the Mississauga Rd. Property, including the ability to close, or partially close, the Driving Range Business, without any abatement of rent; and the ability to terminate the Old Pro Lease upon 30 days' notice. Both of these provisions have significant value to the pending marketing and sale process for the Mississauga Rd. Property.

(C) Marketing of Acton Property

29. The Liquidator originally had hoped to market all of the Calldron Real Property at once, however, the possible ROFRs relating to the Derry Rd. Property, the Eglington Ave. Property and the Mississauga Rd. Property, will require the Liquidator to engage in

further discussion, negotiation, and possibly, court direction, regarding the ROFRs and the corresponding sale processes.

30. As a result, and in consultation with the Principals, the Liquidator has decided to proceed with the marketing and sale of the Acton Property as it is not subject to a ROFR.
31. On March 3, 2023, the Liquidator invited seven reputable real estate brokers (the “**Identified Brokers**”) to submit written proposals for real estate broker services for the marketing and potential disposition of the Acton Property (the “**Realtor Proposals**”). As set out in the Liquidator’s invitations, the Realtor Proposals were due on March 13, 2023 (the “**Realtor Proposal Deadline**”). A copy of the Liquidator’s template invitation is attached as **Appendix “G”**.
32. All but one of the Identified Brokers submitted Realtor Proposals by the Realtor Proposal Deadline.
33. As set out in the Liquidator’s invitation for Realtor Proposals, the Liquidator evaluated the Realtor Proposals on the following criteria:
 - a. overall disposition strategy and work plan, including marketing plan;
 - b. experience with asset class and team experience;
 - c. compensation structure; and,
 - d. other criteria as determined relevant by the Liquidator
34. A table providing the Liquidator’s summary of the Realtor Proposals (the “**Realtor Proposal Summary**”) is attached as **Confidential Appendix “1”** to this First Report.
35. The Liquidator is recommending the appointment of CBRE Limited as realtor to market and sell the Acton Property. Subject to the approval of the Court, the Liquidator intends to execute the proposed form of listing agreement (the “**Listing Agreement**”) attached as **Appendix “H”**.

(D) Fiscal 2022 Financial Statements and Tax Filings

36. The Companies’ fiscal year end is November 30. As a result, fiscal 2022 pre-dated the Liquidator’s appointment, however, the 2022 financial statements (the “**2022**

Statements”) and tax filings (the “**2022 Filings**” and together with the 2022 Statements are the “**2022 Financial Documents**”) remain outstanding.

37. Upon its appointment, the Liquidator met with the Accountants to discuss a variety of matters, including finalizing of the 2022 Accounting Documents. At the initial meeting, the Accountants advised that the 2022 Financial Documents had been completed, but had not been approved by the Principals prior to the Liquidator’s appointment. A copy of the 2022 Financial Documents are attached as **Appendix “I”**.
38. The Liquidator has reviewed the 2022 Financial Documents, however, the Liquidator cannot comment or attest to their contents as they relate to financial matters that predate the Liquidator’s appointment.
39. The Liquidator shared the 2022 Financial Documents with the Principals and asked that they review and provide their position on approving said documents. Mr. Vastis has provided the Liquidator with his approval, but Mr. Kommatas has not provided his comments and/or approval of the 2022 Financial Documents.
40. The Liquidator recommends that Mr. Jackson be provided with the authorization to finalize the 2022 Statements and complete the 2022 Filings so that all regulatory filings for the Companies are brought current and amounts due are paid on time.
41. Should the 2022 Financial Documents require adjustment in the future, those adjustments can be made at a later date.

(E) Company counsel’s files on VDP Submissions

42. As part of the Liquidator’s meetings with the Accountants, the Liquidator was advised that in March 2022 the Companies had made the VDP Submissions to the Canada Revenue Agency (“**CRA**”). Copies of the covering letter for the VDP Submissions, providing a summary of the documents that were sent is attached as **Appendix “J”**.
43. The VDP Submissions disclosed that between fiscal 2016 and 2019 Calldron had unremitted HST totalling \$203,936.00 and unremitted Corporate Taxes totalling \$763,294.00. The VDP Submissions also disclosed that between fiscal 2016 and 2019, Old Pro had unremitted HST totalling \$63,787.00 and unremitted Corporate Taxes totalling \$57,453.00.

44. The VDP Submissions appear to have been delivered to CRA by Company Counsel.
45. The Liquidator advised of the VDP Submissions and provided a copy of the VDP Submissions to counsel for each of the Principals. Subsequently, counsel for Mr. Kommatas advised that he was unaware of the VDP Submissions and requested Company Counsel's entire file with respect to the VDP Submissions. The Liquidator also requested a copy of Company Counsel's entire file. The e-mail exchange between Company Counsel, Mr. Kommatas' counsel and Liquidator's counsel is attached as **Appendix "K"**.
46. On February 21, 2023, Company Counsel e-mailed the Liquidator's counsel and provided certain documents from his file, the vast majority of the documents provided were the VDP Submissions and the engagement letters entered into by each of the Companies and Company Counsel.
47. As the VDP Submissions had been previously provided, the Liquidator's counsel provided the balance of the documents received to counsel for each of the Principals. A copy of the e-mail (without attachments) is attached as **Appendix "L"**.
48. Mr. Kommatas' counsel has expressed his client's position that there must be additional documentation in Company Counsel's VDP Submission file and has repeatedly requested a copy of the entire file. In response, Company Counsel has repeatedly directed the matter to the Liquidator by stating either: (a) the Liquidator has the entire VDP Submission file; (b) the Liquidator has not asked for the entire VDP Submission file; or (c) Mr. Kommatas' counsel should be requesting information from the Liquidator. Copies of various e-mails between Company Counsel, the Liquidator's counsel and Mr. Kommatas' counsel are attached as **Appendix "M"**.
49. The Liquidator has been appointed over the Companies who are both solvent. As such, the Principals continue to have a vested interest in the affairs of the Companies, including matters involving the Companies' engaging of counsel. The Liquidator does not believe that it needs to be an intermediary or "gatekeeper" between the Principals and Company Counsel as it pertains to Company Counsel's files and that matter should be resolved between Company Counsel and the Principals. The Liquidator understands that Mr. Kommatas' counsel may wish to obtain some direction from the Court regarding

Company Counsel's files pertaining to the VDP Submissions. In this regard, the Liquidator is not opposed to the Court making an endorsement permitting Company Counsel to speak directly with Mr. Kommatas' counsel regarding the VDP Submissions and the contents of Company Counsel's file.

50. The Liquidator has provided the Principals (through counsel) with the documents it received from Company Counsel. To the extent that Company Counsel has additional documents and/or information in its file, the Liquidator reiterates its request for those documents as they may be relevant to the Liquidator's analysis of the Companies' financial affairs.

FEES AND DISBURSEMENTS OF LIQUIDATOR AND COUNSEL

51. The Liquidator's invoices are attached as an Exhibit to the affidavit of David Filice attached hereto as **Appendix "N"**. The total amount of fees and disbursements claimed by the Liquidator for the period from December 19, 2022, to February 28, 2023, inclusive of HST is \$110,002.34 (comprising fees of \$96,661.50, disbursements of \$685.71, and HST of \$12,655.13).
52. Lerner's LLP's invoices are attached as an Exhibit to the affidavit of Spencer Jones attached hereto as **Appendix "O"**. The total amount of fees and disbursements claimed by Lerner's LLP for the period from December 12, 2022 to March 16, 2023, inclusive of HST is \$110,900.59.
53. The Liquidator has reviewed the detailed statements of account provided by counsel and confirms that the services detailed in those documents were in fact provided to the Liquidator. The Liquidator is of the view that the time and disbursements incurred, and hourly rates charged by counsel are fair and reasonable in all respects.


REQUESTS FOR APPROVAL

54. The Liquidator respectfully requests an Order from the Court:
 - a. approving this First Report and the actions of the Liquidator contained therein;
 - b. authorizing the Liquidator to enter into the Old Pro Lease;

- c. authorizing and directing the Liquidator to enter into the Listing Agreement;
- d. authorizing and directing the Accountant to finalize the 2022 Statements and submit the 2022 Filings to CRA;
- e. sealing confidential appendix 1 until the earlier of: (a) the Liquidator filing a liquidator's certificate confirming that a sale of the Acton Property has closed; or (b) further order of this court;
- f. approving the fees and disbursements of the Liquidator and its counsel; and
- g. such further and other relief as this Court may deem just.

All of which is respectfully submitted this 17th day of March 2023.

The Fuller Landau Group Inc.,
in its capacity as Court appointed Liquidator of
Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
and not in its personal capacity

Per: 
David Filice
Senior Vice President

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

THE HONOURABLE)	MONDAY, THE 27TH
)	
JUSTICE CONWAY)	DAY OF MARCH, 2023
)	

B E T W E E N :

GEORGE VASTIS
Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS
Plaintiff

- and -

CHRISTOS KOMMATAS
Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE
Defendants
(Defendants to the Counterclaim)

APPROVAL ORDER

THIS MOTION, made by The Fuller Landau Group Inc., in its capacity as the Court-appointed liquidator and receiver (in these capacities, the “**Liquidator**”) of the undertaking, property and assets of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. o.a. Old Pro Driving Range (“**Old Pro**”, and together with Calldron are the “**Companies**”) for an order:

- (a) if necessary, abridging and validating the time for service and filing of the notice of motion and the motion record contained herein, validating service and dispensing with further service upon any other persons not already served with this notice of motion and motion record so that the motion is properly returnable today
- (b) approving the activities of the Liquidator and its counsel as outlined in the First Report of the Liquidator dated March 17, 2023 (the “**First Report**”), and the confidential appendix thereto (the “**Confidential Appendix 1**”);
- (c) approving the listing agreement for the sale of the property located at 10733 Highway #7 and 10365 Highway #7, Acton, Ontario (the “**Acton Property**”) between the Liquidator and CBRE Limited (“**CBRE**”) as the listing realtor (the “**Listing Agreement**”) and authorizing the Liquidator to enter into the Listing Agreement;
- (d) approving the lease between Old Pro Management Consulting Ltd. (the “**Tenant**”) and the Liquidator dated March 14, 2023 (the “**Lease**”), and authorizing the Liquidator to enter into the Lease;
- (e) authorizing and directing J&J, Chartered Professional Accountants (the “**Accountants**”) to finalize the Companies’ fiscal 2022 financial statements;
- (f) authorizing and directing the Accountants to prepare and submit the Companies’ tax filings for the 2022 fiscal year; and
- (g) sealing the Confidential Appendix 1 of the First Report, which contains information related to the solicitation of proposals for the sale of the Acton Property, until the earlier of: (i) entering into an unconditional agreement of purchase and sale for the Acton Property, or (ii) a further Order of this Court;
- (h) approving the fees and disbursements of the Liquidator and its counsel;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the Confidential Appendix 1, the factum, and the affidavits of the Liquidator and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Liquidator, and counsel for Chris Kommatas (“**Chris**”) and George Vastis (“**George**” and together with Chris are the “**Principals**”), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jennifer Manning sworn March 17, 2023, filed:

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF LISTING AGREEMENT

2. **THIS COURT ORDERS** that the Listing Agreement is hereby approved, and the Liquidator is authorized to execute the Listing Agreement.

APPROVAL OF THE LEASE

3. **THIS COURT ORDERS** that the Lease is hereby approved, and the Liquidator is authorized to execute the Lease.

APPROVAL OF THE 2022 FINANCIAL STATEMENTS

4. **THIS COURT AUTHORIZES AND DIRECTS** the Accountant to finalize the Companies’ fiscal 2022 financial statements.

5. **THIS COURT AUTHORIZES AND DIRECTS** the Accountant to prepare and submit the Companies’ tax filings for the 2022 fiscal year.

SEALING OF CONFIDENTIAL APPENDIX 1

6. **THIS COURT ORDERS** that Confidential Appendix 1, be and is hereby sealed until the earlier of: (i) entering into an unconditional agreement of purchase and sale for the Acton Property; or (ii) further Order of the Court.


APPROVAL OF LIQUIDATOR ACTIVITIES AND FEES

7. **THIS COURT ORDERS** that the activities of the Liquidator, as set out in the First Report and Confidential Appendix 1, are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved.

FOREIGN RECOGNITION

9. **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 Liquidator 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 liquidator, 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.



Signature of judge

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

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

Proceeding commenced at Toronto

APPROVAL ORDER

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Lawyers for the Liquidator

LEASE

THIS LEASE made in quadruplicate this 15th day of March, 1995.

B E T W E E N:

CALLDRON GAS BARS LTD.,

(hereinafter called the "Landlord"),

OF THE FIRST PART;

- and -

PETRO-CANADA,

(hereinafter called the "Tenant"),

OF THE SECOND PART.

WITNESSETH that in consideration of the premises and of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord has demised and leased and by these presents doth demise and lease unto the Tenant all those land and premises situate, lying and being in the City of Brampton, in the Regional Municipality of Peel, being composed of that part of the east half of Lot 10, Concession 5, W.H.S., in the said City of Brampton as more particularly described in Schedule "A" attached hereto, including the gas bar and convenience store building and all other erections or structures situate thereon or appertaining thereto and all fixtures of every kind thereto pertaining together with all chattel property, fixtures and equipment belonging to the Landlord and situate on the property including, but not limited to, the equipment set forth on Schedule "B" attached hereto (the "Equipment), hereinafter called the "Demised Premises".

1. TERM - TO HAVE AND TO HOLD the Demised Premises for and during the term of Twenty (20) years (the "Term") to be computed from and inclusive of the 17th day of April, 1995 (hereinafter referred to as the "Commencement Date"), subject as hereinafter provided. The word "year" as used herein shall mean every consecutive twelve-month period during the said Term commencing on the Commencement Date of this Lease.

2. RENT - YIELDING AND PAYING THEREFOR yearly and every year during the said Term unto the Landlord, its successors and assigns, the following annual rental:

- (a) Annual Rental for the first five Years of the said Term shall be the sum of One Hundred and Five Thousand (\$105,000.00) Dollars per annum payable annually in advance on the 17th day of April in each and every Year during the first through fifth Years inclusive of the said Term;
- (b) Annual Rental for the sixth through tenth Years inclusive of the said Term shall be the sum of One Hundred and Twenty-one Thousand (\$121,000.00) Dollars per annum payable annually in advance on the 17th day of April in each and every Year during the sixth through tenth Years inclusive of the said Term;
- (c) Annual Rental for the eleventh through fifteenth years of the said Term shall be the sum of One Hundred and Thirty-nine Thousand (\$139,000.00) Dollars per annum payable annually in advance on the 17th day of April in each and every Year during the eleventh through fifteenth Years inclusive of the said Term;
- (d) Annual Rental for the sixteenth through twentieth Years of the said Term shall be the sum of One Hundred and Sixty Thousand (\$160,000.00) Dollars per annum payable annually in advance on the 17th day of April in each and every Year during the sixteenth through twentieth Years inclusive of the said Term.

3. TAXES, LICENCE FEES, PUBLIC UTILITIES PAYABLE BY TENANT - The Tenant shall pay forthwith as the same become due all rates, taxes (including

property and business taxes but excluding income taxes and capital taxes payable by the Landlord to any provincial or federal government), licences (including operating licence fees), duties, assessments, local improvements, hydro, water, heat and all other utilities and services supplied to the Demised Premises, and charges of every kind whatsoever levied or assessed on the Demised Premises or in connection therewith or the business carried on thereon, all without any charge of any kind against the Landlord. On failure of the Tenant to pay the same or any of them when due, the Landlord may pay the same and the Tenant will forthwith repay same to the Landlord or at the Landlord's option, the amount thereof may be charged against the rentals payable hereunder.

Notwithstanding any other provisions in this Lease to the contrary, the Tenant shall pay to the Landlord an amount equal to any goods and services taxes or value-added taxes imposed on the Landlord with respect to rents, additional rents or any other amounts payable by the Tenant to the Landlord under this Lease whether characterized as a goods and services tax, value-added tax or otherwise (collectively the "GST"), it being the intention of the parties that the Landlord shall thereby be fully reimbursed by the Tenant with respect to any and all GST payable by the Landlord under this Lease. The amount of such GST so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such GST apply are payable to the Landlord under the said terms of this Lease.

4. **MAINTENANCE AND REPAIRS** - The Tenant shall, at all times and at its sole cost, keep and maintain the Demised Premises (including the equipment set forth in Schedule "B" attached hereto) and yard improvements thereto in good order and repair during the said Term or any extensions thereof, save and except for reasonable wear and tear and for major structural repairs to the canopy and convenience store building.

5. **ZONING AND SITE PLAN** - This Lease is conditional upon the Demised Premises being properly zoned to permit erection and operation of a gas bar and convenience store and any use ancillary thereto or permitted by law. The Landlord covenants and agrees to provide notice in writing to the Tenant of any proposed change to the zoning of the Demised Premises to permit the Tenant sufficient time to apply or respond to the appropriate authorities.

The Landlord represents and warrants that the Demised Premises has been developed in accordance with a Site Control Agreement made between the Landlord and the Corporation of the City of Brampton and that the Landlord is not in default or in breach of any of the terms and provisions thereof. The Landlord covenants and agrees to provide the Tenant with a complete copy of such agreement together with all drawings and plans upon execution of this Lease, and to indemnify the Tenant against all costs incurred by it as a result of any default by the Landlord under the terms and provisions of any site plan or development agreement respecting the Demised Premises.

6. **PRIOR ENVIRONMENTAL INVESTIGATION** - The Landlord acknowledges receipt of the report of Intera Information Technologies Corporation dated March 14, 1995 respecting the Tenant's environmental investigation of the Demised Premises. In the event that the Ministry of the Environment or appropriate governmental authority requires remediation of the Demised Premises as a result of the disclosure of such report:

- a) the Tenant shall complete and pay for the remediation of contamination in the area of the fill pipes due to delivery spills occurring during the term of the previous Head Lease between the parties in accordance with the criteria and standards set forth in Schedule "C" attached hereto, subject to the approval of the Ministry of the Environment; and
- b) the Landlord shall be responsible for reimbursing the Tenant for its costs in completing remediation of contamination in the area of the pump islands or anywhere else on the Demised Premises including the underground lines and tanks resulting from but not limited to leakage, in accordance with the criteria and standards set forth in Schedule "C" attached hereto, subject to the approval of the Ministry of the Environment, forthwith upon the Tenant's notification to the Landlord that such remediation has been completed.

It is understood by the parties hereto that the standard of "remediation" of the above areas of the Demised Premises shall be based on and be in accordance with the criteria set forth in Schedule "C" attached hereto. In the event that the standard of remediation set forth in Schedule "C" is deemed by the Ministry of the Environment ("MOE") or other appropriate governmental authority or agency, including the Fuels Safety Branch ("FSB"), to be unacceptable, the Tenant shall propose an alternate criteria for remediation which shall be subject to the approval of the MOE, FSB or other appropriate governmental authority. Upon completion of any required remediation as aforesaid, the Tenant shall obtain and supply the Landlord with a copy of the report of its environmental consultant to the effect that any required remediation has been completed.

7. USE OF DEMISED PREMISES - The Tenant covenants that it will not operate any other business on the Demised Premises than that of a gas bar and convenience store as well as any use ancillary thereto or permitted by law and will observe and fulfill the lawful provisions and requirements of all statutes, orders-in-council, by-laws, rules and regulations, municipal or parliamentary, relating to the occupancy of the Demised Premises. It is understood and acknowledged by the parties hereto that the term "any use ancillary thereto":

- a) may include the sale of food products, beverages, tobacco products, confectionary and other ancillary items normally sold at like facilities within the trade area of the Demised Premises; and
- b) could include the sale of ready-made coffee, donuts, muffins, pastries, sandwiches, soup and other prepared food items for consumption and/or takeout.

During the said Term or any extension thereof:

- a) The Tenant covenants and agrees that it will use reasonable commercial efforts to ensure that all operations of the Tenant with respect to the buildings, trade fixtures and the Tenant's business operations relating to the Demised Premises shall comply at all times and in all material respects with all applicable federal or provincial or local environmental and health and safety statutes and regulations; and
- b) The Tenant shall use reasonable commercial efforts to take all reasonable precautions to contain any petroleum products within their containers and to not allow same to spill onto the Demised Premises or onto any lands adjacent to or near the Demised Premises.

At the end of the said Term or upon early termination of same or of any extension thereof, the Tenant shall remove the Tenant's Equipment (as hereinafter defined) and remediate the Demised Premises at the Tenant's sole cost and expense, and it is understood by the parties hereto that the standard of remediation of the Demised Premises shall be based on and be in accordance with the criteria set forth in Schedule "C" attached hereto. In the event that such standard of remediation is deemed by the Ministry of the Environment ("MOE") or other appropriate governmental authority or agency, including the Fuels Safety Branch ("FSB"), to be unacceptable, the Tenant shall propose an alternate criteria for remediation which shall be subject to the approval of the MOE, FSB or other appropriate governmental authority, and the approved remediation shall be undertaken by the Tenant at the Tenant's sole cost and expense. These covenants shall survive the termination of this Lease and the Tenant shall hold the Landlord harmless for any breach or breaches of the foregoing provisions by the Tenant during the said Term and any extensions thereof.

8. INDEMNITY - Provided any remediation of the Demised Premises as required under the provisions of Clause 6 is completed as aforesaid and provided the Landlord has reimbursed the Tenant for its share of remediation costs, the Tenant covenants and agrees to indemnify and hold the Landlord harmless during the said Term or any extension thereof from and against any and all costs, liabilities, claims, damages or expenses due to or arising:

- i) out of any work done by or act, neglect or omission of the Tenant or its servants, employees, agents, concessionaires, licensees or subtenants in and about the Demised Premises or due to or arising out of any breach by the Tenant of any provisions of this Lease; or

- ii) in connection with all work and costs necessitated or incurred respecting any compliance with all applicable statutes, order, by-laws, regulations and requirements respecting the use, condition and occupation of the Demised Premises.

10. PRIOR TERMINATION - IN THE EVENT THAT:

- a) building permits to restore or rebuild in the event of fire or other casualty are refused for any reason whatsoever beyond the Tenant's control;
- b) the whole or any part of the Demised Premises is expropriated or otherwise taken by virtue of the exercise of the right of eminent domain or by paramount authority which renders the facility unsuitable for business, in the Tenant's reasonable opinion; or
- c) the operation of the Tenant's facility or the sale of gasoline or automotive fuels or propellants is prohibited, prevented or substantially limited or impaired on the Demised Premises directly or indirectly, in whole or in part, by virtue of any governmental or municipal enactment or regulation or by reason of a refusal to issue a license permitting the sale of gasoline or automotive fuels or propellants from the Demised Premises;

the Tenant shall have the right to terminate this Lease on thirty (30) days' prior written notice. Provided that the Tenant shall not exercise such right of termination unless the operation of the service station is in its opinion substantially interfered with.

reasonable

10. OWNERSHIP OF ADDITIONAL BUILDINGS AND EQUIPMENT - At any time during the said Term or any extension thereof, the Tenant shall have the right to erect and install buildings, equipment and other improvements in, upon or under the Demised Premises, in addition to those already installed or erected thereon, which at all times whether affixed to the soil or not shall remain the property of the Tenant and it shall have the right to remove all such improvements including but not limited to those as set out in Schedule "D" attached to and forming part of this Lease (hereinafter collectively referred to as the "Tenant's Equipment"), and the Tenant shall not be required to compensate the Landlord for the value of such improvements upon removal. All such additions and improvements shall comply with local municipal building and zoning regulations.

The parties hereto acknowledge and agree that following removal of the buildings and the said Tenant's Equipment from the Demised Premises at the expiration or prior termination of the said Term or of any extension thereof, the Tenant shall repair any damage caused by such removal and restore the ground affected by same to the condition it was in prior to installation or erection of any buildings or equipment by the Tenant, where feasible.

11. INSURANCE - The Tenant covenants and agrees that it will maintain and keep in force during the said Term and any extension thereof:

- (a) coverage by means of self-insurance against loss, damage or destruction to all buildings, facilities and improvements on the Demised Premises, up to the full replacement value thereof; and
- (b) public liability and property damage insurance embodying limits of not less than Five Million (\$5,000,000.00) Dollars per occurrence.

The Tenant shall provide to the Landlord at its request a certificate of the insurance required under this section, certified by the insurer. The insurance policies shall provide that the insurer may not cancel any provisions of the policies without thirty (30) days' prior written notice to Landlord.

12. DAMAGE OR DESTRUCTION - If and whenever during the said Term the Demised Premises are destroyed by fire, lightning or by any other cause, then and in every such event

- (a) if the damage or destruction is such that it cannot be repaired or replaced (as estimated by a reputable and experienced contractor selected

by the Tenant and approved by the Landlord, acting reasonably) within one hundred and twenty (120) days of the occurrence of such damage or destruction, or in the event that there is substantial damage to the Demised Premises, the Tenant may, by notice in writing to the Landlord to be given within thirty (30) days after the happening of such destruction or damage, elect to terminate the Lease, in which event this Lease shall terminate on a date which is fifteen (15) days after the date of the giving of such notice, and the Tenant shall be relieved of its obligations under this Lease thereafter;

- (b) if the Tenant does not terminate this Lease in accordance with the provisions of paragraph 13(a), then the Tenant shall have the obligation to repair the damage and restore and rebuild the Demised Premises with reasonable dispatch after notice to it of the damage or destruction provided that building permits enabling the aforementioned rebuilding are obtained. In such event, the Tenant shall be entitled to receive the insurance proceeds for the purpose of such rebuilding;
- (c) in the event of damage or destruction as aforesaid, all rent shall cease to be paid (to the extent of such damage or destruction if the Tenant may use a portion of the Demised Premises or in full if the Tenant may not use any portion of the Demised Premises) by the Tenant until the Demised Premises are restored and rebuilt and ready to be used for the applicable business purpose;
- (d) in the event of damage or destruction as aforesaid, the Landlord shall, when requested by the Tenant, use its best efforts in providing assistance in obtaining building permits to restore or rebuild the facility to the same condition as prior to a fire or casualty.

13. EXPROPRIATION - (i) If, during the said Term, the whole of the Demised Premises or any part thereof is expropriated or otherwise taken by virtue of the exercise of the right of eminent domain or by paramount authority, the Landlord shall, when requested by the Tenant, provide assistance and any information required for the proceedings requesting compensation from the expropriating authorities dealing with any expropriation under the Expropriating Act (Ontario) or any other statute similar in effect;

(ii) if, during the said Term, any part or parts (less than the whole) of the Demised Premises are expropriated or otherwise taken by virtue of the exercise of the right of eminent domain or by paramount authority, then the following provisions shall apply:

- (a) subject to Clause 13(ii)(c) hereof, the Landlord shall be entitled to and shall receive the total amount of the award or compensation for that portion of the Demised Premises so expropriated, but without prejudice to the right of the Tenant to intervene in any expropriation proceedings to prove and make claim for all losses and damages resulting therefrom pursuant to its rights under the Expropriations Act (Ontario);
- (b) if, in the opinion of the Tenant, it appears feasible to reconstruct the remainder of the Demised Premises in such a way as to allow the Demised Premises so reconstructed to be used by the Tenant in the manner in which they were used immediately prior thereto, the Tenant shall, with all reasonable speed, reconstruct and restore that portion of the Demised Premises not so expropriated or taken so as to complete the same as an architectural unit to the entire satisfaction of the Tenant for the continued use and occupancy of the Tenant pursuant to the terms hereof. If, in the opinion of the Tenant, it is not feasible to reconstruct the remainder of the Demised Premises, then this Lease shall become null and void on the date upon which the Tenant is required to deliver up vacant possession to the expropriating authority of the part or parts of the Demised Premises. If the Demised Premises are reconstructed, then the monthly rental for the month following the date upon which the Tenant is required to deliver up vacant possession to the expropriating authority of the part or parts of the Demised Premises and for each month thereafter until the expiration of the said Term shall be reduced in the proportion that the part or parts of the

Demised Premises so expropriated bears to the whole of the Demised Premises;

- (c) the Tenant shall receive all compensation payable for the said improvements placed on the Demised Premises at its own cost which shall include but not be limited to, any building or buildings (excluding the main building on the Demised Premises at the date hereof) and the aforesaid Tenant's Equipment and costs incurred in the removal and reinstallation thereof; and

- (d) for the purposes of this Clause 13, the words "Demised Premises" shall mean not only the land and building constructed thereon but also the aforesaid Tenant's Equipment. It is understood and agreed that the Tenant shall be entitled to receive the compensation awarded in respect of the latter. *see 13. e) + f) below

CLAUSE 14 - INTENTIONALLY DELETED

15. RIGHT OF FIRST REFUSAL - IF AT ANY TIME during the Term or extension term of this Lease, or any overholding as hereinafter provided, the Landlord receives a bona fide offer to purchase or to lease the Demised Premises either alone or with other lands or any portion or portions thereof, which the Landlord is ready and willing to accept, or makes a bona fide offer to sell or to lease the Demised Premises, or gives a bona fide option to purchase or to lease same, which is accepted by the optionee, the Landlord shall forthwith deliver to the Tenant a copy of such offer or option and the Tenant shall have the right, to be exercised by written notice to the Landlord within thirty (30) days of receipt of notice from the Landlord together with a full copy of the aforesaid bona fide offer, as the case may be, to purchase the Demised Premises pursuant to the terms of such offer or option as the case may be, at a price and on the terms as specified in such offer or option subject, however, as hereinafter provided. The agreement of purchase and sale, as the case may be, constituted by the exercise by the Tenant of its rights herein shall be subject to compliance at the Landlord's expense with Section 49 of the Planning Act, R.S.O. 1980, Chapter 379, or any successor section. In the event that the time during which the Tenant may exercise its rights contained herein to meet any offer or option to purchase as hereinbefore provided equals or exceeds twenty-one (21) years, this right shall terminate twenty-one (21) years less one day from the date hereof.

Provided however, that in the event the Tenant exercises such right of first refusal, the last date for examining title to the Demised Premises and submitting requisitions as to same shall be the later of (a) the date or time specified in such option or offer to purchase; (b) the date which is thirty (30) days from the date of exercise of the aforesaid right. Provided further, that in the event the Tenant exercises such right of first refusal, the closing date of the transaction arising therefrom shall be the later of (a) the date or time specified in such option or offer to purchase; (b) the date which is forty-five (45) days from the date of exercise of the aforesaid right.

In the event that the Tenant does not exercise his right as aforesaid, the Landlord shall be at liberty to sell or to lease the Demised Premises upon the terms and conditions set forth in the said offer or option but any sale of the Demised Premises shall be subject to the terms and conditions of this Lease including this right of first refusal which shall continue against the new owner.

If the Demised Premises or any part thereof are not transferred pursuant to the terms of the said offer or option, the Landlord shall be obliged to submit any further offers or options to the Tenant by giving written notice thereof to the Tenant in the manner herein provided.

The foregoing right of first refusal shall be deemed to extend to and include any voluntary disposition of the Demised Premises or any part thereof by the Landlord to any third party.

16. OVERHOLDING - It is agreed between the parties hereto that should the Tenant remain in possession of the said Demised Premises after termination of the said Term or any extension thereof without other special agreement, a tenancy from year to year shall not be created by implication of law, but the Tenant shall be deemed to be a monthly tenant only at a monthly rental equivalent to one-twelfth (1/12th) of the annual rental payable during the

13. e) The Tenant shall, when requested by the Landlord and/or the expropriating authority, provide a Surrender of Lease over any part or parts of the Demised Premises expropriated or otherwise taken by virtue of the exercise of the right of eminent domain or by paramount authority at such time as that part or parts of the Demised Premises is so expropriated. and

last full year of the original term of this Lease if this Lease is not extended, or the last full year of the immediately preceding extended term if this Lease is extended, and otherwise upon the terms and conditions of this Lease. Provided that said overholding shall not extend beyond twenty-one years less one day from the Commencement Date of this Lease.

17. COMPENSATION OF RENTAL - In the event that this Lease is terminated by either party for any reason whatsoever prior to the end of the said Term, any prepaid rental shall be apportioned to the date of such termination and the unearned portion thereof shall forthwith be paid by the Landlord to the Tenant.

18. NOTICES - Any notice or other communication (the "Communication") to be given in connection with this Lease shall be given in writing and shall be given by personal delivery, telecopier transmission or by mailing by registered mail with postage thereon, fully prepaid in a sealed envelope addressed to the intended recipient as follows:

If to the Landlord: *George Vastis*
5495 Eglinton Ave., West
Etobicoke, Ontario
M9C 5K5
Telecopier No.:

If to the Tenant: Petro-Canada,
5140 Yonge Street, Suite 200,
North York, Ontario. M2N 6L6

Attention: General Manager, Retail Marketing
Telecopier No.: 416-730-2151

or to such other addresses, telecopier number or individual as may be designated by a Communication given by a party to the other party as aforesaid. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, if given by registered mail on the fourth business day following the deposit thereof in the mail, and if given by telecopier transmission, on the business day following the day on which it was transmitted. If the party giving any communication knows or reasonably knows of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery or by telecopier transmission.

19. DEFAULT BY TENANT - The Tenant covenants with the Landlord that if during the said Term a breach or default be made and continues for a period of fifteen (15) days in any of the covenants, provisoes or conditions herein contained, which on the part of the Tenant ought to be observed and performed, then the Landlord may cancel this Lease forthwith or may at its option and at the Tenant's expense rectify said breach or default.

20. QUIET ENJOYMENT - The Landlord covenants with the Tenant that it shall peaceably possess and enjoy the said Demised Premises for the said Term without interruption or disturbance from the Landlord or any other person or persons lawfully claiming by, from or under it.

21. ASSIGNMENT AND SUB-LETTING BY TENANT - The Tenant shall have the right to sublet all or any part of the Demised Premises to an operator or operators of its choice upon such terms and conditions as it deems acceptable or to assign this Lease at any time during the said Term without the prior written consent of the Landlord, provided the Tenant remains liable for the performance of the obligations of the Tenant contained herein.

22. FORCE MAJEURE - Whenever and to the extent that the Landlord or the Tenant shall be unable to fulfill or shall be delayed or restricted in the fulfilment of any obligations hereunder (save for the payment of rent by the Tenant on the due dates) by reason of strike, lockout, labour dispute, act of God, inability to obtain labour or materials, application of law, regulations or orders of governmental authorities or the occurrence of enemy or hostile action, civil commotion, fire or other casualty, condition or cause beyond the reasonable control of the party obligated to perform including inclement weather, whether of the foregoing nature or not, the Landlord or the Tenant

K 3. f) The Tenant *acknowledges and agrees that none of its improvements*
or equipment are located over Part 2 or reference plan
43R-16796.

shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned and the Landlord or the Tenant shall be granted an extension equivalent to the period of delay.

23. LANDLORD'S TITLE - The Landlord covenants with the Tenant that the Landlord has good title to the Demised Premises and has a valid right to lease the same, and warrants and agrees to defend the title thereto and to reimburse and hold the Tenant harmless from all damages and expenses which the Tenant may suffer by reason of any restriction, encumbrance or defect in such title not herein expressly set forth.

24. PRIOR ENCUMBRANCERS - The Landlord covenants with the Tenant to obtain non-disturbance agreements in favour of the Tenant from any holder of any prior mortgage, charge or encumbrance affecting title to the Demised Premises or the possessor of any title to the Demised Premises paramount to the title of the Landlord whereby such person, corporation or financial institution, as the case may be, shall agree with the Tenant that, so long as the Tenant performs its covenants and agreements pursuant to this Lease, the Tenant shall be entitled to peaceably enjoy the Demised Premises in accordance with the terms hereof.

25. RESTRICTIVE COVENANT - To the extent that these covenants shall run with the Landlord's lands described in Schedule "A-1" attached hereto excluding the Demised Premises or any addition thereto now or hereafter owned or controlled by the Landlord or by any other person, firm or corporation under the Landlord's control (hereinafter referred to the "Remaining Lands"), the Landlord shall not for the said Term or any extension thereof, directly or indirectly, or through the medium of any such person, firm or corporation permit any part of the Remaining Lands to be used for the purpose of carrying on the business of a gasoline or other automotive fuel dispensing facility or any other ancillary facility, such as a convenience store, similar to those originally erected on the Demised Premises. The Landlord covenants and agrees to enter into such other agreements and provide such further assurances as may be required to give effect to the provisions of this clause and to extract a similar covenant from any future purchaser or lessee of the Remaining Lands and Demised Premises. The Landlord covenants and agrees with the Tenant that inasmuch as a breach of the covenants contained in this clause will result in irreparable loss to the Tenant, in the event of such breach by the Landlord and in addition to all other remedies, the Tenant shall be entitled to an injunction restraining such breach and the continuance thereof. Provided further that the Landlord covenants and agrees to provide the Tenant with details of any lease, excluding rental terms of same, regarding the Remaining Lands.

26. ACCESS AND EGRESS - The Tenant covenants and agrees that during the said Term or any extension thereof, it shall provide occupants of the Remaining Lands and their servants, agents, employees, customers, invitees and those persons having business with them, free and uninterrupted ingress and egress over the driveway entrances and paved areas between the Demised Premises and the said Remaining Lands. Any access point to be shared by the Tenant with any occupants of the Remaining Lands will be mutually determined by the Landlord and the Tenant and will be subject to the prior approval of the City of Brampton, with the costs associated with any such shared access point to be shared equally between the parties hereto.

27. PARTIAL INVALIDITY - If a term, covenant or condition of this Lease, or the application thereof to any person or circumstances to any extent is held invalid or unenforceable, the remainder of this Lease, or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term, covenant and condition of this Lease will be valid and enforced to the fullest extent permitted by law.

28. WAIVER - No acceptance of rent subsequent to any breach or default, nor any condoning, excusing or overlooking by the Landlord or the Tenant on previous occasions of breaches or defaults or other rights which the Landlord or the Tenant has exercised, shall be taken to operate as a waiver of any of the covenants, terms, agreements, provisos or conditions herein contained or in any way defeat or affect the rights of the Landlord or of the Tenant.

29. NO PARTNERSHIP - The Landlord does not, in any way, or for any purpose, become a partner of the Tenant in the conduct of its business or otherwise, or a joint adventurer or a member of a joint enterprise with the Tenant. Neither the method of computation of rent nor any other provision contained herein, nor any act of the parties hereto shall create a relationship between the parties other than that of landlord and tenant.

30. PRIOR LEASE - IT IS AGREED between the parties hereto that the Head Lease and Sublease each dated the 31st day of March, 1992, between the Landlord, as lessor, and the Tenant, as lessee, which Head Lease was registered in the Land Registry Office for the Registry Division of Peel on the 19th day of April, 1992 as Instrument Number R0 1004185, shall be of no further force and effect as of the Commencement Date of this Lease, provided that this Lease is executed by all parties.

31. OBLIGATIONS AS COVENANTS - Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

32. HEADINGS - The word "Clause" shall refer to each portion of this Lease introduced or headed by an integer and the word "paragraph" shall refer to the sequentially numbered paragraphs of each clause. The headings appearing at the beginning of each clause of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or of any provisions thereof.

33. ENTIRE AGREEMENT - This Lease contains all covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Demised Premises.

This Lease is binding upon the parties hereto and upon their respective successors and assigns.

Except as herein otherwise provided, no subsequent alterations, amendments, changes or additions to this Lease will be binding upon the Landlord or the Tenant unless reduced to writing and signed by them.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

CALLDRON GAS BARS LTD.

Per: Sec

George Vastis

I/We have authority to bind the Corporation.

PETRO-CANADA

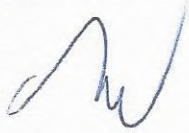
Per: RR Hubley

NA Fraw



SCHEDULE "A"

Part of Lot 10, Concession 5, W.H.S., in the City of Brampton, in the Regional Municipality of Peel (formerly in the Township of Chinguacousy, County of Peel) being designated as Parts 1 and 2 on a Plan of Reference deposited in the Land Registry Office for the Registry Division of Peel as Number 43R-16796.

A handwritten signature in blue ink, appearing to be a stylized 'M' or 'W'.

SCHEDULE "A-1"

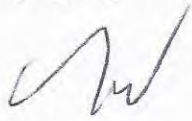
The north half of the east half of Lot 10, Concession 5, West of Hurontario Street and the south half of the east half of Lot 10, Concession 5, West of Hurontario Street, in the City of Brampton, in the Regional Municipality of Peel containing by admeasurement one hundred acres more or less.

SAVE AND EXCEPT that portion of the said lands expropriated by the Department of Highways of Ontario for road widening purposes as described in Instrument registered in the said Registry Office as No. 24802 and amended by Instrument No. 27654;

AND FURTHER SAVE AND EXCEPT thereout and therefrom that portion of the said lands expropriated by the Department of Highways of Ontario for road widening purposes as described in Instrument registered in the said Registry office as No. 26936;

AND FURTHER SAVING AND EXCEPTING thereout and therefrom that portion of the said lands conveyed to the Corporation of the County of Peel for road widening purposes more particularly described in Instrument Numbers 2570VS and 2571VS both of Chinguacousy.

AND FURTHER SAVING AND EXCEPTING thereout and therefrom that portion of the said lands conveyed to The Regional Municipality of Peel for road widening purposes being Part 3 on Reference Plan 43R-16796.

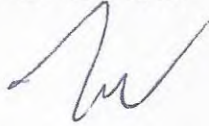


SCHEDULE "B"

- 4 - 50 000-litre FRP underground storage tanks
- 1 - 50 000-litre FRP underground compartment storage tank
(2 - 25 000-litre compartments)
- 5 - Red Jacket Submersible Pumps
- 1 - Seikosha SP20005 Leak Detection System
- 1 - ECO 107C Air Meter
- 16 - Canopy Flag Poles
- 9 - 20-foot Floodlight Poles complete with fixtures
- 6 - Island Garbage Containers
- 5 - Windshield Service Units
- 1 - Intercom with 5 Speakers
- 2 - Coldmatic Vertical Coolers
- 1 - Richdel Automatic Watering System
- 1 - Well Pump
- 1 - Hot Water Tank
- 1 - Septic System Complete with Anaerobic Waste Water System
- 1 - Automatic Washroom Hand Dryer
- 2 - Internally Illuminated Canopies (approximately 30 feet x 36 feet
and 30 feet by 90 feet) complete with light fixtures
- 3 - Fire Extinguishers
- 1 - In-ground Floor Safe
- 1 - Heating and Air-Conditioning Roof Unit
- 1 - Security System (4 cameras, ¹2 monitors, 1 VCR, 1 Chubb Security Alarm) *9/15*
- 1 - Coin-operated Vacuum Cleaner *W*
- 1 - 6-foot Cigarette Rack
- 1 - Canopy Mirror

SCHEDULE "C"

- a) No measurable thickness of petroleum product will be left on the water table under the property;
- b) Cleanup criteria must satisfy all applicable provincial regulations and guidelines;
- c) 35% lower explosive limit ("LEL") maximum soil vapours inside areas where product transfers occur on the property and spills are likely to occur. For service stations, these areas would be defined as areas within:
 - 1 metre beyond walls of tanks (plan view);
 - greater of 1 metre from concrete apron, or 3 metres from pump at pump islands.
- d) 15% LEL maximum soil vapours for the rest of the property beyond 2 meters from the boundaries identified above. This allows for some transition from 35% LEL to 15% LEL.



SCHEDULE "D"

- 4 - Multi-Product Dispensers
 - 1 - Duo-I Dispenser
 - 1 - Duo-I Hi-Speed Pump
- 1 - Flex Face Canopy Fascia for 2 Canopies Listed on Schedule B hereof
 - 1 - Cameo Wall Sign
 - 1 - Console
- 2 - B-200 Identification Sign
- 1 x Credit Card Imprinter
- 1 x Credit Authorization Terminal

A handwritten signature in dark ink, appearing to be a stylized 'W' or 'J' with a long horizontal stroke extending to the right.

DATED: March 15, 1995

CALDRON GAS BARS LTD.

- and -

PETRO-CANADA

L E A S E

Petro-Canada
Legal Department,
5140 Yonge Street,
Suite 200,
North York, Ontario.
M2N 6L6

New
Lease

LEASE EXTENSION AND AMENDING AGREEMENT

THIS AGREEMENT is dated the 15th day of May, 2014.

BETWEEN:

CALLDRON GAS BARS LTD.
(the "Landlord")

OF THE FIRST PART;

- and -

SUNCOR ENERGY PRODUCTS PARTNERSHIP
(the "Tenant")

OF THE SECOND PART.

WHEREAS:

A. By a lease made the 15th day of March, 1995 (the "**Lease**"), the Landlord leased to Petro-Canada, as tenant, for and during a term (the "**Term**") of twenty (20) years, commencing on the 17th day of April, 1995 and expiring on the 16th day of April, 2015, certain lands and premises legally described on Schedule "A" attached to the Lease (the "**Demised Premises**") and municipally known as 9980 Mississauga Road, in the City of Brampton, in the Province of Ontario, which Demised Premises are part of the lands owned by the Landlord (the "**Landlord's Lands**") now described as Part of Lot 10, Concession 5 WHS Chinguacousy as in Instrument No. VS 276607 except Part 1, Plan VS81821, Part 3, Plan 43R-16796, Parts 1, 2, 3, 4, 5, 6 and 7, Plan 43R-27286 and Parts 1 and 5, Expropriation Plan PR-2078646 (being PIN 14092-0320(LT));

B. Notice of the Lease was registered on May 3, 1995 as Instrument No. RO 1089708'

C. By Certificate of Arrangement and Articles of Arrangement dated August 1, 2009 Petro-Canada, Suncor Energy Inc. and certain of their subsidiaries were amalgamated and continued as Suncor Energy Inc.;

D. Effective on January 1, 2011, Suncor Energy Inc. ("**SEI**") transferred its refining and marketing business assets to the Tenant and in connection with such transfer, SEI assigned to the Tenant all of its right, title and interest in and to the Lease with SEI (as successor to Petro-Canada) and continuing to hold the registered interest in the Lease for and on behalf of the Tenant; and

E. The Landlord and the Tenant have agreed to extend the Term of the Lease for a further period of five (5) years, and to further amend the Lease upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of TWO DOLLARS (\$2.00) now paid by each of the parties to the other (the receipt and sufficiency whereof is hereby acknowledged), and other mutual covenants and agreements, the parties hereby agree as follows:

1. **CONFIRMATION OF RECITALS:** The foregoing recitals are true in substance and in fact.

2. **FIRST EXTENSION TERM:** The Term of the Lease is hereby extended for a further period of five (5) years, commencing on the 17th day of April, 2015 and expiring on the 16th day of April, 2020 (the "**First Extension Term**").

3. **TERMS AND ANNUAL RENT FOR FIRST EXTENSION TERM:** The First Extension Term shall be upon the same terms and conditions as are contained in the Lease, and as were applicable during the Term of the Lease except that, the Annual Rent payable during the First Extension Term shall be the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) per annum, payable annually in advance on the 17th day of April each and every year during the five (5) years of the First Extension Term:

4. **FURTHER EXTENSION TERMS:** Provided the Tenant is not in default under the Lease or this Agreement beyond any applicable cure period, the Tenant may on not less than six (6) months and not more than eighteen (18) months' written notice to the Landlord prior to the expiry of the

then current Term elect to further extend the Lease with respect to the Demised Premises for three (3) additional terms of five (5) years each (the "**Future Extension Terms**") on the same terms and conditions as the Term save and except that the Annual Rent for each of the Future Extension Terms shall be the then fair market Annual Rent rate for comparable premises in the area (excluding any value attributable to the Tenant's fixtures and improvements) as agreed upon by the parties.

If the parties are unable to agree on the Annual Rent for any of the Future Extension Terms on or before the date that is sixty (60) days prior to the commencement of such Future Extension Term, as applicable, then such Annual Rent shall be determined by arbitration before a sole arbitrator in accordance with the Arbitrations Act (Ontario). The parties shall share the cost of such arbitration. The parties shall execute a Lease Extension Agreement prepared by the Tenant to reflect the terms of the Future Extension Terms, as applicable.

5. **RIGHT TO LEASE EXPANSION LANDS:** Provided the Tenant is not in default under the Lease or this Agreement beyond any applicable cure period and provided that the Tenant exercises its right to the first Future Extension Term, the Tenant shall have the one time right to expand the Demised Premises to include an additional area of the Landlord's Lands on not less than six (6) months and not more than eighteen (18) months' written notice to the Landlord prior to the expiry of the First Extension Term on the following terms and conditions:

- (a) the expansion lands to the Demised Premises (the "**Expansion Lands**") shall be to the west of the Demised Premises within the area cross hatched on Schedule "A" and subject to and provided that:
 - (i) the Expansion Lands shall be described in a sketch attached to the Tenant's notice exercising this right (the "**Expansion Notice**");
 - (ii) the Expansion Lands shall have frontage on Boivard Drive West and be approximately of the same width back to front from Boivard Drive West to the extension of the south property line of the current Demised Premises; and
 - (iii) the aggregate area of the current Demised Premises and the Expansion Lands shall not exceed approximately 2 acres;
- (b) the Expansion Notice shall set out the commencement date for the lease of the Expansion Lands, which shall be no earlier than three (3) months prior to the end of the First Extension Term and no later than twelve (12) months following the start of the first Future Extension Term. The Landlord may, by notice back to the Tenant within thirty (30) days of the Expansion Notice, adjust the commencement date by up to three months later than set out in the Expansion Notice. The term of the lease of the Expansion Lands shall be co-terminous with the lease of the current Demised Premises and include the rights to the further Future Extension Terms;
- (c) the Tenant shall have a three (3) month Annual Rent free period at the start of the term for the Expansion Lands, being the first three (3) months following the commencement date for the lease of the Expansion Lands. All terms of the Lease shall apply during such Annual Rent free period except for the obligation to pay Annual Rent for the Expansion Lands (and Annual Rent shall continue to be paid in respect of the current Demised Premises in accordance with the terms of the Lease);
- (d) the Annual Rent for the Expansion Lands shall be the fair market Annual Rent rate for comparable premises in the area as agreed upon by the parties. If the parties are unable to agree on the Annual Rent for the Expansion Lands on or before the date that is sixty (60) days prior to the commencement of such lease of the Expansion Lands it shall be determined by arbitration as provided in Section 4 hereof (and under the same arbitration proceeding in the event arbitration of the Annual Rent for the current Demised Premises is required in respect of the first Future Extension Term);
- (e) the Tenant shall be responsible, at its cost, for all work required to integrate the Expansion Lands into the existing Demised Premises, such work to be completed in accordance with the terms of the Lease;

- (f) except as otherwise provided above, the lease of the Expansion Lands shall be on the same terms and conditions as the lease of the Demised Premises and the Landlord and the Tenant agree to enter into a lease amending agreement prepared by the Tenant amending the Lease to include the Expansion Lands and the terms and conditions related to it;
- (g) without limiting any other obligation herein, the Landlord covenants and agrees that it will not sell, lease or otherwise deal with the Landlord's Lands to the west of the Demised Premises in any manner inconsistent with the Tenant's rights herein; and
- (h) the Tenant's right to the Expansion Lands shall be of no further force or effect if not exercised on or before the last date provided for herein.

4. **NON-DISTURBANCE AGREEMENT:** The Landlord covenants and agrees to obtain a non-disturbance agreement from all existing chargees of the Landlord's Lands within three (3) months of the execution of this Agreement, which non-disturbance agreements shall be in compliance with Section 24 of the Lease.

5. **AUTHORITY:** The Tenant represents and warrants that it has the right, full power and authority to agree to extend the Term as provided in this Agreement. The Landlord represents and warrants that it has the right, full power and authority to agree to extend the Term and to grant the right to the Expansion Lands as provided in this Agreement.

6. **CONTINUATION OF LEASE:** The parties confirm that the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. Without limitation, the restrictive covenant in Section 25 of the Lease and the right of first refusal in Section 15 of the Lease continue in full force and effect. All capitalized terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

7. **SUCCESSORS AND ASSIGNS:** This Agreement shall enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

IN WITNESS WHEREOF the parties have executed this Agreement.

CALLDRON GAS BARS LTD.

(Landlord)

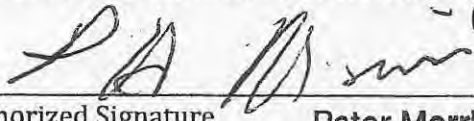
Per: 
Authorized Signature

Per: _____
Authorized Signature

I/We have authority to bind the corporation.

SUNCOR ENERGY PRODUCTS PARTNERHIP

(Tenant)

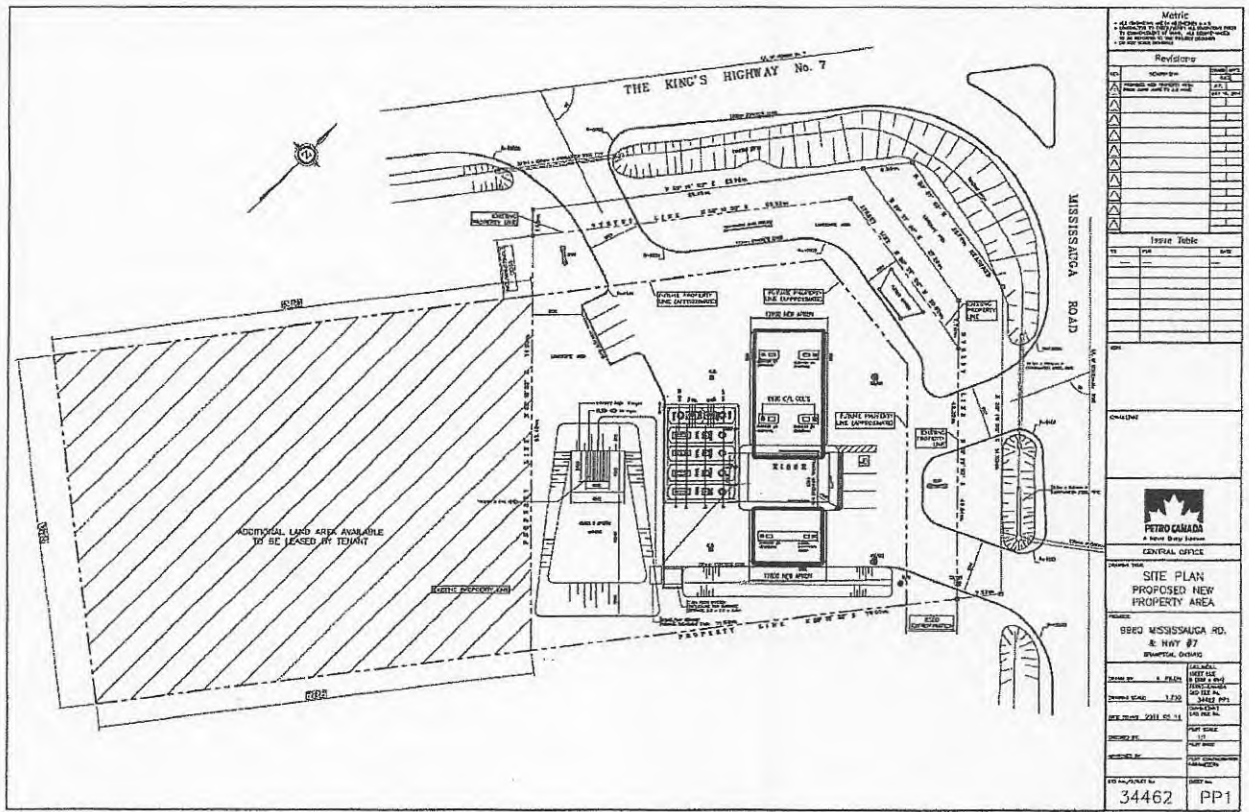
Per: 
Authorized Signature **Peter Morris**

Per: _____
Authorized Signature **Asset Management**

I/We have authority to bind the Tenant.



SCHEDULE "A"
AVAILABLE EXPANSION LANDS



PLAN OF SURVEY OF PART OF
LOT 10, CONCESSION 5 WEST OF HURONTARIO STREET
TOWNSHIP OF CHINGUACOUSY
COUNTY OF PEEL, NOW IN THE
CITY OF BRAMPTON
REGIONAL MUNICIPALITY OF PEEL

SCALE 1:250
BRYAN T. DAVIES O.L.S. 1989

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

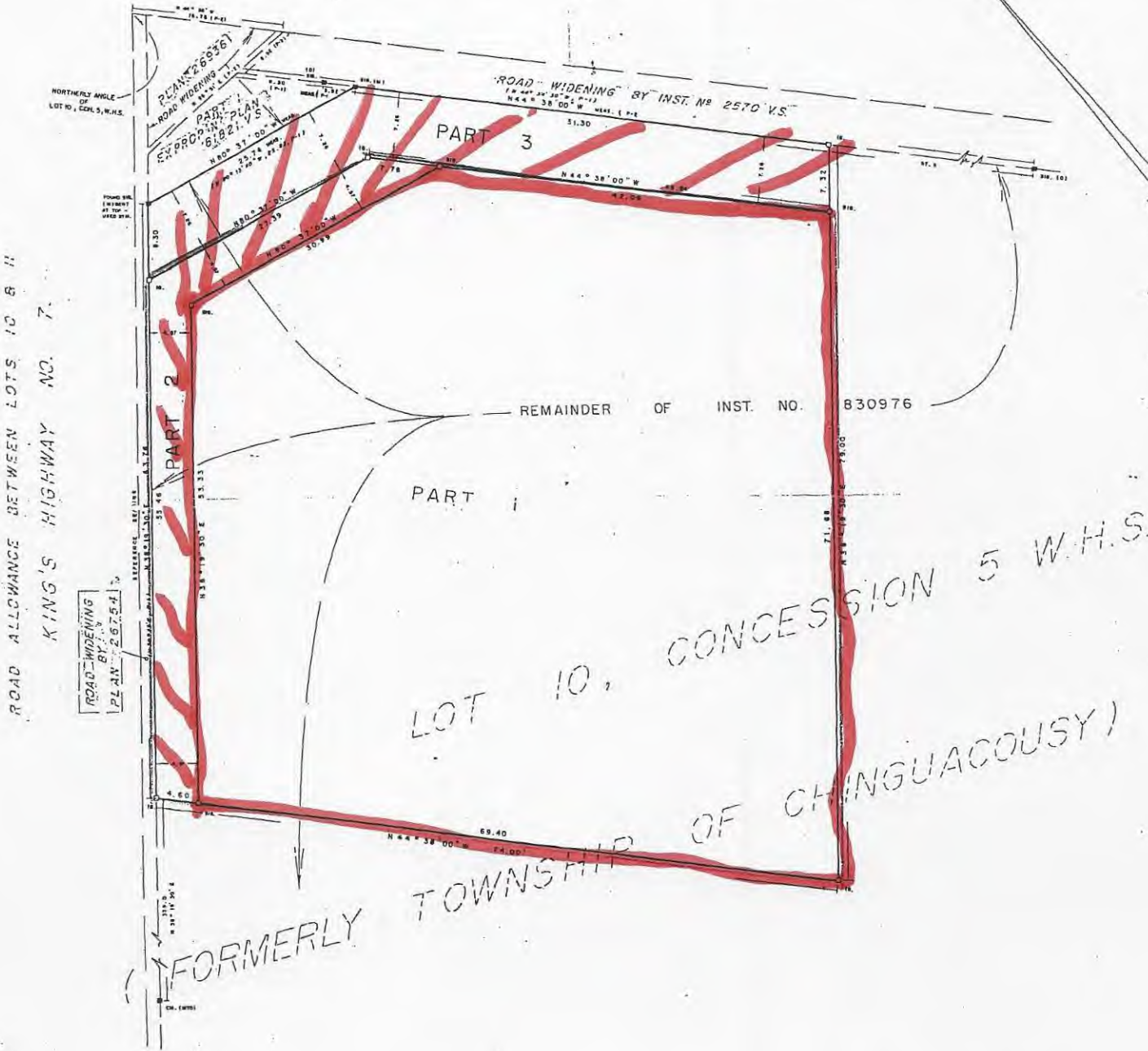
PLAN 43R-16796

RECEIVED AND DEPOSITED
DATE 24 APR 1989
BRYAN T. DAVIES
LAND REGISTRAR FOR THE
REGISTRY DIVISION OF
PEEL (NO. 43)

PART	DESCRIPTION	INST. NO.	AREA
1	Part of Lot 10, Concession 5, W.H.S.	830976 (Rem.)	4687.3 m ²
2			382.1 -
3			560.4 -

I REQUIRE THIS PLAN TO BE DEPOSITED
UNDER THE REGISTRY ACT.
DATE 24 APR 1989
BRYAN T. DAVIES
ONTARIO LAND SURVEYOR

ROAD ALLOWANCE BETWEEN CONCESSIONS 4 & 5 W.H.S.
MISSISSAUGA ROAD



NOTES
BEARINGS ARE ASTROMONIC IN ORIGIN AND ARE
REFERRED TO THE SOUTHEASTLY LIMIT OF KING'S
HIGHWAY NO. 7 AS WIDENED BY PLAN REGISTERED AS
INST. NO. 26754 AND SHOWN THEREON AS N 38° 19' 30" E.
(D) REFERS TO DEATH, McLEAN & McMURCHY O.L.S.
(M) REFERS TO McLEAN, McMURCHY & BISHOP O.L.S.

LEGEND
—○— DENOTES SURVEY MONUMENT FOUND
—○— " " " " SET
SB. " " " " STANDARD IRON BAR
IB. " " " " IRON BAR
CM. " " " " CONCRETE MONUMENT
MEAS. " " " " MEASURED
P-1 " " " " PLAN REGISTERED AS INST. 81821VS
P-2 " " " " PLAN ATTACHED TO INST. 2570VS
W.H.S. " " " " WEST OF HURONTARIO STREET

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN
ACCORDANCE WITH THE SURVEYS ACT AND THE
REGISTRY ACT AND THE REGULATIONS MADE
THEREUNDER.
2. THIS SURVEY WAS COMPLETED ON THE 17th
DAY OF APRIL 1989.

DATE 24 APR 1989
BRYAN T. DAVIES
ONTARIO LAND SURVEYOR

HORTON, WALLACE & DAVIES LTD.
ONTARIO LAND SURVEYORS
306 DUNDAS STREET W., WHITBY
416-888-8883
TORONTO, ONT. M9B 1S9
OTHER OFFICES IN BOWMANVILLE, COBourg AND TRENTON, ONT.

PROJECT No. 17634

LEASE EXTENSION AGREEMENT

THIS AGREEMENT is dated the 20th day of January, 2020.

BETWEEN:

CALLDRON GAS BARS LTD.
(the "Landlord")

OF THE FIRST PART;

- and -

SUNCOR ENERGY PRODUCTS PARTNERSHIP
(the "Tenant")

OF THE SECOND PART.

WHEREAS:

A. By a lease dated the 15th day of March, 1995 (the "**Lease**"), the Landlord leased to Petro-Canada, as tenant, for and during a term (the "**Term**") of twenty (20) years, commencing April 17, 1995 and expiring on April 16, 2015, certain lands and premises located at 9980 Mississauga Road, in the City of Brampton, in the Province of Ontario, which demised premises owned by the Landlord (the "**Demised Premises**");

B. Notice of the Lease was registered on May 3, 1995 as Instrument No. RO 1089708

C. By Certificate of Arrangement and Articles of Arrangement dated August 1, 2009 Petro-Canada, Suncor Energy Inc. and certain of their subsidiaries were amalgamated and continued as Suncor Energy Inc.;

C. Effective on January 1, 2011, Suncor Energy Inc. ("SEI") transferred its refining and marketing business assets to the Tenant and in connection with such transfer, SEI assigned to the Tenant all of its right, title and interest in and to the Lease with SEI (as successor to Petro-Canada) and continuing to hold the interest in the Lease for and on behalf of the Tenant.;

D. By a Lease Extension and Amending Agreement dated May 15, 2014 (the "2014 Amending Agreement"), the parties agreed to extend the Lease for a period of five (5) years commencing on April 17, 2015 and expiring on April 16, 2020 (the "**First Extension Term**"). The Lease was further amended to include three (3) additional options of five (5) years commencing on April 17, 2020, April 17, 2025 and on April 17, 2030 being the "Second, Third and Fourth Extension Terms" respectively granted to the Tenant by the Landlord upon the same terms and conditions as contained in the Lease, except for the Minimum Rent, which was to be negotiated between the parties, as well as providing the Right to Lease the Expansion Lands;

E. By Letter to the Landlord dated October 2, 2019, the Tenant exercised its Second Extension Term of the Lease commencing April 17, 2020 and expiring on April 16, 2025

F. All references in the Lease to "Petro-Canada" shall now be read as "Suncor"; and

G. The Landlord and the Tenant have agreed to extend the Term of the Lease for a further period of five (5) years, and to further amend the Lease upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of TWO DOLLARS (\$2.00) now paid by each of the parties to the other (the receipt and sufficiency whereof is hereby acknowledged), and other mutual covenants and agreements, the parties hereby agree as follows:

1. **CONFIRMATION OF RECITALS:** The foregoing recitals are true in substance and in fact.

2. **SECOND EXTENSION TERM:** The Term of the Lease is hereby extended for a further period of five (5) years, commencing on April 17, 2020 and expiring on April 16, 2025 (the "**Second Extension Term**").

3. **RENT:** The Second Extension Term shall be upon the same terms and conditions as are contained in the Lease, and as were applicable during the Term of the Lease except that, the annual Minimum Rent payable during the Second Extension Term shall be the sum of One Hundred and Sixty-Five Thousand Dollars (\$165,000.00) per annum, payable annually in advance on the 17th day of April each and every year during the five years of the Second Extension Term:

4. **OPTION TO EXTEND:** Provided the Tenant is not in default under the Lease or this Agreement beyond any applicable cure period, Tenant may on not less than six (6) months and not more than eighteen (18) months' provide written notice to the Landlord prior to the expiry of the then current Term elect to extend the Lease with respect to the Demised Premises for one (1) additional term of five (5) year commencing on April 17, 2035 and expiring on April 16, 2040 (the "**Fifth Extension Term**") on the same terms and conditions as the Term save and except:

- (i) the Minimum Rent for the Fifth Extension Term shall be the then fair market Minimum Rent rate for comparable premises in the area as agreed upon by the parties.

The Minimum Rent for the Third, Fourth and Fifth Extension Terms (the "**Extended Term**") shall be mutually agreed upon by the parties hereto. If the parties are unable to agree on the Minimum Rent for the Extended Term on or before the date that is sixty (60) days prior to the commencement of the Extended Term, as applicable, then such Minimum Rent shall be determined by arbitration before a sole arbitrator in accordance with the applicable legislation in force in the province in which the Demised Premises are located. The parties shall share the cost of such arbitration. The parties shall execute a Lease Extension Agreement prepared by the Tenant to reflect the terms of the Extended Term, as applicable.

5. **EXPANSION LANDS:** If a rezoning of the additional lands beyond the existing Demised Premises is completed and Suncor has an approved Site Plan Agreement for redevelopment, then the Minimum rent will be renegotiated to reflect the then fair market Minimum Rent for comparable premises in the area as agreed upon by the parties.

6. The Tenant represents and warrants that it has the right, full power and authority to agree to extend the Term as provided in this Agreement.

7. The parties confirm that the terms, covenants and conditions of the Lease remain unchanged and in full force and effect, except as modified by this Agreement. All capitalized terms and expressions when used in this Agreement, unless a contrary intention is expressed herein, have the same meaning as they have in the Lease.

8. This Agreement shall enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Landlord and the permitted successors and permitted assigns of the Tenant.

IN WITNESS WHEREOF the parties have executed this Agreement.

CALLDRON GAS BARS LTD.

(Landlord)

Per: 

Authorized Signature

George Vastis

Date of Execution:

Jan 30, 2020

Per: _____

Authorized Signature

I/We have authority to bind the corporation.

SUNCOR ENERGY PRODUCTS PARTNERHIP

(Tenant)

Per: 

Authorized Signature

Ken A. Ogston
Director, Network Planning
and Development

Date of Execution

Per: _____

Authorized Signature

I/We have authority to bind the Tenant.



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Sam Rogers

Direct Line: (416) 601-7726
Email: sbrogers@mccarthy.ca

*Assistant: Kaduuli, Stella
Direct Line: (416) 601-8200 x542085
Email: skaduuli@mccarthy.ca*

May 16, 2023

VIA EMAIL

Domenico Magisano
Lerners LLP
225 King Street West, Suite 1600
Toronto ON M5V 3M2

Dear Mr. Magisano:

**Re: Leases between Calldron Gas Bars Ltd. and Suncor Energy Inc.
5495 Eglinton Avenue, Toronto (the “Eglinton Property”)
& 2055 Bovaird Drive West and 9980 Mississauga Road, Brampton (the
“Brampton Property”) (together, the “Properties”)**

We act for Suncor Energy Inc. (“**Suncor**”). Suncor holds leases with Calldron Gas Bars Ltd. (“**Calldron**”) in relation to the above Properties (together, the “**Leases**”). We understand that The Fuller Landau Group Inc. (the “**Liquidator**”) was appointed receiver and liquidator of the undertakings, property and assets of Calldron pursuant to the Winding Up Order of Justice Dietrich dated December 20, 2022 in the Superior Court of Justice, Court File No. CV-20-00644241-00CL. You have advised us that the Liquidator would like to begin a sales process for the Properties.

Pursuant to the Leases, Suncor holds rights of first refusal (the “**ROFRs**”) including with respect to any sale of the Properties. In accordance with the ROFRs,¹ Suncor requests that the Liquidator provide us with a copy of any offer to purchase that it receives and/or offer to sell that it makes with respect to the Properties as part of the sales process.

Liquidator’s Proposed Motion for Directions

We further understand that in advance of any sales process the Liquidator will be seeking the court’s directions on certain questions related to Suncor’s ROFRs. On May 8, 2023, we asked what specific relief the Liquidator would be seeking from the court. We have not received a response. We would appreciate hearing from you regarding the relief that the Liquidator will be seeking, the Liquidator’s expected position, if you have been advised of the position of any other parties and what you expect those parties’ positions to be.

¹ Lease between Calldron and Petro-Canada dated March 31, 1992 with respect to the Eglinton Property, §16; Lease between Calldron and Petro-Canada dated March 15, 1995 with respect to the Brampton Property, §15.

Suncor's Rights of First Refusal

In general, you have asked for Suncor's position on the ROFRs. Suncor's position is that they apply with respect to both Properties.

Suncor is an integrated energy company headquartered in Calgary, Alberta. Suncor's retail operations include the company's Petro-Canada™ (formerly Sunoco) gas station distribution networks. Suncor amalgamated with Petro-Canada™ on August 1, 2009.

In 1992, Petro-Canada™ and Calldron entered into a long-term gas station lease in relation to the Eglinton Property. In 1995, Petro-Canada™ and Calldron entered into a long-term gas station lease in relation to the Brampton Property. In the context of those Leases, the parties came to an agreement that Suncor would have certain rights of first refusal including with respect to any future sale of the Properties and that the ROFRs would apply during any extension terms of the Leases.

The terms of the ROFRs are the same with respect to both Properties. The relevant section is as follows:

RIGHT OF FIRST REFUSAL - If at any time during the Term or extension term of the Lease, or any overholding as provided therein, the Landlord receives a bona fide offer to purchase or to lease the Demised Premises either alone or with other lands or any portion or portions thereof, which the Landlord is ready and willing to accept, or makes a bona fide offer to sell or to lease the Demised Premises, or gives a bona fide option to purchase or to lease same, which is accepted by the optionee, the Landlord shall forthwith deliver to the Tenant a copy of such offer or option and the Tenant shall have the right, to be exercised by written notice to the Landlord within 30 days of receipt of notice from the Landlord together with a full copy of the aforesaid bona fide offer, as the case may be, to purchase the Demised Premises pursuant to the terms of such offer or option as the case may be, at a price and on the terms as specified in such offer or option subject, however, as hereinafter provided. The agreement of purchase and sale, as the case may be, constituted by the exercise by the Tenant of its rights herein shall be subject to compliance at the Landlord's expense with Section 49 of the Planning Act, R.S.O. 1980, Chapter 379 or any successor section. In the event that the time during which the Tenant may exercise its rights contained herein to meet any offer or option to purchase as hereinbefore provided equals or exceeds 21 years, this right shall terminate 21 years less one day from the date hereof. **[emphasis added]**

It is clear from the words chosen by the parties that, as the terms of the Leases continue, either through extensions or overholding, the ROFR agreements continue with them. The Leases have been extended. The ROFRs therefore continue to apply.

The only reason that one might find the ROFRs do not apply is the 21 year term. Given the specificity of that term (21 years less one day), it was included out of an abundance of caution to avoid offending the rule against perpetuities and, in turn, a situation where the ROFRs became ineffective.² It is not drafted as a sunset clause. Properly read, that clause applies prospectively to ensure compliance with rule against perpetuities in the event that the term of a subsequent lease renewal were to be made for a period longer than 21 years. It does not apply

² Unlike an option to purchase, a ROFR does not create an interest in land and therefore is not in any event subject to the rule against perpetuities: *Canadian Long Island Petroleum Ltd. v. Irving Wire Products*, 1974 CarswellAlta 194 at para. 35 (SCC); *McFarland v. Hauser*, 1978 CarswellAlta 127 (SCC); *Harris v. McNeely*, 2000 CarswellOnt 469 at para. 12 (CA); *Benzie v. Kunin*, 2012 ONCA 766 at para. 67; *2123201 Ontario Inc. v. Israel Estate*, 2016 ONCA 409 at paras. 22-24.

in the current circumstances, where the renewal terms of the Leases have been less than 21 years. Accordingly, it was never triggered.

Correctly interpreted, the purpose of the 21 year period was to ensure that the ROFRs would succeed, not fail. There would be no other commercially sound reason for the parties to have included it.

The commercial context for the Leases is Suncor's gas station business. Building a gas station requires significant upfront investment. Gas stations in Ontario are competitive to operate and depend on customer goodwill and partnerships with ancillary businesses such as convenience stores. Once the lease term concludes, gas station retailers are required to remediate the land which creates significant exit costs. Suncor is able to protect its investments and remain competitive in part by negotiating restrictions on competition and rights of first refusal in its long-term lease agreements, as it did here. Against that context, the parties came to an agreement that Calldron could not sell the Properties without first giving Suncor the right of first refusal. The ROFR agreements were made when the original Leases were signed, and stand on their own. They either continued on their terms or were renewed with the renewals of the Leases and therefore continue to apply.

We are aware of the Ontario Court of Appeal's 1989 decision in *Budget Car Rentals Toronto Ltd. v. Petro-Canada-Inc.*³ ("**Budget**") which has been cited for the notion that a right of first refusal is a separate covenant from a lease such that a lease overholding or renewal does not in itself renew the ROFR unless the parties expressly agree to renew it. The court's comments in *Budget* are not applicable in this case. Unlike the *Budget* lease, in this case, the ROFRs make clear that the parties intended the ROFR continue through any extensions of the Leases or overholding. There was no analogous language in *Budget* lease.

We look forward to hearing from you with respect to the particulars of the Liquidator's proposed motion and the additional information requested above.

Yours truly,

McCarthy Tétrault LLP

Per:



Sam Rogers
SR/

ec. Morgan Watkins, **McCarthy Tétrault LLP**

³ *Budget Car Rentals Toronto Ltd. v. Petro-Canada-Inc.*, [\[1989\] O.J. No. 1362](#) (Ont. C.A.).

Demised Premises so expropriated bears to the whole of the Demised Premises;

- (c) the Tenant shall receive all compensation payable for the said improvements placed on the Demised Premises at its own cost which shall include but not be limited to, any building or buildings (excluding the main building on the Demised Premises at the date hereof) and the aforesaid Tenant's Equipment and costs incurred in the removal and reinstallation thereof; and

- (d) for the purposes of this Clause 13, the words "Demised Premises" shall mean not only the land and building constructed thereon but also the aforesaid Tenant's Equipment. It is understood and agreed that the Tenant shall be entitled to receive the compensation awarded in respect of the latter. *see 13. e) + f) below

CLAUSE 14 - INTENTIONALLY DELETED

15. RIGHT OF FIRST REFUSAL - IF AT ANY TIME during the Term or extension term of this Lease, or any overholding as hereinafter provided, the Landlord receives a bona fide offer to purchase or to lease the Demised Premises either alone or with other lands or any portion or portions thereof, which the Landlord is ready and willing to accept, or makes a bona fide offer to sell or to lease the Demised Premises, or gives a bona fide option to purchase or to lease same, which is accepted by the optionee, the Landlord shall forthwith deliver to the Tenant a copy of such offer or option and the Tenant shall have the right, to be exercised by written notice to the Landlord within thirty (30) days of receipt of notice from the Landlord together with a full copy of the aforesaid bona fide offer, as the case may be, to purchase the Demised Premises pursuant to the terms of such offer or option as the case may be, at a price and on the terms as specified in such offer or option subject, however, as hereinafter provided. The agreement of purchase and sale, as the case may be, constituted by the exercise by the Tenant of its rights herein shall be subject to compliance at the Landlord's expense with Section 49 of the Planning Act, R.S.O. 1980, Chapter 379, or any successor section. In the event that the time during which the Tenant may exercise its rights contained herein to meet any offer or option to purchase as hereinbefore provided equals or exceeds twenty-one (21) years, this right shall terminate twenty-one (21) years less one day from the date hereof.

Provided however, that in the event the Tenant exercises such right of first refusal, the last date for examining title to the Demised Premises and submitting requisitions as to same shall be the later of (a) the date or time specified in such option or offer to purchase; (b) the date which is thirty (30) days from the date of exercise of the aforesaid right. Provided further, that in the event the Tenant exercises such right of first refusal, the closing date of the transaction arising therefrom shall be the later of (a) the date or time specified in such option or offer to purchase; (b) the date which is forty-five (45) days from the date of exercise of the aforesaid right.

In the event that the Tenant does not exercise his right as aforesaid, the Landlord shall be at liberty to sell or to lease the Demised Premises upon the terms and conditions set forth in the said offer or option but any sale of the Demised Premises shall be subject to the terms and conditions of this Lease including this right of first refusal which shall continue against the new owner.

If the Demised Premises or any part thereof are not transferred pursuant to the terms of the said offer or option, the Landlord shall be obliged to submit any further offers or options to the Tenant by giving written notice thereof to the Tenant in the manner herein provided.

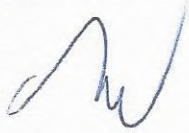
The foregoing right of first refusal shall be deemed to extend to and include any voluntary disposition of the Demised Premises or any part thereof by the Landlord to any third party.

16. OVERHOLDING - It is agreed between the parties hereto that should the Tenant remain in possession of the said Demised Premises after termination of the said Term or any extension thereof without other special agreement, a tenancy from year to year shall not be created by implication of law, but the Tenant shall be deemed to be a monthly tenant only at a monthly rental equivalent to one-twelfth (1/12th) of the annual rental payable during the

13. e) The Tenant shall, when requested by the Landlord and/or the expropriating authority, provide a Surrender of Lease over any part or parts of the Demised Premises expropriated or otherwise taken by virtue of the exercise of the right of eminent domain or by paramount authority at such time as that part or parts of the Demised Premises is so expropriated. and

SCHEDULE "A"

Part of Lot 10, Concession 5, W.H.S., in the City of Brampton, in the Regional Municipality of Peel (formerly in the Township of Chinguacousy, County of Peel) being designated as Parts 1 and 2 on a Plan of Reference deposited in the Land Registry Office for the Registry Division of Peel as Number 43R-16796.

A handwritten signature in blue ink, appearing to be a stylized 'M' or 'W' with a flourish.

SCHEDULE "A-1"

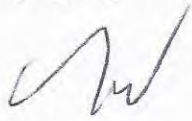
The north half of the east half of Lot 10, Concession 5, West of Hurontario Street and the south half of the east half of Lot 10, Concession 5, West of Hurontario Street, in the City of Brampton, in the Regional Municipality of Peel containing by admeasurement one hundred acres more or less.

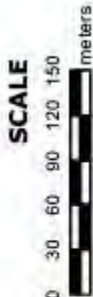
SAVE AND EXCEPT that portion of the said lands expropriated by the Department of Highways of Ontario for road widening purposes as described in Instrument registered in the said Registry Office as No. 24802 and amended by Instrument No. 27654;

AND FURTHER SAVE AND EXCEPT thereout and therefrom that portion of the said lands expropriated by the Department of Highways of Ontario for road widening purposes as described in Instrument registered in the said Registry office as No. 26936;

AND FURTHER SAVING AND EXCEPTING thereout and therefrom that portion of the said lands conveyed to the Corporation of the County of Peel for road widening purposes more particularly described in Instrument Numbers 2570VS and 2571VS both of Chinguacousy.

AND FURTHER SAVING AND EXCEPTING thereout and therefrom that portion of the said lands conveyed to The Regional Municipality of Peel for road widening purposes being Part 3 on Reference Plan 43R-16796.





PROPERTY INDEX MAP
PEEL(No. 43)

- LEGEND**
- FREEHOLD PROPERTY
 - LEASEHOLD PROPERTY
 - LIMITED INTEREST PROPERTY
 - CONDOMINIUM PROPERTY
 - RETIRED PIN (MAP UPDATE PENDING)
 - PROPERTY NUMBER
 - BLOCK NUMBER
 - GEOGRAPHIC FABRIC
 - EASEMENT

THIS IS NOT A PLAN OF SURVEY

NOTES

REVIEW THE TITLE RECORDS FOR COMPLETE
PROPERTY INFORMATION AS THIS MAP MAY
NOT REFLECT RECENT REGISTRATIONS

THIS MAP WAS COMPILED FROM PLANS AND
DOCUMENTS RECORDED IN THE LAND
REGISTRATION SYSTEM AND HAS BEEN PREPARED
FOR PROPERTY INDEXING PURPOSES ONLY

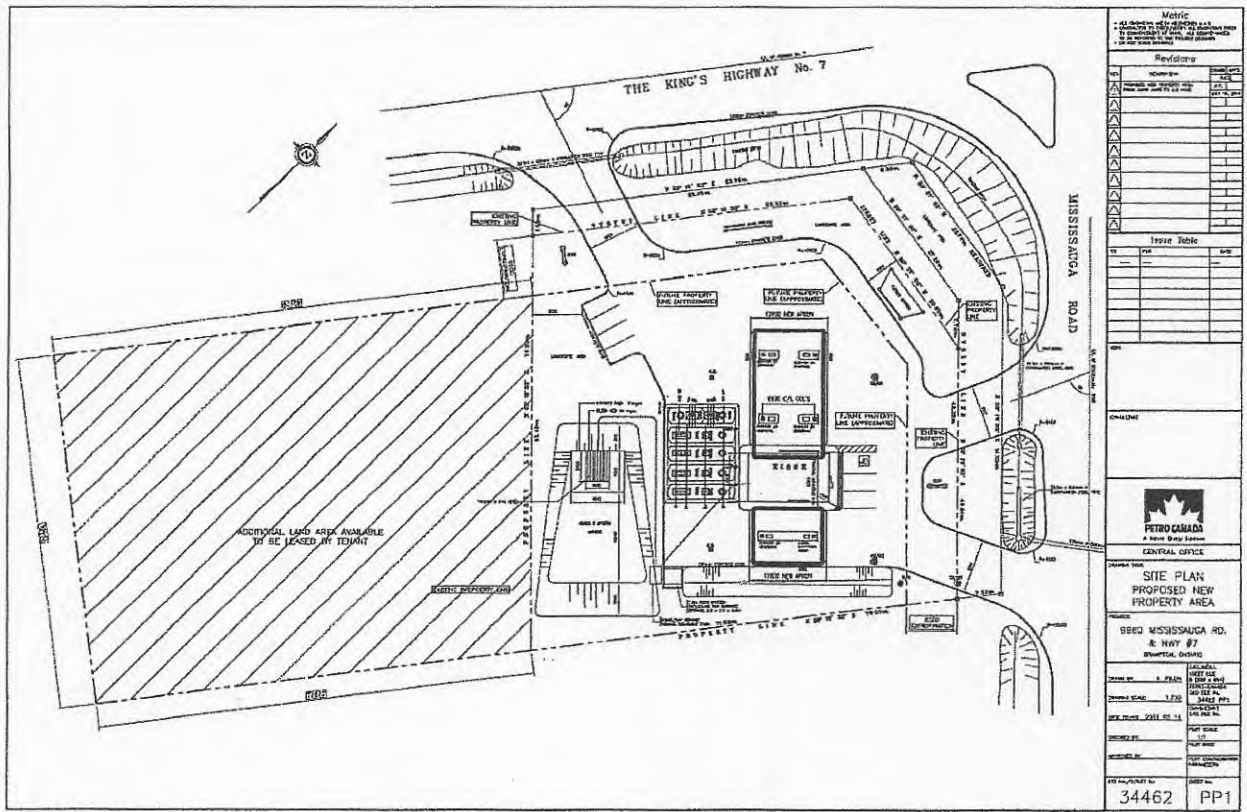
FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE
RECORDED PLANS AND DOCUMENTS

ONLY MAJOR EASEMENTS ARE SHOWN

REFERENCE PLANS UNDERLYING MORE RECENT
REFERENCE PLANS ARE NOT ILLUSTRATED



SCHEDULE "A"
AVAILABLE EXPANSION LANDS



[Handwritten signature]

PLAN OF SURVEY OF PART OF
LOT 10, CONCESSION 5 WEST OF HURONTARIO STREET
TOWNSHIP OF CHINGUACOUSY
COUNTY OF PEEL, NOW IN THE
CITY OF BRAMPTON
REGIONAL MUNICIPALITY OF PEEL

SCALE 1:250
BRYAN T. DAVIES O.L.S. 1989

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

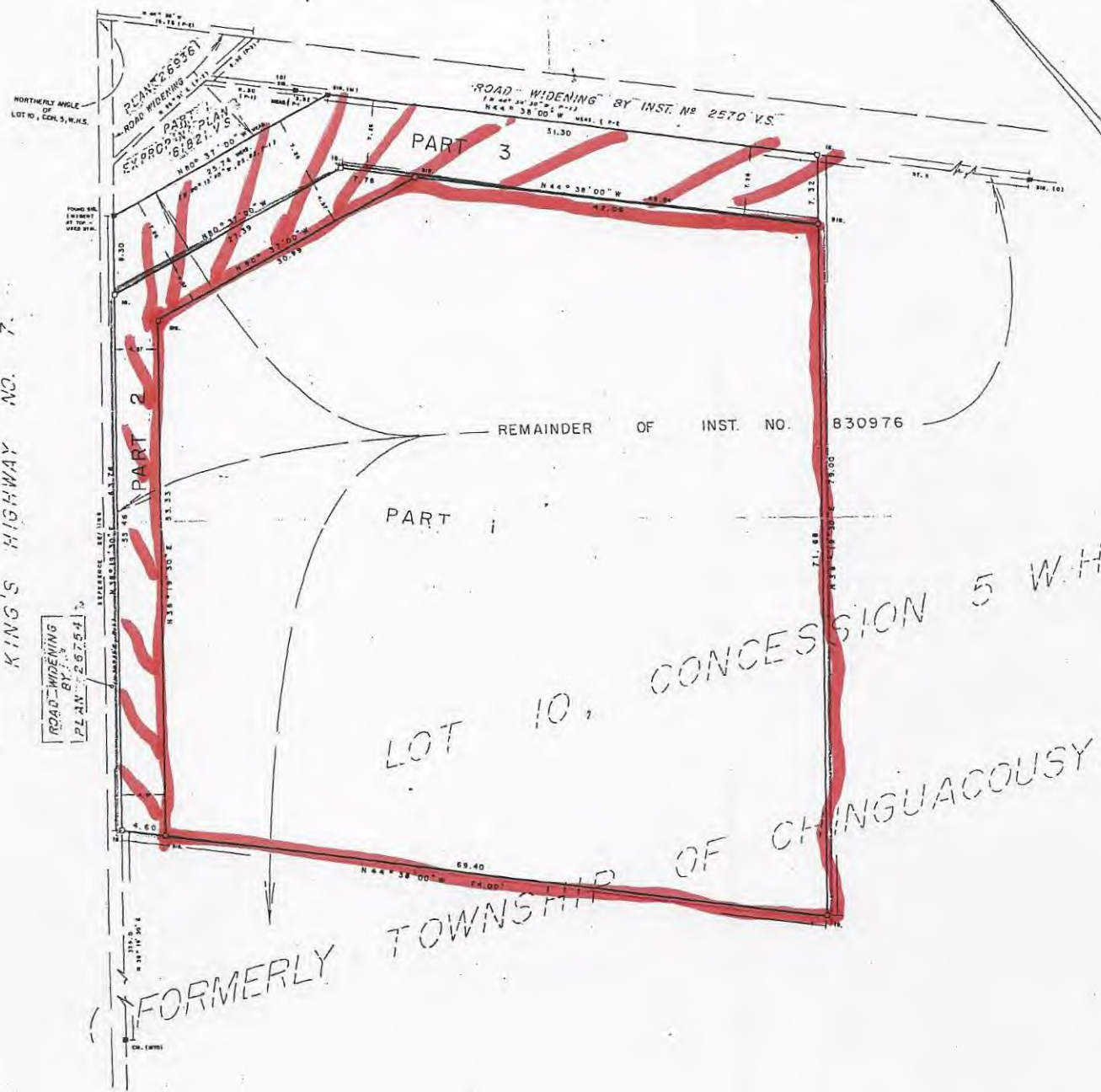
PLAN 43R-16796

RECEIVED AND DEPOSITED
DATE 24 APRIL 1989
BRYAN T. DAVIES
ONTARIO LAND SURVEYOR

PART	DESCRIPTION	INST. NO.	AREA
1	Part of Lot 10, Concession 5, W.H.S.	830976 (Rem.)	4687.3 m ²
2			382.1 -
3			560.4 -

I REQUIRE THIS PLAN TO BE DEPOSITED
UNDER THE REGISTRY ACT.
DATE 24 APRIL 1989
BRYAN T. DAVIES
ONTARIO LAND SURVEYOR

ROAD ALLOWANCE BETWEEN CONCESSIONS 4 & 5 W.H.S.
MISSISSAUGA ROAD



NOTES
BEARINGS ARE ASTROMONIC IN ORIGIN AND ARE
REFERRED TO THE SOUTHEASTERLY LIMIT OF KING'S
HIGHWAY No. 7 AS WIDENED BY PLAN REGISTERED AS
INST. NO. 26754 AND SHOWN THEREON AS N 38° 19' 30" E.
(D) REFERS TO DEATH, McLEAN & McMURCHY O.L.S.
(M) REFERS TO McLEAN, McMURCHY & BISHOP O.L.S.

LEGEND
—○— DENOTES SURVEY MONUMENT FOUND
—○— " " " " SET
SB. " " " " STANDARD IRON BAR
IB. " " " " IRON BAR
CM. " " " " CONCRETE MONUMENT
MEAS. " " " " MEASURED
P-1 " " " " PLAN REGISTERED AS INST. 81821VS
P-2 " " " " PLAN ATTACHED TO INST. 2570VS
W.H.S. " " " " WEST OF HURONTARIO STREET

SURVEYOR'S CERTIFICATE
I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN
ACCORDANCE WITH THE SURVEYS ACT AND THE
REGISTRY ACT AND THE REGULATIONS MADE
THEREUNDER.
2. THIS SURVEY WAS COMPLETED ON THE 17th
DAY OF APRIL 1989.
DATE 24 APRIL 1989
BRYAN T. DAVIES
ONTARIO LAND SURVEYOR

HORTON, WALLACE & DAVIES LTD.
ONTARIO LAND SURVEYORS
306 DUNDAS STREET W., WHITBY
416-888-8883
TORONTO, ONT. M9B 1S9
OTHER OFFICES IN BOWMANVILLE, COBourg AND TRENTON, ONT.

PROJECT No. 17634

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

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

Proceeding commenced at Toronto

**MOTION RECORD
(Returnable September 12, 2023)**

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Lawyers for the Liquidator