

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

**RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC.,
RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN PROPERTY
SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN
FINANCIAL SERVICES LIMITED**

Applicants

and

**2455034 ONTARIO LIMITED PARTNERSHIP, 2455034 ONTARIO INC.,
2491815 ONTARIO LIMITED PARTNERSHIP, 2491815 ONTARIO INC., 2491816
ONTARIO LIMITED PARTNERSHIP, 2491816 ONTARIO INC., 2681842
ONTARIO LIMITED PARTNERSHIP, 2681845 ONTARIO INC., and 2681842
ONTARIO INC**

Respondents

In the matter of an Application under Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended; and Section 101 of the Courts of Justice Act, R.S.O. 1990, C. C.43, as amended

FACTUM OF OXFORD PROPERTIES GROUP

January 9, 2026

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PART I - OVERVIEW

1. The Receiver's motion to impose a 50-year Proposed Sublease of 300,000 square foot Premises upon the landlord ("**Oxford**") of Canada's pre-eminent shopping centre in favour of Fairweather Ltd. ("**Fairweather**") should be dismissed. Fairweather is a discount retail apparel operator proposing to re-launch a largely dormant Quebec brand, *Les Ailes de la Mode*, under a new and untested moniker, *Ailes*. The Receiver seeks to impose the Proposed Sublease and maintain the Head Lease for a hypothetical future Alternative Transaction.

2. Apart from an issue as to the Receiver's capacity to enter into the Proposed Sublease,¹ the Receiver can have no greater right to sublet² the Premises than the Tenant itself.

3. The Head Lease requires the Receiver to deliver an agreement by Fairweather in favour of Oxford to assume and perform all obligations under the Head Lease. It is common ground that no such agreement was delivered. The Proposed Sublease creates the opposite effect, by purporting to insulate Fairweather from any direct obligation to Oxford. Oxford is expressly deemed **not to be unreasonable** in withholding its consent and may **arbitrarily** withhold its consent to the Proposed Sublease in these circumstances.³

4. Separately, under the Head Lease, Oxford's consent to the Proposed Sublease is not to be unreasonably withheld **so long as** Fairweather is: (a) creditworthy; (b) a suitable replacement

¹ The Receiver was appointed over JV entities including a limited partnership that does not hold any leasehold interest, but has a right to instruct the Tenant on behalf of the relevant JV entity. See: Receivership Order at [para 5\(i\)](#) – Appendix "A" to the Fifth Report of the Receiver dated October 11, 2025 (the "**Fifth Report**"), Motion Record ("**MR**"), Tab 2A.

² A sublease is included in the definition of "Transfer" under the Head Lease. See: [Definition of "Transfer"](#) in the Head Lease – Exhibit "D" to the Affidavit of Nadia Corrado sworn November 13, 2025 ("**First Corrado Affidavit**"), Responding Motion Record ("**RMR**"), Vol 1, Tab 1D. Relevant extracts of the Head Lease are attached at Schedule "C" to this Factum.

³ Head Lease at [s. 21.02](#) – Exhibit "D" to the First Corrado Affidavit, RMR, Vol 1, Tab 1D; *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**") at [s. 146](#); *Commercial Tenancies Act*, RSO 1990, c L7 ("**CTA**") at [s. 23\(1\)](#).

tenant; *and* (c) sufficiently experienced and competent in operating the type of store required by the Head Lease. Oxford is entitled to withhold its consent when any of these requirements is not met. The Receiver's failure to prove that Fairweather meets these requirements is fatal.

5. Any deference that may be shown to a receiver does not alter the Receiver's evidentiary burden. The Receiver filed no direct evidence from Fairweather and refused to provide any Fairweather or *Ailes*-related business plan, financial information, strategy or ordinary course information expected when a (sub)tenancy of this magnitude is sought.

6. Finally, the Receiver's failure to meet the *Soundair* test is alone grounds for dismissal.⁴

(a) the Proposed Sublease amounts to a **negative** realization. No consideration is being paid to the receivership estate. Rent payable under the Proposed Sublease is approximately 36% of the rent payable to Oxford under the Head Lease. The estate is subsidizing Fairweather, and the imaginary value ascribed to the Head Lease does not make the improvident Proposed Sublease provident;

(b) there was no marketing by the Receiver. Any "marketing" was undertaken by an affiliate of RioCan who, in a conflict of interest and pursuant to an undisclosed agreement with the Receiver, solicited Fairweather as an "occupier" for the Premises without addressing the Head Lease; and

(c) the Receiver wholly disregarded Oxford's substantive interests, failed to undertake its mandate to consult with Oxford, and seeks to ignore or amend the terms of the Head Lease.⁵

⁴ *Royal Bank v Soundair Corp*, 1991 CarswellOnt 205 (CA) [*Soundair*], Book of Authorities ("BOA"), Tab 1.

⁵ Proposed Sublease at s. 13(d) – Appendix "I" to the Fifth Report, MR, Tab 2I.

PART II - BACKGROUND FACTS

A. Yorkdale and the Premises

7. Yorkdale Shopping Centre (“**Yorkdale**”) is the most financially successful shopping centre in Canada and consistently tops the list of Canada’s best malls by a significant margin.⁶ Oxford has invested approximately \$1 billion over the past 15 years alone at Yorkdale.⁷

8. Oxford leased anchor tenant premises of approximately 300,000 square feet⁸ (the “**Premises**”) at Yorkdale to Hudson’s Bay Company ULC (“**HBC**”) pursuant to a Lease Agreement dated September 26, 2002 (as amended, the “**Head Lease**”).⁹ The Head Lease was executed when Oxford purchased from HBC the HBC Lands under which the Premises are situated.¹⁰ The Premises are the largest and most prominent retail space at Yorkdale, being nearly three times larger than the next largest retail space at Yorkdale and prominently visible from major Toronto thoroughfares.¹¹ The parties to the Head Lease are sophisticated commercial parties.

9. Anchor tenants assist overall mall stability and traffic and attract other desirable retail tenants such that a change in the business of an anchor tenant can cause a negative ripple effect on other retail tenancies within the shopping mall.¹² The size of an anchor tenant’s unit plays a factor in the shopping centre’s success, as the negative effect of an unsuitable anchor tenant is

⁶ First Corrado Affidavit at [paras 13-16](#), [59](#) and [Exhibit “B”](#), RMR, Vol 1, Tab 1 and 1B.

⁷ First Corrado Affidavit at [paras 17-18](#), RMR, Vol 1, Tab 1.

⁸ First Corrado Affidavit at [para 28](#), RMR, Vol 1, Tab 1.

⁹ Head Lease – [Exhibit “D”](#) to the First Corrado Affidavit, RMR, Vol 1, Tab 1D. Contrary to various references in the Receiver’s Factum and RioCan’s Factum, the tenant is not the JV entity or YSS 1. It is HBC.

¹⁰ Definition of “[Purchase Agreement](#)” and “[HBC Lands](#)” in the Head Lease – [Exhibit “D”](#) to the First Corrado Affidavit, RMR, Vol 1, Tab 1D.

¹¹ First Corrado Affidavit at [paras 8](#), [28](#) and [70](#), RMR, Vol 1, Tab 1.

¹² *In Re Hudson’s Bay Company*, 2025 ONSC 5998 [at para 98\(p\)](#) [HBC].

compounded.¹³ It can deter prospective tenants and diminish the overall performance and value of the shopping centre.¹⁴

B. The Tenancy under the Head Lease

10. In 2015, HBC assigned its tenancy under the Head Lease to itself as general partner (in that capacity, the “**Tenant**”) of HBC YSS 1 Limited Partnership (“**YSS 1**”).¹⁵ RioCan Real Estate Investment Trust (“**RioCan**”) holds an indirect 22% equity interest in YSS 1. HBC holds the remaining equity interest in YSS 1.¹⁶ Despite the Receiver’s characterization of RioCan as a “primary creditor”¹⁷ in respect of the Premises at Yorkdale, RioCan is fundamentally an equity holder of an insolvent entity.¹⁸ In recently “acquiring a \$75 million loan” made by Royal Bank of Canada (“**RBC**”), RioCan asserts itself as a secured creditor by virtue of paying the *debt it already owed to RBC* as guarantor of that loan, for which it was granted security by the HBC JV on other properties – and specifically not the Premises.¹⁹ That transaction does not leapfrog RioCan’s interests ahead of Oxford’s in any evaluation of the parties’ interests.

11. At the same time HBC assigned its interest in the Head Lease to itself as the Tenant, the Tenant subleased the Premises to HBC pursuant to a Sublease dated November 25, 2015 (the “**HBC Sublease**”).²⁰ The HBC Sublease has not been disclaimed.

¹³ Cross-examination of James Tate (“**Tate Cross**”) at [p7, Q11-12](#), Cross Brief, Vol 3, Tab 4. See also the Expert Report of Scott Lee dated November 13, 2025 (the “**Lee Report**”), at [q3](#), RMR, Vol 3, Tab 3A.

¹⁴ Lee Report at [q4](#), RMR, Vol 3, Tab 3A.

¹⁵ Affidavit of Dennis Blasutti sworn October 12, 2025 (“**Blasutti Affidavit**”) at [para 25](#), RioCan Record (“**RR**”), Tab 1. The order permitting an assignment in [HBC v OMERS, 2015 ONSC 4671](#) and [Hudson’s Bay Company v OMERS Realty Corporation, 2016 ONCA 113](#) referenced at footnotes 5 to 7 of the Receiver’s Factum and [footnote 5](#) of RioCan’s Factum was based on a finding that HBC remained the tenant under the Head Lease in all respects, therefore it was an assignment to an “Affiliated Corporation” not requiring landlord consent. It has no bearing on this motion.

¹⁶ Affidavit of Dennis Blasutti sworn May 29, 2025 (the “**Receivership Affidavit**”) at [para 5](#) – Exhibit “E” to the Blasutti Affidavit, RR, Tab 1.

¹⁷ Receiver’s Factum at para 4.

¹⁸ RioCan’s Q3 Report to Unitholders (“**Q3 Report**”) at [note \(v\) at the top of p 34](#) – Exhibit “1” to the Cross-examination of Dennis Blasutti (“**Blasutti Cross**”), Cross Brief, Vol 1, Tab 3.

¹⁹ Q3 Report at [para 4 of p 35](#) – Exhibit “1” to the Blasutti Cross, Cross Brief, Vol 1, Tab 3.

²⁰ HBC Sublease – [Appendix “F”](#) to the Fifth Report, MR, Tab 2F.

C. Insolvency Proceedings Involving the Premises

12. The Head Lease was marketed pursuant to a Lease Monetization Process Order in the CCAA Proceeding,²¹ which provided that disclaimers would be issued by July 15, 2025 for all leases not subject to a Successful Bid.²² No bids were received in respect of the Premises.²³

13. The value of a lease is determined by what the market is willing to pay in an open market, and on that basis, the value of the Head Lease is nil. Any “value” that RioCan ascribes to the Head Lease for internal accounting purposes or from a hypothetical Alternative Transaction is not “value” the Court should recognize.²⁴

14. On RioCan’s application, the Receiver was appointed on June 3, 2025 (the “**Receivership Order**”) in respect of the assets and properties of various JV entities. The Receiver was not appointed over the Tenant under the Head Lease, but rather, the JV entities’ interest.²⁵ The receivership was “a companion proceeding” and intersects with the CCAA Proceeding.²⁶

²¹ As part of the CCAA Proceeding, various joint venture entities including YSS 1 were granted protection in the form of a third-party stay pursuant to the Initial Order.

²² [Section 26](#) of the Lease Monetization Process attached as Schedule “A” to the Lease Monetization Order – Appendix “O” to the Fifth Report, MR, Tab 2O.

²³ Receivership Affidavit at paras [6](#), [10-11](#), [15](#) – Exhibit “E” to the Blasutti Affidavit, RR, Tab 1E; Receiver’s Factum at para 21.

²⁴ Of the 96 leases monetized in the CCAA Proceeding and receivership, only a handful were subject to completed transactions, none generated proceeds over \$2.1 million per location, and some were negligible. References by the Receiver to other insolvency proceedings decades ago where landlords may have voluntarily participated in a formal court-supervised process to acquire locations is irrelevant to the value of the Head Lease in this proceeding.

²⁵ Receivership Order at the first recital, [para 3](#) and [Part III](#) of Schedule “A” – Appendix “A” to the Fifth Report, MR, Tab 2A. The Receiver was only appointed in respect of the lessee’s interest in the Head Lease – not the landlord’s interest. *See also*: [para 9\(a\)](#) of the Receivership Order which makes clear that Charges apply only to the JV Entities’ interests in the Leasehold Interests and are not a charge on the applicable landlord’s interests in the Leasehold Interests or on the Leasehold Properties (as each are defined).

²⁶ *RioCan Real Estate Investment Trust et al v RioCan-HBC Limited Partnership et al.*, (June 3, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne) at paras 10, 42, BOA, Tab 2.

i. The Receiver improperly delegated the marketing of the Head Lease to RioCan

15. On the same date as the Receivership Order, the Receiver and a RioCan affiliate entered into a Management Services Agreement (the “MSA”) pursuant to which RioCan would attempt to locate tenants for the Premises.²⁷ The MSA was not disclosed to the Court or Oxford. Its existence was revealed only on cross-examination in this motion.²⁸ Three full pages containing the financial terms relating to RioCan’s compensation under the MSA were redacted and remain secret.²⁹

16. The Premises were not broadly marketed.³⁰ Contrary to paragraph 26 of the Receiver’s Factum, RioCan did not “assist” the marketing process involving the Premises - RioCan ran the process.³¹ RioCan admits it learned that Fairweather was interested in the Premises before the Receiver was appointed. After the Receiver’s appointment, RioCan contacted Fairweather’s long-time real estate broker, Oberfeld, regarding the Premises.³²

17. RioCan unabashedly told Oxford that it should pay \$100 million for a surrender or termination of the Head Lease and two other Oxford leases, without any legal basis whatsoever.³³ The other two Oxford leases were terminated by the Receiver. The Receiver and RioCan suggest that Oxford might still offer a sufficient amount to “recover the Premises”.³⁴

18. Oxford is under no obligation to pay anything arising from its tenant’s default. Further, it was also expressly acknowledged by the parties at the time of entering into the Head Lease that

²⁷ Receiver’s Answers to Written Interrogatories (“Receiver’s Answers”) at [q11](#), RMR, Vol 3, Tab 5A. See also Blasutti Cross at p10-11, [Q27-31](#), Cross Brief, Vol 1, Tab 3.

²⁸ Blasutti Cross at p15, [Q51](#), Cross Brief, Vol 1, Tab 1.

²⁹ [Schedule “C”](#) of the MSA, Blasutti Cross, Cross Brief, Vol 1, Tab 3B.

³⁰ Fifth Report at [para 24](#), MR, Tab 2.

³¹ Receiver’s Answers at [q11-17](#), RMR, Vol 3, Tab 5A.

³² Blasutti Cross at p14-15, [Q43-50](#), Cross Brief, Vol 1, Tab 3. The reference at para 25 of the Receiver’s Factum to “discussions with Oberfeld Snowcap Inc. (a real estate broker)” fail to state that it was Fairweather’s broker.

³³ Blasutti Cross at p36-38, [Q140-146](#), Cross Brief, Vol 1, Tab 3.

³⁴ Receiver’s Factum at para 89; RioCan Factum at [para 87](#).

Oxford already paid HBC “adequate valuable consideration” when the HBC Lands on which the Premises are located were purchased from HBC, and included in the rental terms, HBC agreed that upon the Tenant’s default and any early termination or disclaimer of the Head Lease, the Premises would be conveyed to Oxford for no further consideration.³⁵

19. Contrary to paragraphs 50 and 52 of RioCan’s Factum, in no event does Oxford receive a “windfall” through a disclaimer of the Head Lease. It is RioCan who seeks a windfall through its improper attempt to extract a payment from Oxford and effectively shift to Oxford the burden of repaying RioCan’s \$75 million guarantee to RBC. Any “windfall” relating to the Head Lease is RioCan’s. While Oxford was receiving \$2.8 million per year in rent under the Head Lease, RioCan benefited by the JV receiving over \$13 million per year in rent under the HBC Sublease.³⁶

ii. The Proposed Sublease

20. The Receiver and Fairweather entered the Proposed Sublease on August 12, 2025 for the purpose of operating a *Les Ailes de la Mode* brand store.³⁷ If the Proposed Sublease is terminated before the end of its 50-year term in favour of an “Alternate Transaction”, Fairweather is to receive up to 50% of the total consideration paid in connection with that Alternative Transaction.³⁸

21. Oxford was never consulted regarding the Proposed Sublease and its consent to the Proposed Sublease was not sought.³⁹ The Receiver refused to provide a copy of the Proposed Sublease to Oxford until directed to do so at a case conference, and advised the Court at that time that a motion would be scheduled — prior to any disclosure, discussion or request for consent.⁴⁰

³⁵ Head Lease at [s.25.13](#) – Exhibit “D” to the First Corrado Affidavit, RMR, Vol 1, Tab 1D.

³⁶ First Corrado Affidavit at paras [23](#), [26](#), RMR, Vol 1, Tab 1.

³⁷ Proposed Sublease at [s. 10\(vi\)](#) – Appendix “I” to the Fifth Report, MR, Tab 2I.

³⁸ Proposed Sublease at [s. 13\(a\)](#) – Appendix “I” to the Fifth Report, MR, Tab 2I.

³⁹ First Corrado Affidavit at [para 67](#), RMR, Vol 1, Tab 1.

⁴⁰ *RioCan Real Estate Investment Trust et al. v RioCan-HBC Limited Partnership et al.*, (August 19, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne) (“**August 19**

22. No business plan for the proposed *Ailes* brand store exists. The Receiver’s description of “Fairweather’s plan for the *Ailes* stores” at paragraphs 32-34 of its Factum is based entirely on hearsay advice contained in the affidavit of RioCan’s Chief Financial Officer.

23. Oxford made information requests of the Receiver in respect of the Proposed Sublease on September 3, 2025⁴¹ and followed up on September 15, 2025.⁴² Those questions were ordinary course for any prospective anchor tenant, particularly one seeking to utilize 300,000 square feet in a long-term lease or sublease, and directly relevant to the terms of the Head Lease.⁴³

24. On October 1, 2025, without responding to Oxford’s information requests or seeking Oxford’s consent to the Proposed Sublease, the Receiver stated that it understood “there is no consensual resolution” regarding the Proposed Sublease, the Court’s intervention would be required, and it would “address the appropriate information in its [court] materials.”⁴⁴ A letter followed, threatening costs against Oxford if it opposed the Proposed Sublease.⁴⁵

PART III - ISSUES & ARGUMENT

25. The sole issue on this motion is whether this Court should approve the Proposed Sublease. It should not.

Endorsement) at paras [11](#) and [14](#) – Exhibit “I” to the Affidavit of Corrina Macdonald sworn November 13, 2025 (“**Macdonald Affidavit**”), RMR, Vol 2, Tab 2I.

⁴¹ September 3, 2025, letter (erroneously dated September 4, 2025) (the “**September 3rd Letter**”) – [Appendix “K”](#) to the Fifth Report, MR, Tab 2K.

⁴² September 15, 2025 email – [Exhibit “F”](#) to the Macdonald Affidavit, RMR, Vol 2, Tab 2F.

⁴³ Affidavit of Nadia Corrado sworn November 28, 2025 (the “**Sur-Reply Affidavit**”) at [para 5](#), Sur-Reply Motion Record (“**Sur-Reply MR**”), Tab 1

⁴⁴ October 1, 2025, email – [Appendix “L”](#) to the Fifth Report, MR, Tab 2L.

⁴⁵ October 9, 2025 letter from the Receiver – [Appendix “N”](#) to the Fifth Report, MR, Tab 2N; October 17, 2025 letter from TGF – [Exhibit “G”](#) to the Macdonald Affidavit, RMR, Vol 2, Tab2G.

A. Receiver's Burden

26. The Receiver must “meet its burden of proof to the requisite standard for each application that it brings” and must “provide the evidentiary basis to support the relief” it seeks.⁴⁶ In determining whether the Receiver has met its burden, the Court will weigh the Receiver’s evidence. The Court may give evidence in a receiver’s report no weight at all.⁴⁷

27. Any deference that may be shown to a receiver’s business judgment does not turn a motion for approval of a transaction into a rubber-stamping exercise or elevate the weight to be afforded to alleged facts in a receiver’s report. If a receiver seeks relief, “sufficient evidence has to be put before the court”.⁴⁸ As Osborne, J [as he then was] recently held, best practice is for a receiver to include direct evidence from the parties or, at a minimum, explain why none is available.⁴⁹

28. The Receiver’s and RioCan’s mischaracterization and misstatements of Oxford’s evidence does not detract from the Receiver’s fundamental failure to meet its burden with any direct evidence of its own and their reliance on information admitted on cross-examination to be false. Oxford’s evidence does not reflect any change in position. It was properly responsive to new information and further materials from RioCan and the Receiver that were determined by the Court in a prior Endorsement to constitute improper reply.⁵⁰

B. The Receiver Has Established No Right to Sublet under the Head Lease

29. The Receiver has failed to demonstrate that Oxford has unreasonably withheld its consent to the Proposed Sublease, in circumstances where Oxford’s consent was never sought. The

⁴⁶ *Jaycap Financial Ltd v Snowdon Block Inc*, 2019 ABCA 47 at paras 28 and 29 [*Jaycap*].

⁴⁷ *Farber v Goldfinger*, 2011 ONSC 2044 at para 38; *Luigi Martellacci, Re*, 2014 ONSC 5188 at para 23.

⁴⁸ *The Toronto Dominion Bank v Canadian Starter Drives Inc*, 2011 ONSC 8004 at para 10 [*Canadian Starter*].

⁴⁹ *Royal Bank of Canada v Chesswood Group Ltd et al*, 2025 ONSC 1577 at para 24.

⁵⁰ *In the matter of RioCan Real Estate Investment Trust*, (November 25, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne) at para 10, BOA, Tab 4.

Receiver makes the bald statement that it sought the consent of Oxford at paragraph 35 of its Factum, and notably cites no evidence for that assertion.⁵¹

30. The Receiver failed to deliver an agreement from Fairweather in favour of Oxford wherein Fairweather agrees to assume and perform each of the covenants, obligations and agreements of the Tenant under the Head Lease, as required by the Head Lease. The parties agreed that the absence of such agreement would deem Oxford's refusal to consent to a transaction to not be unreasonable, and permit it to arbitrarily withhold such consent, notwithstanding anything contained in any legislation, law or statute.⁵²

31. Under s. 21.00 of the Head Lease, Oxford may not unreasonably withhold its consent to the Proposed Sublease **so long as** Fairweather is: (i) creditworthy; (ii) a suitable replacement tenant; and (iii) sufficiently experienced and competent in operating a business of the type required to be operated in the Tenant Department Store (that is, a "single integrated traditional retail department store" by reference to the type of store operated by The Bay, Sears, Nordstrom, Macey's and Bloomingdales, as specifically agreed by the parties).⁵³ The Receiver has failed to demonstrate that Fairweather meets any of these criteria.

i. Fairweather is not Creditworthy

32. The Receiver has adduced no direct evidence of Fairweather's creditworthiness.⁵⁴ The Receiver relies on hearsay from RioCan and its "own independent investigation",⁵⁵ comprised of: (a) more hearsay from RioCan; (b) hearsay discussions with Fairweather's counsel; and (c)

⁵¹ Receiver's Factum at para 35.

⁵² Head Lease at [section 21.02](#) – Exhibit "D" to the Corrado Affidavit, RMR, Vol 1, Tab 1D.

⁵³ Head Lease at [article 6.00](#) – Exhibit "D" to the Corrado Affidavit, RMR, Vol 1, Tab 1D.

⁵⁴ September 3rd Letter – [Appendix "K"](#) to the Fifth Report, MR, Tab 2K.

⁵⁵ Fifth Report at [para 40](#), MR, Tab 2.

“publicly available information” such as news articles and Fairweather’s website.⁵⁶ The Receiver has failed to file fundamental evidence of Fairweather’s creditworthiness, such as audited financial statements, credit checks, banking details and financial details to support the capitalization of the business to be operated from the Premises, together with the corporate and financial organization and ownership of the various entities purportedly operating under “Fairweather” that are referenced in connection with its experience. The Receiver offers no explanation for its failure to lead direct evidence from Fairweather. The Receiver’s bald hearsay statements as to Fairweather’s creditworthiness should be given no weight.

33. The direct evidence adduced by Oxford and admissions made by RioCan support the conclusion that Fairweather is not creditworthy. On cross-examination, RioCan’s deponent conceded that, contrary to paragraph 65 of his affidavit, it is not true that “Fairweather has consistently performed its obligations under its leases with RioCan and has never defaulted on any of its leases.”⁵⁷ RioCan has been involved in litigation against Fairweather and its brands at least twice.⁵⁸ Those proceedings reveal that Fairweather defaulted under multiple leases with RioCan.⁵⁹

34. Contrary to paragraph 49 of the Receiver’s Factum, documents produced by RioCan following cross-examination demonstrate that in 2019 and 2020 alone, Fairweather defaulted in rent payments to RioCan at 12 different locations, involving an aggregate of 69 months of late or unpaid rent totaling \$240,484.61.⁶⁰ By the following year, additional defaults brought the

⁵⁶ Receiver’s Answers at [q15](#), RMR, Vol 3, Tab 5A.

⁵⁷ Blasutti Cross at p5-6, [Q2](#), Cross Brief, Vol 1, Tab 3.

⁵⁸ Exhibits [“J”](#) and [“K”](#) to the Macdonald Affidavit, RMR, Vol 2, Tab 2J and 2K.

⁵⁹ Notice of Application in *RioCan Holdings Inc et al v International Clothiers Inc et al – Exhibit “J”* to the Macdonald Affidavit, RMR, Vol 2, Tab 2J; Affidavit of Jeff Ross in *Fairweather Ltd v RioCan YEC Holdings Inc* at paras [22-30](#) – Exhibit [“K”](#) to the Macdonald Affidavit, RMR, Vol 2, Tab 2K.

⁶⁰ Statement of Account attached at [Schedule “B” to the October 29, 2020](#) Labels Tanger Cookstown Mall Lease, Cross Brief, Vol 3, Tab 3L.

aggregate total of unpaid rent to \$439,804.⁶¹ Non-payment of rent at premises of less than 10,000 square feet demonstrates a lack of creditworthiness necessary to assume anchor tenant Premises of 300,000 square feet.

35. Oxford does not have evidence that would satisfy it of Fairweather's creditworthiness.⁶² Contrary to RioCan's allegations, Oxford previously had problems with Fairweather paying rent on time and has even had to resort to litigation relating to unpaid rent arrears.⁶³

36. Fairweather's principal, Isaac Benitah, has a history of insolvency proceedings involving several of his retail brands. For example, each of *Les Ailes de la Mode* and *International Clothiers* have undertaken proposal proceedings under the *Bankruptcy and Insolvency Act*.⁶⁴ In each of these prior insolvency proceedings, creditors (including landlords with proven claims in the tens of millions of dollars) were left with dozens of disclaimed leases and no recovery.⁶⁵

37. The Receiver mischaracterizes Oxford's evidence of Fairweather's GROC as "misleading" in circumstances where it has led no evidence of Fairweather's GROC itself. Contrary to paragraph 52(b) of the Receiver's Factum, Oxford's evidence is that a tenant's GROC is representative of the financial health of a tenant.⁶⁶ Contrary to paragraph 52(a) of the Receiver's Factum, Ms. Corrado explained that the perceived discrepancy in the calculation of GROC likely resulted from RioCan's counsel relying on monthly sales figures instead of rolling 12-month sales figures.⁶⁷

⁶¹ Statement of Account attached at [Schedule "C" to the October 26, 2021](#) Labels Tanger Cookstown Mall Lease, Cross Brief, Vol 3, Tab 3L.

⁶² First Corrado Affidavit at [paras 57-58](#), RMR, Vol 1, Tab 1.

⁶³ Sur-Reply Affidavit at [paras 13-14](#), Sur-Reply MR, Tab 1.

⁶⁴ Exhibits "L" and "P" to the Macdonald Affidavit, RMR, Vol 2, Tab 2L and P.

⁶⁵ See: [Trustee Report dated March 11, 2016](#) and [Amended Dividend Sheet](#) in the *Les Ailes de la Mode* BIA proposal proceeding – Exhibit "L" to the Macdonald Affidavit, RMR, Vol 2, Tab 2L; [Form 78 Statement of Affairs](#) and [Report of Trustee dated June 1, 2016](#) in the *International Clothiers* BIA proposal proceeding – Exhibit "P" to the Macdonald Affidavit, RMR, Vol 2, Tab 2P.

⁶⁶ First Corrado Affidavit at [paras 42-43](#), RMR, Vol 1, Tab 1.

⁶⁷ Cross-examination of Nadia Corrado ("**Corrado Cross**") at p72-74, [Q308-312](#), Cross Brief, Vol 1, Tab 1.

ii. Fairweather is not a suitable replacement tenant

38. The proposed *Ailes* store is not a suitable replacement tenant for the Premises. The Head Lease does not define a “suitable replacement tenant”, but this means more than being able to comply with the Head Lease’s use clause. Any other interpretation would render the “suitable replacement tenant” requirement superfluous.⁶⁸ A suitable replacement tenant is one that operates in keeping with the character of the shopping centre and its proposed use.

39. The *Ailes* concept store is entirely speculative, theoretical, and based on hearsay.⁶⁹ There is no actual business plan, concept material or financial plan.⁷⁰ The Receiver states that Fairweather “intends to undertake business at the [Premises] as a department store operator”.⁷¹ The operation of a “department store”, however, is a prohibited use under the Head Lease.⁷²

40. Operators at Yorkdale are first-class retail operators with strong brand and reputation, a seamless experience, relevant and well curated inventory, operational excellence and consistency, an engaging and well-designed store environment and a commitment to the leased premises. Fairweather demonstrates none of these characteristics.⁷³ By contrast, Fairweather invests very little in its stores, with the result that they look and feel temporary and downmarket.⁷⁴ Consistent with this approach, Fairweather intends to invest approximately \$1.60 per square foot in tenant

⁶⁸ *Fairweather Ltd v Riocan YEC Holdings Inc*, 2010 ONSC 6445 [at para 13](#), citing *Elliott v Billings (Township) Board of Education*, 1960 CanLII 155 (ONCA).

⁶⁹ Receiver’s Answers at [q7](#), RMR, Vol 3, Tab 5A.

⁷⁰ First Corrado Affidavit at [para 61](#), RMR, Vol 1, Tab 1.

⁷¹ Fifth Report at [para 44](#), MR, Tab 2.

⁷² Head Lease at [article 6.00](#) – Exhibit “D” to the Corrado Affidavit, RMR, Vol 1, Tab 1D.

⁷³ Sur-Reply Affidavit at paras [17-18](#), [21](#), [29](#) Sur-Reply MR, Tab 1.

⁷⁴ First Corrado Affidavit at paras [7](#) and [45](#), RMR, Vol 1, Tab 1.

improvements at the Premises if the Proposed Sublease is approved.⁷⁵ Tenants at Yorkdale typically invest between \$250-\$400 per square foot in their premises.⁷⁶

41. Fairweather's *Les Ailes de la Mode* brand has not operated a "department store" since 2017.⁷⁷ When the Receiver brought this motion, Fairweather only had an intention to launch the new *Ailes* brand in the Canadian market outside of Quebec.⁷⁸ Inside Quebec, Fairweather operates three *Ailes de la Mode* stores (not department stores) of less than 10,000 square feet each. These operations are "wholly inconsistent with the image for Yorkdale that Oxford has carefully curated over a number of years and the type of operation that is required by the Head Lease."⁷⁹

42. Oxford has been reducing Fairweather's presence in all its shopping centres and keeps Fairweather on short-term, temporary lease or license arrangements with landlord termination rights.⁸⁰ Contrary to paragraph 78(a) of the Receiver's Factum,⁸¹ the 2007 extension to the Fairweather lease at Upper Canada Mall was offered by the *prior* owner (landlord) of the shopping centre. Any renewals and extensions to the Fairweather lease by Oxford since it acquired Upper Canada Mall were for six-month and one-year terms only.⁸²

43. RioCan's experience with Fairweather has been similar. Fairweather is not one of RioCan's top 30 commercial tenants.⁸³ A bubble tea operator makes the list of "major tenants" at RioCan's malls; Fairweather does not.⁸⁴ RioCan has also been reducing Fairweather's presence in its

⁷⁵ Blasutti Affidavit at paras [62-63](#), RR, Tab 1.

⁷⁶ Sur-Reply Affidavit at [para 32](#), Sur-Reply MR, Tab 1.

⁷⁷ Receiver's Answers at [q6](#), RMR, Vol 3, Tab 5A.

⁷⁸ Receiver's Answers at [q6](#), RMR, Vol 3, Tab 5A.

⁷⁹ First Corrado Affidavit at [paras 53-56](#), RMR, Vol 1, Tab 1.

⁸⁰ First Corrado Affidavit at paras [8](#) and [46](#), RMR, Vol 1, Tab 1.

⁸¹ Receiver's Factum at para 78(a).

⁸² [Recitals D, G, H, J](#), and [s. 2](#) to the Lease Extension and Amending Agreement dated December 16, 2024 – Exhibit "K" to the First Corrado Affidavit, RMR, Vol 1, Tab 1K.

⁸³ Blasutti Cross at p8, [Q15](#), Cross Brief, Vol 1, Tab 3.

⁸⁴ Blasutti Cross at p22, [Q84-85](#) and p23-24, [Q96-97](#), Cross Brief, Vol 1, Tab 3.

commercial leasing portfolio⁸⁵ and, like Oxford, keeps Fairweather on short-term, temporary lease or license arrangements with landlord termination rights.⁸⁶ Every existing lease and license agreement with Fairweather-related brands in evidence on this motion, involving both RioCan and Oxford, currently provide for one or two-year terms only,⁸⁷ and Fairweather does not currently operate out of premises anywhere near the size or prominence of the Premises.⁸⁸ On that basis alone, Fairweather is not a suitable replacement tenant for a 50-year lease of anchor tenant space.

44. Contrary to paragraphs 62 and 44 of the respective Factums of the Receiver and RioCan, there is no evidence that “Oxford’s head of leasing advised that Walmart would be a satisfactory replacement tenant.” When Oxford was approached in the past about the possibility of Walmart becoming a tenant at Yorkdale, it declined to entertain the request.⁸⁹ Further, Walmart’s suitability is entirely irrelevant to the issue of Fairweather’s suitability.

iii. Fairweather is not sufficiently experienced and competent

45. Sections 6.00 and 21.00 of the Head Lease require a proposed subtenant to be sufficiently competent and experienced *in operating a single integrated traditional retail department store*.⁹⁰ There is no evidence that Fairweather has *any* such experience. It currently does not operate one.⁹¹

⁸⁵ In 2020, RioCan had at least 12 leases with Fairweather, compared to only 4 leases in 2025. See [Schedule “B” to the October 29, 2020 Labels Tanger Cookstown Mall Lease](#), Cross Brief, Vol 3, Tab 3L.

⁸⁶ [Fairweather Lease at Georgian Mall \(with amendments\)](#), [Labels Lease at Shoppers World \(Brampton\) \(with amendments\)](#), [Labels Lease at Tanger Cookston Mall \(with amendments\)](#), Cross Brief, Vol 2, Tab 3C and 3D and Vol 3, Tab 3L.

⁸⁷ For Oxford properties, see: [Exhibits “K”, “M”, “N” and “P”](#) to the First Corrado Affidavit, RMR, Vol 1, Tab 1K, M, N, P. For RioCan properties, see: [Fairweather Lease at Georgian Mall \(with amendments\)](#), [Labels Lease at Shoppers World \(Brampton\) \(with amendments\)](#), [Labels Lease at Tanger Cookston Mall \(with amendments\)](#), Vol 2, Tab 3C and 3D and Vol 3, Tab 3L.

⁸⁸ Chart at [Exhibit “S”](#) to the First Corrado Affidavit, RMR, Vol 1, Tab 1.

⁸⁹ Sur-Reply Affidavit at [para 36](#), Sur-Reply MR, Tab 1.

⁹⁰ Head Lease at article [6.00](#) and [21.00](#) – Exhibit “D” to the Corrado Affidavit, RMR, Vol 1, Tab 1D. Relevant extracts from the Head Lease are reproduced at Schedule “C” to this Factum.

⁹¹ Receiver’s Answers at [q6](#), RMR, Vol 3, Tab 5A.

Contrary to paragraph 66 of RioCan's Factum, it is disputed that the *Ailes* brand store will operate in compliance with the Head Lease. The terms of the Proposed Sublease confirm that it will not.⁹²

46. Contrary to the submissions at paragraphs 67-71 of the Receiver's Factum, the Head Lease acknowledges that the departments and types of merchandise and services typically offered may change over time, but not the *nature* of the department store itself or the requirement to operate a single integrated traditional retail department store. The parties agreed that The Bay, Sears, Nordstrom, Macey's, and Bloomingdale's were examples of a single integrated traditional retail department store.⁹³ A Statistics Canada designation based on information provided by a retailer itself is not determinative of whether a store is a single integrated traditional retail department store for purposes of the Head Lease. Even if it were, there is no evidence that the *Ailes* brand store would be categorized in that manner. The only evidence regarding the proposed *Ailes* brand store consists of bald hearsay statements by RioCan and the Receiver's expert report, prepared in reliance upon unproven assumptions provided by counsel.⁹⁴

47. There is no evidence that Fairweather has the necessary infrastructure or management to operate a single integrated traditional retail department store.⁹⁵ Stores operating under the Fairweather banners are apparel retailers (i.e. specialty stores, a prohibited use, like department stores).⁹⁶ Almost all of Fairweather's locations are approximately 3% of the size of the Premises.⁹⁷

⁹² Schedule "D" to this Factum lists the terms of the Proposed Sublease that do not comply with the Head Lease.

⁹³ Head Lease at [article 6.00](#) – Exhibit "D" to the Corrado Affidavit, RMR, Vol 1, Tab 1D.

⁹⁴ Receiver's Answers at [q17](#), RMR, Vol 3, Tab 5A; Tate Cross at pp.9-14, [Q24-39](#), Cross Brief, Vol 3, Tab 4.

⁹⁵ First Corrado Affidavit at paras [52](#), [61](#) and [63-65](#), RMR, Vol 1, Tab 1.

⁹⁶ Affidavit of Dennis Blasutti sworn November 21, 2025 at paras [35](#), [37](#), [39](#), [42](#), [45](#), [49](#), RR, Tab 2.

⁹⁷ First Corrado Affidavit at paras [6](#) and [47-51](#), RMR, Vol 1, Tab 1.

iv. Oxford has not unreasonably withheld consent

48. Oxford is contractually and statutorily entitled to arbitrarily withhold its consent in the present circumstances.⁹⁸ Even if that was not the case, the Receiver has the onus to prove that Oxford's refusal to consent to the Proposed Sublease is unreasonable.⁹⁹ Specifically, the issue is "whether a reasonable person *could have* withheld consent."¹⁰⁰ The question of reasonableness is a question of fact that must be determined on the circumstances of the case, including the commercial realities of the marketplace and the economic impact on the landlord.¹⁰¹

49. A reasonable landlord could have withheld consent to the Proposed Sublease. The Ontario Court of Appeal has confirmed that this is all that is required.¹⁰² Oxford did not unreasonably withhold its consent to the Proposed Sublease.

50. The starting point of the Court's analysis is the terms of the Head Lease.¹⁰³ The Court must consider the reasonableness of the landlord's refusal to consent "in light of the existing provisions of the lease that define and delimit the subject matter of the assignment [or sublease] as well as the right of the Tenant to assign and that of the Landlord to withhold consent."¹⁰⁴

51. The financial position of an assignee is a relevant consideration.¹⁰⁵ It is also reasonable for a landlord to withhold consent to a sublease if it diminishes the value of the landlord's rights under the lease or of its reversion.¹⁰⁶ The Court must only consider the information available to, and the

⁹⁸ CTA [at s. 23\(1\)](#); Head Lease at [s. 21.02](#) – Exhibit "D" to the First Corrado Affidavit, RMR, Vol 1, Tab 1D.

⁹⁹ *1455202 Ontario Inc v Welbow Holdings Ltd*, 2003 CanLII 10572 [at para 9\(1\)](#) (ONSC) [*Welbow Holdings*]. See also *People's Choice Inc v C&E Holdings Inc*, 2008 CarswellOnt 4503 at para 17 (SC), BOA, Tab 5.

¹⁰⁰ *Tabriz Persian Cuisine Inc v Highrise Property Group Inc*, 2022 ONCA 272 [at para 20\(1\)](#) [*Tabriz*].

¹⁰¹ *Welbow Holdings* [at para 9\(1\)](#); *Tabriz* at [paras 21-24](#).

¹⁰² *Tabriz* [at para 20\(1\)](#).

¹⁰³ *Welbow Holdings* [at para 10](#).

¹⁰⁴ *Welbow Holdings* [at para 9\(3\)](#).

¹⁰⁵ *Welbow Holdings* [at para 9\(5\)](#).

¹⁰⁶ *Welbow Holdings* [at para 9\(3\)](#).

reasons given by, the landlord at the time of the refusal.¹⁰⁷ The Court should be “slow to substitute its judgment for the business judgment of the landlord”, despite any judgment of the Receiver.¹⁰⁸

52. The Receiver takes the position that Oxford refused consent on October 1, 2025.¹⁰⁹ At that time, the Receiver had not sought Oxford’s consent to the Proposed Sublease.¹¹⁰ The Receiver had not answered Oxford’s information requests and provided no direct or meaningful information regarding Fairweather as proposed subtenant. Oxford did not (and does not) have evidence of Fairweather’s financial position through its existing short-term lease and license arrangements with Fairweather to assess the Proposed Sublease.¹¹¹ Further, any information that Oxford may have regarding Fairweather would not extend to Fairweather’s new untested *Ailes* brand, as the proposed operator.

53. It is not unreasonable for Oxford to refuse to consent to the Proposed Sublease while the Tenant is in default of the Head Lease.¹¹² The Receiver ignored the detailed evidence of approximately \$16.9 million in necessary repairs at the Premises required to comply with the Head Lease that was provided on September 3, 2025,¹¹³ there is no commitment by any party to undertake this work, and Fairweather is unwilling to assume any obligations for base building replacement obligations for HVAC, elevators and related items contrary to the terms of the Head

¹⁰⁷ *Welbow Holdings* at para 9(2); *Tabriz* at para 20(2).

¹⁰⁸ *Welbow Holdings* at para 23. See also: *Micro Cooking Centres (Canada) Inc (Trustee of) v Cambridge Leaseholds Ltd*, 1988 CarswellOnt 140 at paras 19 and 119, BOA, Tab 6, for considerations unique to shopping centre leases.

¹⁰⁹ October 1, 2025, email – [Appendix “L”](#) to the Fifth Report, MR, Tab 2L.

¹¹⁰ First Corrado Affidavit at [para 67](#), RMR, Vol 1, Tab 1.

¹¹¹ First Corrado Affidavit at [paras 57-58](#) and [Exhibit “Q”](#), RMR, Vol 1, Tab 1.

¹¹² *Tabriz* at [paras 23-24](#).

¹¹³ September 3rd Letter – [Appendix “K”](#) to the Fifth Report, MR, Tab 2K.

Lease.¹¹⁴ Moreover, contrary to paragraph 29 of the Receiver’s Factum, the Proposed Sublease does not comply with the Head Lease, which is itself a breach of the Head Lease.¹¹⁵

54. Oxford has spent over \$1 billion in the last 15 years alone developing Yorkdale into Canada’s pre-eminent shopping mall. The Proposed Sublease would upend those efforts. Oxford’s unchallenged evidence is that this could result in hundreds of millions of dollars in damages.¹¹⁶

55. The Receiver’s argument on reasonableness rests heavily on speculation that Oxford’s opposition to the motion “likely stems” from a collateral purpose.¹¹⁷ This speculation has no basis. Oxford’s unchallenged evidence is that the tenant consent provisions in the Head Lease relating to potential future redevelopment of the lands surrounding Yorkdale have no bearing on Oxford’s position and there are no approvals in place to advance any development at Yorkdale.¹¹⁸

56. Nothing in the evidence provides any support for the Receiver’s assertion of collateral purpose. Contrary to paragraph 87 of the Receiver’s Factum, Ms. Corrado did not say that Oxford would “probably” reconfigure the space to be occupied by multiple tenants, nor has Oxford “refused” to provide information about its plans for the space. This may be one option Oxford pursues, but Oxford has not developed any concrete plans beyond general considerations.¹¹⁹

C. The Receiver Has Not Met the *Soundair* Test

57. In determining whether to grant the Receiver’s request for approval of the Proposed Sublease,¹²⁰ the Court should apply the well-established *Soundair* test. The Proposed Sublease,

¹¹⁴ Proposed Sublease at ss. 7 and 10(i) – Appendix “I” to the Fifth Report, MR, Tab 2I.

¹¹⁵ Head Lease at [article 21.02](#) – Exhibit “D” to the Corrado Affidavit, RMR, Vol 1, Tab 1D.

¹¹⁶ First Corrado Affidavit at paras [5](#), [8](#) and [78](#), RMR, Vol 1, Tab 1.

¹¹⁷ Receiver’s Factum at paras 10, 84.

¹¹⁸ First Corrado Affidavit at paras [81](#) and [83](#), RMR, Vol 1, Tab 1.

¹¹⁹ Corrado Cross at p45, [Q188](#), Cross Brief, Vol 1, Tab 1.

¹²⁰ Notice of Motion at [para 2](#), MR, Tab 1.

like a sale of an asset, involves a conveyance of property rights in the debtor's asset to a third party. Unlike a lease assignment under the BIA or CCAA, there is no statutory test for imposing a subtenant on Oxford, and there is no "inherent discretion" or section 11 CCAA provision that could apply. The Receiver acknowledges *Soundair* informs the Court's task in this case.¹²¹

58. The *Soundair* test requires the Court to consider: (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (b) the efficacy and integrity of the process; (c) whether there has been unfairness in the working out of the process; and (d) the interests of all parties.¹²² The Receiver has not satisfied any element of the *Soundair* test.

i. The Proposed Sublease is Improvident

59. The Proposed Sublease is a negative realization. No consideration is payable by Fairweather for the Proposed Sublease notwithstanding the benefits conferred upon it. The rent payable under the Proposed Sublease (\$1 million per year until May 31, 2029)¹²³ does not even cover the below-market rent payable to Oxford under the Head Lease (approx. \$2.8 million per year), much less other significant and immediate financial and operational obligations.¹²⁴

60. Contrary to paragraph 19 of RioCan's Factum, there is no valid purpose in maintaining the Head Lease of an insolvent Tenant. A Proposed Sublease premised entirely on a hypothetical "Alternate Transaction" for the Head Lease manifesting itself is not commercially reasonable.

61. There is no commercial basis for a court-appointed receiver to expose itself to personal liability for financial and other obligations during the Proposed Sublease's 50-year term, or the

¹²¹ Receiver's Factum at para 41.

¹²² *Soundair* at para 16, BOA, Tab 1.

¹²³ Proposed Sublease at s.7 – Appendix "I" to the Fifth Report, MR, Tab 2I.

¹²⁴ Schedule "A" of the September 3rd Letter – Appendix "K" to the Fifth Report, MR, Tab 2K.

more than 100-year term of the Head Lease, which would be the legal effect of the Receiver's success on this motion.¹²⁵

ii. The Receiver Failed to Market in a Commercially Reasonable Manner

62. The Receiver had a duty to market the Premises in a commercially reasonable manner.¹²⁶ The Receiver did not obtain Court approval of a sale process. It did not develop an information package regarding the Premises or establish a data room for interested persons¹²⁷ or broadly market the Premises.¹²⁸ No confidentiality agreement was requested or obtained from Fairweather.¹²⁹ No information on any other bids has been provided to the Court, whether in a confidential appendix or otherwise. Oxford's request for such information was refused.¹³⁰

63. In response to Oxford's Written Interrogatories (and despite the narrative in the Fifth Report) the Receiver disclosed for the first time that it engaged a RioCan affiliate to locate an "occupant" for the Premises.¹³¹ RioCan made no effort to find a new tenant for the Head Lease.¹³²

64. It is well-established that a receiver's sale process "should be transparent. It should enable the court and interested parties to make an informed decision as to whether the sale can be

¹²⁵ A court-appointed receiver must elect to either adopt or disclaim executory contracts entered into by a debtor. If the receiver does not disclaim a contract and elects instead to complete it, the receiver will be subject to the obligations of the contract. See *Spyglass Resources Corp v Bonavista Energy Corporation*, 2017 ABQB 504 at para 67, citing *Galanda Properties Inc. v Tiercon Industries Inc. (Receiver of)*, (2007), 38 CBR (5th) 142 (Ont SCJ), BOA, Tab 7; *Peace River Hydro Partners v Petrowest Corp.*, 2022 SCC 41 at para 109. See also: Joseph Pasquariello, Andrew Harmes & Brennan Caldwell, *Restructuring & Insolvency 2023*, 17th ed at ch 8, s. 4.5, International Comparative Legal Guides, BOA, Tab 8.

¹²⁶ BIA, s.247(b); Lloyd W Houlden, Geoffrey B Morawetz & Janis P Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed at ch 12 s. 12:18, online: (WL Can), Thomson Reuters Canada ["Houlden & Morawetz"], BOA, Tab 9, citing *Sullivan v Lemik*, 2002 CanLII 9856 at para 33.

¹²⁷ Blasutti Cross at p12-13, Q38, Cross Brief, Vol 1, Tab 1.

¹²⁸ Fifth Report at para 24, MR, Tab 2.

¹²⁹ Blasutti Cross at p13, Q40, Cross Brief, Vol 1, Tab 1; Undertakings Chart, Item 4, Cross Brief, Vol 1, Tab 3A.

¹³⁰ Receiver's Response to Oxford's Follow Up Request, at b), Macdonald Affidavit, Tab 7.

¹³¹ Receiver's Answers at q11, RMR, Vol 3, Tab 5A; Blasutti Cross at p15, Q51, Cross Brief, Vol 1, Tab 3.

¹³² Blasutti Cross at p19, Q67, Cross Brief, Vol 1, Tab 3.

considered fair and reasonable in the circumstances.”¹³³ The process by which the Premises were marketed in this case is opaque. Opacity is the antithesis of insolvency proceedings.¹³⁴

65. The MSA was executed the same day the Receivership Order was granted. Its existence was not revealed until Oxford’s cross-examination of RioCan. RioCan should have disclosed the MSA in its application materials, and the Receiver should have sought Court approval of it. RioCan’s CFO admitted he does not think that RioCan is a registered broker with the Real Estate Council of Ontario.¹³⁵ The complete terms of RioCan’s engagement by the Receiver, including its compensation under the MSA, remain undisclosed.

iii. The Receiver Improperly Permitted RioCan to Insert Itself into the Process

66. It is well-settled that a court-appointed receiver owes fiduciary duties not only to the Court, but also to all parties interested in the debtor’s property. A receiver is a “fiduciary as to all interests of concerned parties”. It must act in good faith and with candour. It must disclose “all relevant material facts affecting the parties” and avoid “any real or perceived conflict of interest.”¹³⁶ A receiver’s role as a neutral court officer and its duties to all parties are part of the justification behind the deference that is often shown to a receiver. The task of a receiver must be undertaken in compliance with its duties. RioCan had an interest in putting *any* occupant (including an inappropriate one) in the Premises for its own self interest, including seeking to pressure Oxford into making a payment that it is not legally required to make.

¹³³ *Canadian Starter* at para 5.

¹³⁴ *Arrangement relatif à 9550-1714 Québec inc*, 2025 QCCS 3840 at para 86 [*Re Proman Services*].

¹³⁵ Blasutti Cross at p17, [Q56-57](#), Cross Brief, Vol 1, Tab 3; *Trust in Real Estate Services Act, 2002*, SO 2002, c 30, Sch C, [s. 4](#). None of the available exemptions under the Act are applicable in this case.

¹³⁶ *Canada Trustco Mortgage Co v York-Trillium Development Group Ltd*, [1992 CarswellOnt 168](#) at para 2(a) (Commercial List), BOA, Tab 10; *Ravelston Corporation Limited (Re)*, 2007 CanLII 2663 at [paras 62-63](#) and [67](#) (Commercial List), aff’d [2007 ONCA 135](#).

67. Unlike a court-appointed receiver, RioCan has no duty to Oxford, and has its own conflicting interest in exploiting the Head Lease for the purposes of a hypothetical future Alternative Transaction or extracting payment from Oxford for its termination without legal entitlement. Despite this conflict, RioCan undertook the marketing process and had discussions with Fairweather to advance and negotiate the terms of the Proposed Sublease. The Receiver merely “provided, on an ongoing basis, its views on the discussions and negotiations”¹³⁷ that RioCan carried out pursuant to the undisclosed MSA.

68. RioCan received and reviewed the Receiver’s draft Reports to the Court before they were served, and RioCan received and reviewed the Receiver’s draft responses to Oxford’s written interrogatories before they were delivered.¹³⁸ RioCan held weekly meetings with the Receiver¹³⁹ and touted the “significant influence” it continues to have over the RioCan-HBC Limited Partnership [notwithstanding the appointment of the Receiver] in its public reporting.¹⁴⁰

69. It is improper to permit one stakeholder to insinuate itself into the Receiver’s marketing process.¹⁴¹ This Court should be concerned with the lack of transparency. The Receiver has allowed itself to be used by RioCan to protect RioCan’s own self interest and improperly exert perceived commercial leverage over another stakeholder, Oxford. This conduct undermines all confidence in its process.¹⁴² The Receiver is not a privately appointed receiver for RioCan.

¹³⁷ Receiver’s Answers at [q11](#) and [q13](#), RMR, Vol 3, Tab 5A.

¹³⁸ Undertakings Chart, [Items 2-3](#), Cross Brief, Vol 1, Tab 3A.

¹³⁹ Blasutti Cross at pp49-50, [Q182](#), Cross Brief, Vol 1, Tab 3.

¹⁴⁰ Q3 Report at [note \(iii\) at the top of p 34](#) and [p 95](#) – Exhibit “1” to the Blasutti Cross, Cross Brief, Vol 1, Tab 3.

¹⁴¹ [Houlden & Morawetz](#), citing *Bank of Nova Scotia v MacCulloch*, [1983 CarswellNS 53](#) at para 3 [*MacCulloch*], BOA, Tab 11. *MacCulloch* was cited with approval in *Royal Bank of Canada v Delta Logistics Transportation Inc*, 2017 ONSC 368 [at paras 23-25](#).

¹⁴² *Re Proman Services* at para [91](#).

iv. Oxford's Interests have been Entirely Disregarded and Unduly Prejudiced

70. Despite the Receivership Order requiring the Receiver to consult with Oxford,¹⁴³ Oxford first learned of the Proposed Sublease on August 18, 2025, one week *after* it was entered into. It only received a copy of the Proposed Sublease after the Court directed the Receiver to share it.¹⁴⁴

71. The Receiver refuses to acknowledge that Oxford is a “stakeholder having a material interest” in the outcome of this motion,¹⁴⁵ despite readily characterizing RioCan this way.¹⁴⁶ Partially repaying its guarantee to RBC by way of “purchasing” RBC’s loan should not be viewed as elevating RioCan’s fundamental interest on this motion – that of an equity holder of an insolvent JV entity that provided an unsecured guarantee to RBC. Contrary to paragraph 19 of RioCan’s Factum, the only stakeholders with any interest in this motion are Oxford and RioCan.¹⁴⁷

72. Oxford has an insolvent tenant. It has been stayed for ten months from enforcing its rights under the Head Lease, including for payment of rent and the \$16.9 million in required repairs.¹⁴⁸

73. The Receiver has not disclosed its intentions for the Head Lease.¹⁴⁹ The Receiver is reliant on RioCan to fund its ability to pay rent under the Head Lease. That funding is not reliable. RioCan failed to provide funding to the Receiver to allow it to pay rent when due under other Oxford leases during this receivership. The Receiver only paid August rent following an August 18, 2025 case conference, and after entering into the Proposed Sublease.¹⁵⁰ RioCan’s own evidence is that it

¹⁴³ Receivership Order at paras [5\(c\)](#) and [6](#) – Appendix “A” to the Fifth Report, MR, Tab 2A

¹⁴⁴ August 19 Endorsement at [para 14](#) – Exhibit “I” to the Macdonald Affidavit, RMR, Vol 2, Tab 2I.

¹⁴⁵ Receiver’s Answers at [q3](#), RMR, Vol 3, Tab 5A.

¹⁴⁶ Fifth Report at [para 35](#), MR, Tab 2.

¹⁴⁷ The loan made by Bank of Montreal is not secured against the leasehold interest at Yorkdale and is over one property in Calgary and two leasehold interests in Quebec. It holds only an unsecured guarantee from YSS 1.

¹⁴⁸ The Receiver (through funding from RioCan on an entirely discretionary basis) has indicated that it will spend no more than \$2.5 million. See: Receiver’s Answers at [q29](#), RMR, Vol 3, Tab 5A; Receiver’s Response to Oxford’s Follow-Up Request at [c\)](#), RMR, Vol 3, Tab 7; Blasutti Affidavit at [para 80](#), RR, Tab 1.

¹⁴⁹ Receiver’s Answers at [q10](#), RMR, Vol 3, Tab 5A.

¹⁵⁰ August 19 Endorsement at paras [8-9](#) and [13](#) – Exhibit “I” to the Macdonald Affidavit, RMR, Vol 2, Tab 2I.

“may” fund rent, but only “as long as it ...has a material economic interest in the Head Lease”.¹⁵¹ There is no documentation evidencing any commitment between or among the Receiver, RioCan, or Fairweather to provide support for the financial obligations under the Head Lease.¹⁵² In any event, any such discretionary decision by RioCan is not in favour of Oxford, who has no covenant from any party for the payment of rent or other obligations under the Head Lease.

74. Contrary to paragraph 84 of RioCan’s Factum, the Leasehold Lender Agreement does not support the arguments advanced by RioCan or the Receiver.¹⁵³ RBC took no steps under the Leasehold Lender Agreement.¹⁵⁴ The rights of RBC, the Tenant, and any receiver appointed over the Tenant are specifically subordinated and postponed to the interest of Oxford upon any termination or disclaimer of the Head Lease.¹⁵⁵ Moreover, the Tenant and those parties acknowledge the adequate valuable consideration paid by Oxford, with no further consideration to be paid. The alleged “windfall” that RioCan and the Receiver say would result from a disclaimer of the Head Lease for consideration previously paid by Oxford is unfounded.

PART IV - ORDER SOUGHT

75. The Court should dismiss the Receiver’s motion with costs payable to Oxford.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of January, 2026.

Thornton Groat Finnigan LLP

¹⁵¹ Receiver’s Answers at [q4](#), RMR, Vol 3, Tab 5A; Fifth Report at paras [46-47](#), MR, Tab 2; Supplement to Fifth Report dated November 21, 2025 at [para 21](#), Reply Record, Tab 1; Blasutti Affidavit at [para 16](#), RR, Tab 1.

¹⁵² Receiver’s Answers at [q4](#), RMR, Vol 3, Tab 5A.

¹⁵³ The Head Lease permits the Tenant, in connection with “bona fide financing”, to grant a security interest on its leasehold interest, provided an agreement in writing is executed among the Landlord, Tenant and Lender.

¹⁵⁴ Receiver’s Answers at [q2](#), RMR, Vol 3, Tab 5A.

¹⁵⁵ LLA at [s.15\(c\)](#) – Appendix “H” to the Fifth Report, MR, Tab 2H; Head Lease at [s.25.13](#) – Exhibit “D” to the First Corrado Affidavit, RMR, Vol 1, Tab 1D.

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Royal Bank v Soundair Corp*, 1991 CarswellOnt 205 (CA).
2. *In Re Hudson’s Bay Company*, 2025 ONSC 5998.
3. *HBC v OMERS*, 2015 ONSC 4671.
4. *Hudson’s Bay Company v OMERS Realty Corporation*, 2016 ONCA 113.
5. *RioCan Real Estate Investment Trust et al v RioCan-HBC Limited Partnership et al*, (June 3, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne).
6. *RioCan Real Estate Investment Trust et al. v RioCan-HBC Limited Partnership et al*, (August 19, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne).
7. *Jaycap Financial Ltd v Snowdon Block Inc*, 2019 ABCA 47.
8. *Farber v Goldfinger*, 2011 ONSC 2044.
9. *Luigi Martellacci, Re*, 2014 ONSC 5188.
10. *The Toronto Dominion Bank v Canadian Starter Drives Inc*, 2011 ONSC 8004.
11. *Royal Bank of Canada v Chesswood Group Ltd et al*, 2025 ONSC 1577.
12. *In the matter of RioCan Real Estate Investment Trust*, (November 25, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne).
13. *Fairweather Ltd v Riocan YEC Holdings Inc*, 2010 ONSC 6445.
14. *Elliott v Billings (Township) Board of Education*, 1960 CanLII 155 (ONCA).
15. *1455202 Ontario Inc v Welbow Holdings Ltd*, 2003 CanLII 10572.
16. *People’s Choice Inc v C&E Holdings Inc*, 2008 CarswellOnt 4503.
17. *Tabriz Persian Cuisine Inc v Highrise Property Group Inc*, 2022 ONCA 272.
18. *Micro Cooking Centres (Canada) Inc (Trustee of) v Cambridge Leaseholds Ltd*, 1988 CarswellOnt 140.
19. *Spyglass Resources Corp v Bonavista Energy Corporation*, 2017 ABQB 504.

20. *Galanda Properties Inc. v Tiercon Industries Inc. (Receiver of)*, (2007), 38 CBR (5th) 142 (Ont SCJ).
21. *Peace River Hydro Partners v Petrowest Corp.*, 2022 SCC 41.
22. Joseph Pasquariello, Andrew Harmes & Brennan Caldwell, *Restructuring & Insolvency 2023*, 17th ed at ch 8, International Comparative Legal Guides.
23. Lloyd W Houlden, Geoffrey B Morawetz & Janis P Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed at ch 12 s. 12:18, online: (WL Can), Thomson Reuters Canada.
24. *Sullivan v Letnik*, 2002 CanLII 9856.
25. *Arrangement relatif à 9550-1714 Québec inc.*, 2025 QCCS 3840
26. *Canada Trustco Mortgage Co v York-Trillium Development Group Ltd.*, 1992 CarswellOnt 168.
27. *Ravelston Corporation Limited (Re)*, 2007 CanLII 2663.
28. *Bank of Nova Scotia v MacCulloch*, 1983 CarswellNS 53.
29. *Royal Bank of Canada v Delta Logistics Transportation Inc.*, 2017 ONSC 368.

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: January 9, 20265



**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Application of provincial law to lessors’ rights

146 Subject to priority of ranking as provided by [section 136](#) and subject to [subsection 73\(4\)](#) and [section 84.1](#), the rights of lessors are to be determined according to the law of the province in which the leased premises are situated.

Good faith, etc.

247 A receiver shall

(a) act honestly and in good faith; and

(b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner. 1992, c. 27, s. 89

Commercial Tenancies Act, RSO 1990, c L7.

Licence to assign not to be unreasonably withheld

23 (1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, **unless the lease contains an express provision to the contrary**, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld. R.S.O. 1990, c. L.7, s. 23 (1).

Application to court where consent to assignment or subletting withheld

23(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the Superior Court of Justice, upon the application of the tenant or of the assignee or sub-tenant, made according to the rules of court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof. R.S.O. 1990, c. L.7, s. 23 (2); [2006, c. 19](#), Sched. C, s. 1 (1).

Trust in Real Estate Services Act, 2002, SO 2002, c 30, Sch C.

Prohibition against trade in real estate unless registered

4 (1) No person shall,

(a) trade in real estate as a brokerage unless the person is registered as a brokerage;

- (b) trade in real estate as a broker unless he or she is registered as a broker of a brokerage;
- (c) trade in real estate as a salesperson unless he or she is registered as a salesperson of a brokerage; or
- (d) trade in real estate unless registered under this Act. [2002, c. 30](#), Sched. C, s. 4 (1).

Unregistered persons

- (2) A person who is not registered as a brokerage, broker or salesperson shall not,
- (a) directly or indirectly hold himself, herself or itself out as being a brokerage, broker or salesperson, respectively; or
 - (b) perform any of the functions of a brokerage, broker or salesperson as provided in this Act. [2002, c. 30](#), Sched. C, s. 4 (2).

SCHEDULE "C"
EXTRACTS FROM THE HEAD LEASE

1.00 Definitions. In this Lease the terms defined in this clause 1.00 are used with the meanings so defined, as follows:

"Bay Operating Costs" means the total direct and indirect cost and expense incurred or to be incurred by Tenant to discharge its obligation under this Lease and with respect to the operation, condition, use, maintenance, improvement, cleaning, insuring, rebuilding, replacement and repair of the Tenant Department Store including the Bay HVAC Facilities, the Bay Mechanical Equipment, and all related installations and all Utilities and services to the extent serving the Tenant Department Store (each of which shall be separately metered to the extent permitted by the applicable Authority) and the Leasehold Improvements and the Tenant Property for the Tenant Department Store;

"Purchase Agreement" means the agreement of purchase and sale respecting the HBC Lands between the Tenant as vendor and the Owners as purchaser dated August 27, 2002;

"Transfer" means any assignment, sublease, licensing, concessioning, franchising, change in control, or parting with possession, or other transaction or occurrence (including an amalgamation, other than an amalgamation as part of a bona fide corporate reorganization, carried out while the Tenant is solvent, receivership or seizure by execution or other legal process) which has or might have the effect of changing the identity of Tenant or the persons controlling Tenant or changing the identity of the person having lawful use, occupancy or possession of the whole or any part of the Tenant Department Store, whether such change is or might be immediate, deferred, conditional, exclusive, non-exclusive, permanent or temporary;

1.05 Net Lease. It is intended that this Lease be an absolutely net and carefree lease for the Landlord and that rent be received by Landlord free of any cost or obligation concerning the Leased Premises and the Tenant Department Store unless expressly otherwise specified in this Lease. Except as otherwise specifically provided in this Lease, the Leased Premises and the Tenant Department Store are at the sole risk of the Tenant throughout the Term and the Tenant shall be responsible for and shall pay the Bay Operating Costs and all other cost and expense arising with respect to the operation, condition, maintenance, repair, restoration, use and occupation of the Leased Premises and the Tenant Department Store.

4.04 Tenant to Pay. The Tenant covenants to pay rent. The Tenant shall also be solely responsible for and shall promptly pay as and when due and payable all amounts included in the Bay Operating Costs.

OCCUPANCY OF TENANT DEPARTMENT STORE

6.00 Use of Tenant Department Store. The Tenant shall continuously operate in all or substantially all of the Tenant Department Store throughout the Term as a single integrated traditional retail department store, subject to Unavoidable Delay and provided that the Landlord is operating the balance of the Shopping Centre as a first class regional shopping centre. The parties acknowledge that the type of store presently operated by the Tenant under its Bay banner and the type of store presently operated under the Sears, Bloomingdale's, Macey's or Nordstrom's banners are single integrated traditional retail department stores. The parties further acknowledge the fluid and dynamic nature of a

department store operation and agree that the departments and types of merchandise and services typically featured in such an operation are subject to changes over time to better accommodate the operator's perception of its target market.

Any other type of store, department store, junior department store, speciality store or speciality department store not of the specific type or kind required to be operated under the preceding paragraph shall be a prohibited use and shall not be permitted to operate in the Tenant Department Store.

While the Tenant is required to operate the Tenant Department Store, it shall be operated or have the appearance of being operated as a single integrated business, controlled by a single overall operator having regard to the Tenant's rights under Clause 21.00, with a major access to and from the Mall at each level (other than the basement level and third level, and only on the second level once there is an abutting Mall, with the connection of the second level of the Tenant Department Store to a Mall expansion to be governed by the terms of paragraph 20.00(3) of this Lease).

6.06 Heating and Air-Conditioning. The Tenant shall at its own expense heat and air-condition the Tenant Department Store (other than portions thereof which are not designed to be heated or air-conditioned) whenever reasonably required from time to time and in such manner that there will be no direct or indirect appropriation of heating or cooling from the Mall, but subject to Unavoidable Delay, and provided that the Landlord heats and cools the Mall as required in order to ensure that there is no direct or indirect appropriation of heating or cooling from the Tenant Department Store. The Tenant shall also, at its expense, operate, maintain, repair and replace the Bay HVAC Facilities when necessary.

UTILITIES AND SERVICES

8.00 Utilities and Services. During the Term:

(6)

damage caused at expiry or termination of the Lease if required by the Landlord. The Tenant shall at all times be responsible, at its sole cost and expense, for operating, maintaining, repairing, insuring and replacing any such equipment and facilities and connections, and shall promptly repair, at its sole cost, any damage to the building and/or the balance of the Shopping Centre that is caused by or arises out of the installation, operation, maintenance, repair or replacement of any such equipment and facilities and connections. Prior to installation the Tenant shall obtain the Landlord's approval for the

ARTICLE 12

REPAIRS AND REBUILDING

12.00 Repairs and Rebuilding by Tenant The Tenant Department Store and the Truck Standing Area are at the sole risk of Tenant throughout the Term and Tenant shall at all times during the Term maintain and keep in a good and substantial state of repair the Tenant Department Store and the slab of the Truck Standing Area consistent with the standards of a careful and prudent owner, and accordingly the Tenant will from time to time whenever necessary diligently carry out all repairs thereto, including those made necessary by age and damage or destruction by casualty or any other reason and any necessary replacements and rebuilding, but excluding reasonable wear and tear which does not materially impair the use thereof for the purposes required by Article 6 in a first class regional Shopping Centre setting, provided however that in the course of any repair or rebuilding the Tenant may alter or expand the Tenant Department Store to the extent specifically permitted by, and subject to compliance with, the provisions of Article 19 of this Lease pertaining thereto;

All Leasehold Improvements made by or on behalf of the Tenant and all exterior signs on the Tenant Department Store and all exterior lighting illuminating the Tenant Department Store, all Utilities and services exclusively servicing the Tenant Department Store, the Bay HVAC Facilities and the Bay Mechanical Equipment shall be operated, repaired, replaced and maintained by and at the expense of the Tenant in a state of repair consistent with the covenants of the Tenant in this clause 12.00.

The Tenant's obligation to repair, replace or rebuild hereunder shall include the obligation to keep in good and substantial repair and operating condition all building equipment and services, including the Bay HVAC Facilities and the Bay Mechanical Equipment, exclusively serving the Tenant Department Store (reasonable wear and tear as aforesaid again excepted), and to make all repairs required hereunder in a good and workmanlike manner, with reasonable expedition and in accordance with all laws and

ARTICLE 19

EXPANSION AND ALTERATION OF TENANT DEPARTMENT STORE

19.00 Expansion and Alteration of Tenant Department Store. The Tenant shall have the right at any time and from time to time to alter, reconstruct or expand the Tenant Department Store (including any of the improvements therein), but subject to the following provisions:

- (1)** The Tenant Department Store shall be architecturally compatible with the Shopping Centre and shall be functionally integrated with the Mall as provided for in this Lease;

- (8)** With respect to any alterations to the interior of the Tenant Department Store:
 - (a)** no alterations shall change the single integrated traditional retail department store appearance and character of the Tenant Department Store nor cause the Tenant Department Store to be or appear to be a multiple lessee business, and,

 - (b)** such work shall be carried out in a good and workmanlike manner and shall not unreasonably interfere with the activities of the Landlord or any other tenant of the Shopping Centre or their respective officers, agents, employees, customers, invitees and licensees.

ARTICLE 21

ASSIGNMENTS, TRANSFERS AND ENCUMBRANCES OF INTEREST BY LANDLORD AND TENANT

21.00 Restrictions on Assignment, Subletting and Encumbrances by Tenant. Tenant covenants that no Transfer affecting Tenant, this Lease, the Tenant Department Store or the business of Tenant at the Tenant Department Store shall be permitted or effective unless and until Landlord's written consent to the Transfer is delivered to Tenant with such consent not to be unreasonably withheld so long as the transferee is creditworthy and a suitable replacement tenant and one who is sufficiently experienced and competent in operating a business of the type required to be operated in the Tenant Department Store. Notwithstanding the aforesaid, the Tenant may assign or sublet the whole of the Leased Premises without consent, but with notice, to an Affiliated Corporation (with consent to be obtained or this Lease reassigned or sublease terminated if the affiliation ceases) and the Tenant may assign without consent, but with notice, to the assignee of a majority of the Tenant's traditional retail department stores in Ontario, each being a "Permitted Transfer". Any assignment shall be subject to compliance with the provisions of this Lease, including without limitation, the provisions of Article 6.

Notwithstanding the aforesaid:

- (1) The ownership of the Tenant Department Store and the leasehold interest in this Lease shall co-exist entirely in the same entity and any Transfer of either interest which has the effect of causing a breach of this provision shall be void and of no effect; and
- (2) The Tenant shall be entitled to grant franchises, subleases, concessions or licences of any part of the Tenant Department Store, but only so long as the franchises, subleases, concessions or licences in the aggregate do not exceed 25% of the Tenant Department Store and only if the business of the Tenant Department Store continues to be, and appears to be, carried on as a single integrated department store of the specific type and kind required to be operated, except that such franchisees, subtenants, concessionaires and licensees may be identified by product, service or trade name.

21.02 Consent May be Withheld. Notwithstanding anything contained in any legislation, law or statute as the same may be amended from time to time if the Landlord's consent is required, the Landlord shall be deemed not to be unreasonable in withholding its consent to a Transfer and may arbitrarily withhold such consent if a proposed Transferee has not agreed with the Landlord in writing and on a form acceptable to Landlord, Tenant and such Transferee, each acting reasonably, to assume and perform each of the covenants,

obligations and agreements of the Tenant in this Lease, and if the requirements of clause 21.00 have not been satisfied.

21.04 Store Name. The Tenant Department Store shall be operated under the principal name used by the Tenant from time to time in a majority of its similar operations in Canada unless the Landlord agrees to the use of a different name.

25.13 Ownership of Tenant Department Store. The Landlord and Owners hereby acknowledge and agree that as at the date of this Lease the Tenant Department Store is owned by the Tenant and shall, along with any improvements made therein or thereto, during the Term or until such earlier date as this Lease shall be terminated, disclaimed or repudiated or the Tenant Department Store shall be abandoned, remain the sole property of the Tenant, notwithstanding the manner or degree of affixation.

However, upon the termination, disclaimer or repudiation of this Lease prior to the expiration of the Term by effluxion of time or upon abandonment of the Tenant Department Store (collectively, an "Early Termination") or upon expiry of the Term by effluxion of time, the Owners, Landlord and Tenant specifically agree, which agreement shall have priority to the rights of any other party including the Tenant, any lender to the Tenant and

any other party deriving its interest through the Tenant (including without limitation, any trustee in bankruptcy or receiver of the Tenant), that the Tenant Department Store and all Leasehold Improvements (other than Tenant Property) shall be deemed to have been automatically conveyed to and vested in the Owners by the Tenant free and discharged of any encumbrance or claim by the Tenant and any such parties, upon the day immediately preceding the date of the Early Termination or upon the date of expiry of this Lease by effluxion of time, whichever is the earlier to occur, without payment by the Owners or Landlord or any additional compensation to the Tenant or any such party. The Tenant and such parties acknowledge that adequate valuable consideration was included in the price paid to the Tenant by the Owners for the purchase of the HBC Lands and included in the rental terms of this Lease for the foregoing provision.

**SCHEDULE “D”
PROVISIONS OF PROPOSED SUBLEASE THAT DO NOT COMPLY WITH HEAD
LEASE**

- **Use Restriction:** Article 6.00 of the Head Lease requires that the Tenant Department Store be operated as a single integrated traditional retail department store by reference to the type of store operated by The Bay, Sears, Nordstrom, Macy’s and Bloomingdales in 2002.
- **Plans, Specifications and Signage:** Section 4 of the Proposed Sublease only requires Fairweather to have its plans and specifications approved by the Sublandlord (the Receiver), whereas Article 19 of the Head Lease requires the Landlord’s (Oxford’s) approval for various work including any exterior alterations. Article 23 of the Head Lease also provides for Oxford’s approval rights over any exterior signage.
- **Insurance Requirements:** Article 11.00 of the Head Lease requires the Tenant to maintain, or cause to be maintained, insurance covering the use and occupancy of the premises by its subtenants, including naming the Landlord as an additional insured under Article 11.00(2)(i). However, section 4 of the Proposed Sublease requires Fairweather’s contractor to carry general liability insurance naming only the Sublandlord (Receiver) and its property manager as additional insureds.
- **Ownership of Tenant Department Store and Transfer of Leasehold Interest:** The Proposed Sublease does not comply with Article 21.00(1) of the Head Lease. This requires that ownership of the Tenant Department Store and the leasehold interest co-exist in the same entity, and any Transfer (which is defined to include a sublease or changing of the identity of the person having lawful use or occupancy or possession of the Premises) that causes a breach of this provision is void and of no effect. Here, the Tenant Department Store is still owned by HBC as General Partner of the RioCan-HBC Limited Partnership, but there is a Transfer of occupancy and possession of the Premises through the sublease with Fairweather.
- **Assumption of all covenants on transfer:** Article 21.02 of the Head Lease provides that the Landlord is deemed not to be unreasonable in withholding its consent, and may arbitrarily withhold its consent, unless the proposed transferee (Fairweather) has agreed in writing with the Landlord to assume and perform each of the Tenant’s covenants, obligations, and agreements under the Head Lease. No such agreement has been offered to Oxford, nor entered into between Oxford and Fairweather.
- **Rent Structure:** Section 7 of the Proposed Sublease provides for rent payable by Fairweather in amounts materially lower than under the Head Lease and is structured to vary based on the Subtenant’s performance. The Head Lease requires the Tenant to pay fixed rent to the Landlord irrespective of performance, as well as all costs and expenses arising with respect to the operation, condition, maintenance, repair, restoration, use and occupation of the Leased Premises and the Department Store.
- **Base Building Replacement Obligations:** Section 10(i) of the Proposed Sublease provides that Fairweather is not responsible for the replacement of base building systems located within the Premises, including escalators, elevators, the roof, and HVAC systems until May 31, 2029, which period of non-compliance may be extended further if Fairweather delivers a termination notice and the Sublandlord elects to void that notice by delivering a rescission notice. Articles 6.06, 8.00(6) and 12.00 of the Head Lease require that these obligations be fulfilled.

- **Operating Name:** Section 10(vi) of the Proposed Sublease requires Fairweather to operate under the name “Les Ailes de la Mode” or such other name as may be approved by the Sublandlord (Receiver). This is inconsistent with Article 21.04 of the Head Lease, which requires the store to be operated under the principal name used by HBC from time to time in a majority of its similar operations in Canada, unless the Landlord agrees to the use of a different name. No Landlord consent to operate the Tenant Department Store under a different name has been sought or obtained.
- **Improper Terms Inconsistent with Head Lease:** Section 5(d) of the Proposed Sublease purports to prevent the Sublandlord (Receiver) from terminating the Head Lease without the prior written consent of the Subtenant “in its sole discretion”. Apart from purporting to fetter the discretion and powers of a court-appointed Receiver, the Subtenant has no such rights in respect of the Head Lease.
- **Purported Future Assignment:** Section 19 of the Proposed Sublease contravenes the Head Lease which prohibits Transfers of any kind (including assignments and subleases) without the prior written consent of the Landlord Oxford and compliance with Articles 21.00 and 6.00 of the Head Lease. The Proposed Sublease purports to permit Fairweather to assign or further sublet its interest in the Subleased Premises “in whole or in part” with the prior written consent of the Sublandlord (Receiver). This contravenes several terms of the Head Lease, including that: (i) the whole premises be operated as a “single integrated” traditional retail department store; (ii) any sublet must be of the **whole** of the Leased Premises pursuant to Article 21 of the Head Lease; and (iii) Landlord (Oxford) consent is required in accordance with the terms of Article 21 of the Head Lease. Section 19 of the Proposed Sublease also contravenes the Head Lease in providing that the Sublandlord (Receiver) is permitted to assign all of its rights under the Proposed Sublease “to any successor in interest to the Sublandlord (Receiver)” or to any third party. All Transfers (which is defined to include assignments) require Oxford’s prior written consent and compliance with Articles 6 and 21 of the Head Lease.
- **Receiver’s Capacity:** Section 22 of the Proposed Sublease provides that the Sublandlord (Receiver) has no personal or corporate liability, and therefore it is not accountable to fulfil any obligations as Sublandlord (or otherwise) under the Head Lease. The Receiver is entering into a Proposed Sublease with a subtenant Fairweather that itself is not assuming all obligations under the Head Lease, while at the same time ensuring that the Receiver is not responsible for those obligations. Section 16 of the Proposed Sublease provides that the Sublandlord (Receiver’s) sole obligations under the Proposed Sublease are those expressly stated therein, and Section 22 makes clear that the Receiver cannot be held liable in any way connected with the Proposed Sublease or as a result of the Sublandlord failing to perform any of its covenants or obligations.

RIOCAN REAL ESTATE INVESTMENT TRUST et al.
Applicant

and

2455034 ONTARIO LIMITED PARTNERSHIP et al.
Respondents

Court File No. CL-25-00744295-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at **Toronto**

FACTUM OF OXFORD PROPERTIES GROUP

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