

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

B E T W E E N:

RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC.,
RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIO CAN 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.,
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 THE MOVING PARTY
FTI CONSULTING CANADA INC., AS RECEIVER**

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as Receiver

TO: THE SERVICE LIST

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PART I - INTRODUCTION

1. In 2015, Hudson's Bay Company ULC (**HBC**) and RioCan Real Estate Investment Trust (**RioCan**) formed a joint venture (**JV**). The JV's assets include the beneficial interest in a long-term lease held by HBC at Yorkdale Mall, which is owned by the Oxford Properties Group.

2. The JV is an unfortunate casualty of HBC's insolvency. In June 2025, Justice Osborne appointed FTI Consulting Canada Inc. as the receiver and manager of all assets held by the JV entities, including 2491815 Ontario Limited Partnership (**YSS 1**), which holds the beneficial interest in the Yorkdale lease.

3. The Yorkdale lease and the terms contained therein are valuable. Its term runs until 2142 if all extension options are exercised. The rental rate is below market. Yorkdale is a desirable shopping centre, outperforming all other centres in Canada in sales per square foot.

4. HBC's insolvency and cessation of operations has forced RioCan to shoulder sole responsibility for funding rent and other amounts to preserve the valuable Yorkdale lease. RioCan also recently acquired a \$75 million loan made by Royal Bank of Canada to YSS 1 secured by a mortgage of the Yorkdale lease, which RioCan had guaranteed, such that RioCan is now YSS 1's primary creditor and priority secured creditor.

5. The Receiver took steps to identify a transaction in respect of the Yorkdale lease to preserve and protect the value of this material asset for the benefit of the JV's stakeholders. Locating a replacement tenant in a timely manner was challenging given HBC's prior insolvency and prevailing market conditions. There are few department stores operating in Canada after several notable insolvencies, including Sears, Eaton's, Target and now HBC.

6. Despite the challenges and after running an efficient process to identify a new tenant or subtenant, Fairweather Ltd. was identified as a proposed subtenant. Fairweather and its affiliates

have more than 25 years of retail experience in Canada. It is a current tenant at other Oxford shopping centres. It was a tenant at Yorkdale for decades until its lease expired in 2020.

7. Although Fairweather is the proposed subtenant, it would operate an “Ailes” department store – a Fairweather-owned banner positioned at a higher price point compared to Fairweather’s other banners. It is precisely the sort of operation contemplated by the Yorkdale head lease.

8. This is a positive result for all stakeholders. Sustaining the Yorkdale lease by tenanting the premises to a new operator preserves this asset for the benefit of stakeholders of the JV, including RioCan and other creditors. Early termination rights ensure the Receiver can pursue a more favourable transaction if one arises. Fairweather is an experienced operator and has covenanted to comply with all terms of the head lease. Oxford will remain *in situ* retaining its contractual rights, collect all rent, and have a creditworthy subtenant in Fairweather with the additional financial support of RioCan as a lender in the receivership.

9. Despite this, Oxford objects to the proposed sublease (the **Sublease**) for the purported reason that Fairweather is not a “first-class” operator. Its history of leasing to Fairweather suggests otherwise. For over thirty years, Fairweather has operated in Oxford shopping centres. Not once over those decades has Oxford asserted that Fairweather has failed to operate in a first-class manner. To the contrary, Oxford has repeatedly extended Fairweather’s leases.

10. Landlords generally prefer to rid themselves of long-term head leases to provide increased control over an asset, particularly when rent is below market and the lease restricts development or control. Termination of the lease would free Oxford of a long-term lease and allow it to redevelop the site however it wishes, such as converting the premises to house multiple tenants potentially paying higher rent. The case law is clear that a commercial landlord may not refuse a

sublease for reasons collateral to the existing lease. A plan to redevelop the premises is entirely collateral to the lease.

11. The Receiver views the Sublease as the best way to preserve the value of the head lease for YSS 1's stakeholders. It respectfully recommends that the Court approve the Sublease. If the motion is dismissed, this valuable asset will be extinguished for no consideration. Such an outcome is inconsistent with the objectives of Canadian insolvency principles and law.

PART II - SUMMARY OF FACTS

A. The Head Lease

12. YSS 1 leases space at Yorkdale pursuant to a lease dated September 26, 2002 (the **Head Lease**).¹ If all extensions are exercised, the Head Lease will run until 2142.² Rent under the Head Lease is below market.³

13. YSS 1 owns the building which houses the leased premises. However, upon expiry (or earlier termination) of the Head Lease, the Head Lease provides that the building is automatically conveyed to Oxford for no further consideration.⁴

14. HBC and RioCan entered into their joint venture in 2015. HBC became the general partner of YSS 1, a limited partnership of which both HBC and RioCan were indirect limited partners. HBC proposed to assign the Head Lease to the joint venture.⁵

¹ Head Lease attached as Appendix "B" to the Fifth Report of FTI Consulting Canada Inc., dated October 11, 2025 (**Fifth Report of the Receiver**) (**Receiver Motion Record, Tab 2B, p. 65**)

² Head Lease ss. 3.00 and 3.01 (**Receiver Motion Record, Tab 2B, p. 79**)

³ Fifth Report of the Receiver, at para 10 (**Receiver Motion Record, Tab 2, p. 16**); Expert Report of Scott Lee, p. 4 (**Oxford Responding Record, Tab 3A**)

⁴ Head Lease s. 25.13 (**Receiver Motion Record, Tab 2B, pp. 111-112**)

⁵ Fifth Report of the Receiver, at para 11 (**Receiver Motion Record, Tab 2, p. 16**); *Hudson's Bay Company v OMERS Realty Corporation*, 2015 ONSC 4671, at paras. 10-11 (**Receiver Motion Record, Tab 2C, p. 125**)

15. Oxford objected to the assignment of the Head Lease. On July 20, 2015, Justice Conway held that Oxford's refusal was unreasonable and permitted the assignment.⁶ That decision was upheld by the Court of Appeal on February 10, 2016.⁷

16. Following the creation of the joint venture, HBC itself was a subtenant of YSS 1. Under the sublease, HBC paid a rent much higher than that payable under the Head Lease.⁸

B. The RBC Loan

17. In January 2024, RBC provided YSS 1 with a credit facility of approximately \$75 million, secured against YSS 1's leasehold interest in the Yorkdale premises. RioCan guaranteed YSS 1's obligations under the Credit Agreement.⁹

18. As of October 11, 2025, the RBC facility was fully drawn.¹⁰ On October 23, 2025, through an affiliate, RioCan acquired RBC's right, title and interest in the credit facility and related security interests. As a result, this RioCan affiliate is YSS 1's sole secured creditor.¹¹

19. If sufficient value is realized to repay the RBC facility, any excess value will flow to YSS 1's other creditors, including the Bank of Montreal, which provided a credit facility to the HBC/RioCan JV and is guaranteed by YSS 1.¹²

⁶ *Hudson's Bay Company v OMERS Realty Corporation*, 2015 ONSC 4671 (**Receiver Motion Record, Tab 2C, p. 123**)

⁷ *Hudson's Bay Company v OMERS Realty Corporation*, 2016 ONCA 113 (**Receiver Motion Record, Tab 2C, p. 137**)

⁸ Affidavit of Nadia Corrado sworn November 13, 2025 (**Corrado Affidavit**), at paras. 23 and 26 (**Oxford Responding Record, Tab 1, p. 8**)

⁹ Fifth Report of the Receiver, at paras 17, 19 (**Receiver Motion Record, Tab 2, p. 17**)

¹⁰ Fifth Report of the Receiver, at paras 18 (**Receiver Motion Record, Tab 2, p. 17**)

¹¹ Supplement to the Fifth Report of the Receiver (**Supplemental Report**), at paras. 6-8 (**Receiver Reply Record, Tab 1, p. 5**)

¹² Fifth Report of the Receiver, at para 63(c) (**Receiver Motion Record, Tab 2, p. 27**)

C. Insolvency of HBC and Appointment of Receiver

20. On March 7, 2025, HBC commenced CCAA proceedings.¹³ The proceedings quickly became a forced liquidation of HBC's inventory over a period of approximately three months. HBC had limited alternatives to find a going concern buyer of its business in the circumstances.

21. Efforts to monetize HBC's assets in the CCAA proceedings did not result in any bids for HBC's interest in the JV or any transactions in respect of the Head Lease or other JV assets.¹⁴ Accordingly, RioCan applied to appoint a receiver over the assets of YSS 1 and the other joint venture entities. That order was granted on June 3, 2025, and FTI was appointed as Receiver over, among other things, YSS 1's assets, including the Head Lease.

22. HBC ceased conducting business at Yorkdale in June 2025 and left the premises on June 16, 2025.¹⁵ HBC ceased paying rent to the JV thereafter. Since then, RioCan has provided the funds necessary to pay all amounts due under the Head Lease.¹⁶

23. Under the Head Lease, if the tenant ceases operating in the premises for six months, Oxford can then provide notice to terminate the Head Lease six months thereafter unless the tenant resumes operation in that time.¹⁷ This means Oxford can terminate the lease as soon as 12 months after the tenant ceases operating, which the parties typically refer to as the "go dark" date. HBC ceased operating in June 2025, making it important for RioCan to secure a new tenant to operate in the premises prior to June 2026. Oxford has subsequently agreed that it will not terminate the Head Lease pursuant to the "go dark" provisions until at least August 31, 2026.¹⁸

¹³ Affidavit of Dennis Blasutti, sworn October 12, 2025 (**Blasutti Affidavit**), at para 38 (**RioCan Record, Tab 1, p. 20**)

¹⁴ Blasutti Affidavit, at para 40 (**RioCan Record, Tab 1, p. 20**)

¹⁵ Fifth Report of the Receiver, at para 16 (**Receiver Motion Record, Tab 2, p. 17**)

¹⁶ Blasutti Affidavit, at paras 43-44 (**RioCan Record, Tab 1, p. 21**)

¹⁷ Head Lease, s. 6.01 (**Receiver Motion Record, Tab 2B, p. 82**)

¹⁸ Corrado Cross, at pp. 58-59, qq. 245-250 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 61-62**)

D. Marketing of Head Lease

24. HBC's insolvency left the Receiver and RioCan with limited time to identify a replacement tenant for the Yorkdale premises. Prior to the Receiver's appointment, RioCan had engaged in preliminary discussions with potential occupants for the premises, including Fairweather. RioCan provided the names of these potential occupants to the Receiver after it was appointed.¹⁹

25. The Receiver had discussions with HBC, HBC's CCAA Monitor, Oberfeld Snowcap Inc. (a real estate broker) and Reflect Advisors (HBC's financial advisor) about their efforts to market the Head Lease. The Receiver and RioCan also inquired of Oxford on multiple occasions whether it was interested in a transaction whereby the Head Lease would be surrendered in exchange for consideration, but Oxford expressed no interest.²⁰

26. The Receiver adopted a targeted marketing approach for the Head Lease. RioCan assisted, leveraging its extensive leasing expertise. The Receiver contacted approximately 12 potential occupants for the Yorkdale premises, including Fairweather.²¹

27. Fairweather is a Canadian-owned and operated retailer currently operating over 100 retail stores across Canada under various banners, including Fairweather, Designer Depot and Les Ailes de la Mode.²² It is currently a tenant at three-Oxford properties²³ and has been an Oxford tenant for decades.²⁴ Fairweather is also a tenant of other major Canadian commercial landlords, including RioCan. Fairweather has been party to over 35 leases with RioCan over the years.²⁵

¹⁹ Blasutti Affidavit, at para 52 (**RioCan Record, Tab 1, p. 23**)

²⁰ Fifth Report of the Receiver, at para 22 (**Receiver Motion Record, Tab 2, p. 18**)

²¹ Fifth Report of the Receiver, at paras 24-25 (**Receiver Motion Record, Tab 2, p. 19**)

²² Blasutti Affidavit at para 64 (**RioCan Record, Tab 1, p. 27**); Fifth Report of the Receiver, at para 42 (**Receiver Motion Record, Tab 2, p. 24**)

²³ Blasutti Affidavit at para 68 (**RioCan Record, Tab 1, p. 28**)

²⁴ Cross-Examination of Nadia Corrado, at p. 4, q. 4 (**Cross-Examination Brief, Vol 1, Tab 1, p. 7**)

²⁵ Blasutti Affidavit at para 64 (**RioCan Record, Tab 1, p. 27**)

28. The Receiver concluded that Fairweather's proposal was the highest and best alternative for a successful transaction. It commenced negotiations with Fairweather, leading to the execution of the Sublease on August 13, 2025.²⁶

E. Terms of the Sublease

29. Under the Sublease, Fairweather must comply with all provisions of the Head Lease, save for modifications to the rent it is required to pay. Until May 31, 2029, Fairweather will pay an annual gross rent equal to the greater of \$1,000,000 or 12% of its gross receipts at Yorkdale. After May 31, 2029, Fairweather will be required to pay all amounts due under the Head Lease.²⁷

30. The Sublease has an initial term of 25 years with extensions of up to 25 additional years.²⁸ However, the Receiver may terminate the Sublease at any time on nine months notice in favour of an "Alternative Transaction", meaning an assignment, sale, transfer or similar transaction involving the Head Lease.²⁹ This allows the Receiver to continue looking for a tenant to take over the Head Lease or any other transaction that is more beneficial than the Sublease.

31. Fairweather may terminate the Sublease at any time after May 31, 2029. If it does, YSS 1 can rescind that termination, but Fairweather will then pay rent equal to the greater of \$1,000,000 or 12% of its gross receipts at Yorkdale, rather than all amounts due under the Head Lease.

²⁶ Fifth Report of the Receiver, at paras 27-28 (**Receiver Motion Record, Tab 2, p. 19**); Fairweather Sublease dated August 13, 2025 (**Receiver Motion Record, Tab 21**)

²⁷ Fifth Report of the Receiver, at para 32 (**Receiver Motion Record, Tab 2, pp. 20-21**); Sublease, s. 7 (**Receiver Motion Record, Tab 21, pp. 339-340**)

²⁸ Sublease, s. 5 (**Receiver Motion Record, Tab 21, pp. 338-339**)

²⁹ Sublease, s. 13 (**Receiver Motion Record, Tab 21, pp. 343**)

F. Fairweather's Plan for Yorkdale

32. Fairweather intends to operate the Yorkdale premises under its "Ailes" brand. Ailes will be a traditional department store offering merchandise in a range of departments: men's apparel, women's apparel, children's apparel, footwear, accessories, housewares and home décor.³⁰

33. Yorkdale is part of a broader launch of Ailes department stores by Fairweather. It is in the process of opening Ailes department stores in locations previously tenanted by HBC in established malls in Québec City and Montréal. Those malls are owned and managed by Primaris Real Estate Investment Trust, a major commercial landlord.³¹

34. Fairweather's plan is for the Ailes stores to sell products at a higher price point than its other brands, including the Fairweather brand. The products are expected to be in the mid- to high-end range of the market. Brands that have committed to supply the Ailes stores include Reebok, Chaps, Steve Madden, DKNY, Tahari, Billabong, French Connection, Laura Ashley, Geoffrey Beene and Perry Ellis.³²

35. The Receiver sought Oxford's consent to the Sublease. On September 3, 2025, Oxford responded with a list of requests about Fairweather including, Fairweather's corporate profile, articles of incorporation, business description, audited financial statements and details regarding Fairweather's experience as a department store operator.

36. Despite Fairweather's long-running relationship with Oxford, Oxford's list of requests suggested that it did not have any information about Fairweather's corporate existence or

³⁰ Fifth Report of the Receiver, at para 44 (**Receiver Motion Record, Tab 2, p. 24**)

³¹ Blasutti Affidavit at para 73(b) (**RioCan Record, Tab 1, p. 29**); Cross-Examination of D. Blasutti, at pp. 39-40, qq. 152-155 (**Cross-Examination Brief, Vol 1, Tab 3, pp. 138-139**)

³² Blasutti Reply, at paras 20-26 (**RioCan Record, Tab 2, pp. 321-324**)

operations.³³ Fairweather advised the Receiver, through its counsel, that these requests had not been made in connection with its other Oxford property leases.³⁴

37. Following Oxford's requests, the Receiver understood that Oxford was refusing to consent to the Sublease and commenced this motion.³⁵

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. The Legal Framework

38. The determination of this motion is guided by insolvency law, the terms of the Head Lease and the *Commercial Tenancies Act*.

39. A key objective of proceedings under the BIA is to preserve and maximize the value of a debtor's assets.³⁶ The primary task of a receiver appointed under the BIA is to maximize the return to creditors.³⁷ The Receiver believes that the Sublease presents the best option to maximize recoveries for YSS 1's creditors.

40. Section 183 of the BIA provides this Court with a "broad scope of authority" to deal with bankruptcy disputes. One tool available to the Court is to appoint a receiver with "wide-ranging powers" to enhance the realization of the debtor's assets.³⁸ Among the tools open to receivers and the Court to maximize value are the sale of assets and assignment of contracts.³⁹ The Court has wide discretion to determine whether a sale or an assignment is appropriate – even if a contractual counterparty objects.

³³ Fifth Report of the Receiver, para 52 (**Receiver Motion Record, Tab 1, p. 25**)

³⁴ Fifth Report of the Receiver, para 53 (**Receiver Motion Record, Tab 2, pp. 25-26**)

³⁵ Fifth Report of the Receiver, paras 54-56 (**Receiver Motion Record, Tab 2, p. 26**)

³⁶ [9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10, at para 40](#)

³⁷ [Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508, at para 73](#)

³⁸ [Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41, at paras 56-57](#)

³⁹ [In Re Hudson's Bay Company, 2025 ONSC 5998, at paras 18-43](#)

41. These principles and powers inform the Court's task in this case. While a sublease is not identical to a sale or an assignment, it serves the same purpose of maximizing value for creditors and is readily analogous to a sale or assignment. Both the *Soundair* factors, relevant to sale transactions, and the principles applicable to an assignment, support approval of the Sublease.⁴⁰

42. Section 21.00 of the Head Lease precludes YSS 1 from subletting the premises without Oxford's written consent. However, Oxford may not unreasonably withhold consent if the transferee 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 premises.⁴¹

43. Section 23(1) of the *Commercial Tenancies Act* provides that consent to a sublease may not be unreasonably withheld unless the lease contains "an express provision to the contrary." If a landlord refuses to consent, the Court may determine whether the refusal is unreasonable and grant an order permitting the assignment if it is.⁴²

44. In considering whether Fairweather is creditworthy, a suitable replacement tenant and sufficiently experienced, Oxford must act reasonably. This is clear from s. 23(1) of the *Commercial Tenancies Act* and the absence of any express provision in the Head Lease permitting Oxford to act unreasonably. Further, the Court of Appeal has specifically held that where one party's consent to an assignment of a contract is sought, that party is required to act reasonably based on the common law duty of good faith.⁴³

45. The leading case on a landlord's duty to act reasonably in considering an assignment request, *Welbow*, establishes the following principles:

⁴⁰ [In Re Hudson's Bay Company, 2025 ONSC 5998, at paras 18-19 and 43](#)

⁴¹ Head Lease, s. 21.00 (**Receiver Motion Record, Tab 2B, p. 101**)

⁴² *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, s. 23(2).

⁴³ [Quickie Convenience Stores Corp. v. Parkland Fuel Corporation, 2020 ONCA 453, at para 40](#)

- (a) The tenant has the burden of showing the landlord has acted unreasonably.⁴⁴
- (b) In determining whether the landlord acted reasonably, the Court considers only the reasons given by the landlord at the time of refusal, not reasons subsequently provided to the Court.⁴⁵
- (c) A refusal will be deemed unreasonable if it is designed to achieve a collateral purpose or benefit unconnected to the lease.⁴⁶
- (d) A *probability* that the proposed assignee will default *may* be a reasonable ground for withholding consent.⁴⁷
- (e) Reasonableness is essentially a question of fact, determined with reference to the commercial realities of the marketplace and economic impact on the landlord.⁴⁸

46. Guided by the principles outlined above, the Court must thus decide the following issues:

- (a) did Oxford unreasonably conclude that Fairweather is not creditworthy;
- (b) did Oxford unreasonably conclude that Fairweather is not a suitable tenant;
- (c) did Oxford unreasonably conclude that Fairweather is not sufficiently experienced and competent in operating a business of the required type; and
- (d) has Oxford otherwise unreasonably refused to consent to the Sublease?

⁴⁴ [1455202 Ontario Inc. v. Welbow Holdings Ltd., 2003 CanLII 10572 \(ON SC\), at para 9\(a\)](#)

⁴⁵ [1455202 Ontario Inc. v. Welbow Holdings Ltd., 2003 CanLII 10572 \(ON SC\), at para 9\(b\)](#)

⁴⁶ [1455202 Ontario Inc. v. Welbow Holdings Ltd., 2003 CanLII 10572 \(ON SC\), at para 9\(c\)](#); [Tradedge Inc. \(Shoeless Joe's\) v. Tri-Novo Group Inc., 2009 CanLII 22578 \(ON SC\), at para 39](#)

⁴⁷ [1455202 Ontario Inc. v. Welbow Holdings Ltd., 2003 CanLII 10572 \(ON SC\), at para 9\(d\), \(e\)](#)

⁴⁸ [1455202 Ontario Inc. v. Welbow Holdings Ltd., 2003 CanLII 10572 \(ON SC\), at para 9\(f\)](#)

A. Fairweather is Creditworthy

i) Fairweather's Established History of Meeting Rent Obligations

47. Fairweather operates over 100 retail stores across Canada.⁴⁹ It has confirmed that it does not require any third-party funding to proceed with the Sublease. It has been a RioCan tenant for over 25 years across more than 35 leases.⁵⁰ The only payment “default” that Fairweather has committed in its history with RioCan was in relation to two disputes between Fairweather and RioCan concerning the calculation of rent for a store in Timmins, Ontario.⁵¹

48. Fairweather has been a similarly reliably tenant of Oxford's. In preparation for her affidavit, Ms. Corrado of Oxford instructed staff to search for instances where Fairweather failed to pay rent.⁵² She then included all such examples in her affidavit. Despite its efforts, Oxford found almost no examples of Fairweather not paying its rent on time. The few it did find were *de minimis* in nature, as detailed below:

- (a) Over its decades-long tenancy at Yorkdale, Fairweather was late paying rent only once.⁵³ On March 10, 2016, Oxford advised Fairweather that rent due on March 1 had not been paid. Fairweather then paid the rent.⁵⁴ Oxford has not identified any other example of Fairweather failing to pay rent on time at Yorkdale.
- (b) Fairweather has been a tenant at Scarborough Town Centre (**STC**) for 28 years.⁵⁵ Oxford found only a single instance when rent was late over that time. On January 5, 2022, Oxford reminded Fairweather to pay an amount that had come due on

⁴⁹ Fifth Report of the Receiver, at para 42 (**Receiver Motion Record, Tab 2, p. 24**)

⁵⁰ Blasutti Affidavit, at para 64 (**RioCan Record, Tab 1, p. 27**)

⁵¹ Blasutti Cross, at p 5 (**Cross-Examination Brief, Vol 1, Tab 3, p. 104**)

⁵² Corrado Cross, at p. 13, qq. 46-47 (**Cross-Examination Brief, Vol 1, Tab 1, p. 16**)

⁵³ Corrado Cross, at p. 26, q. 101 (**Cross-Examination Brief, Vol 1, Tab 1, p. 29**)

⁵⁴ March 10, 2016 letter from Oxford to Fairweather (**Oxford Sur-Reply Record, Tab 1D**); Corrado Cross, at p. 26, q. 102 (**Cross-Examination Brief, Vol 1, Tab 1, p. 29**)

⁵⁵ Corrado Cross, at p. 8, q. 24 (**Cross-Examination Brief, Vol 1, Tab 1, p. 11**)

December 31 pursuant to a “Rent Relief Agreement” entered into during COVID.⁵⁶ Fairweather paid.⁵⁷ Notably, Oxford extended Fairweather’s lease subsequent to this event, so it clearly did not cause Oxford to be concerned about Fairweather’s creditworthiness.⁵⁸

- (c) Fairweather has been a tenant at Upper Canada Mall since 1989 - a 36-year tenancy.⁵⁹ Despite looking, Oxford was unable to identify even a single instance of Fairweather not paying its rent on time.⁶⁰
- (d) Finally, Oxford relies on a dispute it had with Fairweather concerning rent at a shopping centre in Brossard, Quebec. The dispute resulted in litigation, which was settled on the basis that the lease was terminated early and Fairweather made a payment to Oxford that was less than the arrears Oxford claimed.⁶¹ Oxford has not provided any other details about this dispute. It continued to extend Fairweather’s leases at other centres after this dispute.

49. Oxford’s efforts to paint Fairweather as uncreditworthy prove exactly the opposite. Over decades of operations and a host of leases with both Oxford and RioCan, there are almost no examples of Fairweather ever paying rent late. This is very strong evidence of creditworthiness.

ii) Oxford’s Attacks on Fairweather’s Creditworthiness

50. Despite Fairweather’s sterling history, Oxford asserts two reasons why it is not a creditworthy tenant. Neither of Oxford’s assertions are well founded.

⁵⁶ January 5, 2022 email from Oxford to Fairweather (**Oxford Sur-Reply Record, Tab 1E**); Corrado Cross, at pp. 10-11, qq. 33-35

⁵⁷ Corrado Cross, at p. 12, q. 40 (**Cross-Examination Brief, Vol 1, Tab 1, p. 15**)

⁵⁸ Corrado Cross, at p. 12, qq. 41-42 (**Cross-Examination Brief, Vol 1, Tab 1, p. 15**)

⁵⁹ Corrado Cross, at p. 5, qq. 9-10 (**Cross-Examination Brief, Vol 1, Tab 1, p. 8**)

⁶⁰ Corrado Cross, at pp. 7-8, qq. 18-21 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 10-11**)

⁶¹ Corrado Sur-Reply Affidavit, para 13(a) (**Oxford Sur-Reply Record, Tab 1**)

51. First, Oxford asserts that Fairweather’s “gross rent occupancy cost” (**GROC**) at STC and Upper Canada Mall is high. GROC measures a tenant’s rent costs as a percentage of total sales.⁶² Oxford alleges that Fairweather’s GROC at STC and Upper Canada between January 2023 and September 2025 was higher than expected from a “financially healthy apparel retailer.”⁶³

52. There are two significant problems with Ms. Corrado’s evidence:

- (a) She did not perform the calculations of Fairweather’s GROC at STC or Upper Canada and is unable to explain them.⁶⁴ Oxford’s GROC calculations vary without any obvious correlation to Fairweather’s sales levels. On cross-examination, Ms. Corrado was unable to explain this discrepancy. The chart, which Ms. Corrado did not prepare and could not explain, has no evidentiary value.⁶⁵
- (b) GROC is not a measure of creditworthiness. Oxford has not identified any link between the two concepts. Whatever Fairweather’s GROC is, it has dutifully paid its rent in full for decades.

53. Second, Oxford claims to lack sufficient information about Fairweather to know if it is creditworthy. This is a surprising position given its long history of dealings with Fairweather.

54. In an effort to diminish the relevance of Oxford’s lengthy relationship with Fairweather, Ms. Corrado asserted that Oxford “did not require evidence of Fairweather’s creditworthiness” in respect of other leases because they were “short-term, small, non-anchor retail spaces.” That evidence was misleading. As noted above, Fairweather has been party to multiple long-term leases with Oxford. When confronted with this on cross-examination, Ms. Corrado admitted that

⁶² Corrado Affidavit, at paras. 42-43 (**Oxford Responding Record, Tab 1, p. 15**)

⁶³ Corrado Affidavit, at para. 43 (**Oxford Responding Record, Tab 1, p. 15**)

⁶⁴ Corrado Cross, at p. 65, qq. 276-277 (**Cross-Examination Brief, Vol 1, Tab 1, p. 68**)

⁶⁵ Corrado Cross, at p. 76, q. 320 (**Cross-Examination Brief, Vol 1, Tab 1, p. 79**)

the real reason Oxford has not required evidence of Fairweather's creditworthiness for any leases since 2006 was because "they were an existing tenant."⁶⁶

55. In other words, Oxford has been comfortable entering into long-term leases with Fairweather on multiple occasions in the last 20 years without additional evidence of creditworthiness because it is an existing tenant. For Oxford to now assert that it lacks sufficient information about Fairweather's creditworthiness is unreasonable and transparently tactical.

B. Fairweather is a Suitable Replacement Tenant

i) The Proposed Ailes Store is Suitable for the Former HBC Premises

56. As detailed above, Fairweather's plan is to operate an "Ailes" department store at Yorkdale. The store will feature a range of private-label brands and well-known third-party brands.

57. Fairweather has decades of experience in the retail apparel industry in Canada. In addition to Oxford and RioCan, it leases space from such prominent commercial landlords as Primaris, Westcliff, Morguard, Cushman Wakefield, BentallGreenOak, Cominar, Ivanhoe Cambridge, First Capital and Leyad.⁶⁷ It currently operates over 100 stores.⁶⁸

58. Jamie Tate, an expert in retail market analysis, has provided an expert report in which he opines that Fairweather is a suitable tenant for Yorkdale. Mr. Tate notes that the merchandise range to be sold at the Ailes store is similar to that carried by Simons, one of Yorkdale's current anchor tenants.⁶⁹ Mr. Tate also explains that the third-party brands to be sold at Ailes are comparable in quality and price point to what was previously offered by HBC itself.⁷⁰

⁶⁶ Corrado Cross, at pp. 35-36, qq. 150-151 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 38-39**)

⁶⁷ Blasutti Affidavit, at para. 75(c)(i) (**RioCan Record, Tab 1, p. 31**)

⁶⁸ Blasutti Affidavit, at para. 76 (**RioCan Record, Tab 1, p. 32**)

⁶⁹ Tate Report, at p. 7 (**Receiver Reply Record, Tab 2A, p. 129**)

⁷⁰ Tate Report, at p. 7 (**Receiver Reply Record, Tab 2A, p. 129**)

59. Based on data published by Oxford itself, Mr. Tate considered the demographics of Yorkdale's primary customer base, noting that the mall's Primary Trade Area (as defined by Oxford) has average income levels slightly below the GTA average. In keeping with this demographic, Yorkdale has many retailers that offer products at affordable price points. The Ailes store would thus be an appropriate addition to Yorkdale.⁷¹

ii) Oxford's Attacks on Fairweather's Suitability

60. Oxford asserts that Fairweather is not a suitable tenant. Concerningly, Oxford changed its reasons for objecting to Fairweather's suitability between its initial materials and its sur-reply.

61. In her first affidavit, Ms. Corrado swore that Oxford opposed the subtenancy because Fairweather's stores operate in the "budget and value-oriented market"⁷², contrary to Yorkdale's positioning as a "centre for luxury and flagship retail operations."⁷³ Her affidavit gave the impression that Yorkdale was tenanted exclusively by high-end, luxury retailers, and thus any new tenant had to focus on that same segment of the market.

62. The truth is quite different. While there are indeed luxury retailers at Yorkdale, the mall caters to all demographics. Mr. Tate noted that Yorkdale features a range of "decidedly mid-market retailers", including anchor tenants Simons, Uniqlo and Sport Chek.⁷⁴ In addition to these three anchor tenants, Yorkdale features a host of retailers selling apparel at "affordable price points", including Zara, H&M, Garage, Urban Behaviour and Foot Locker.⁷⁵ During discussions

⁷¹ Tate Report, at pp. 8-9 (**Receiver Reply Record, Tab 2A, pp. 130-131**)

⁷² Corrado Affidavit, at para. 6 (**Oxford Responding Record, Tab 1, p. 3**)

⁷³ Corrado Affidavit, at para. 19 (**Oxford Responding Record, Tab 1, p. 6**)

⁷⁴ Tate Report, at pp. 7-8 (**Receiver Reply Record, Tab 2A, pp. 129-130**)

⁷⁵ Tate Report, at p. 9 (**Receiver Reply Record, Tab 2A, p. 131**)

with HBC in the Fall of 2024, Oxford's head of leasing advised that Walmart would be a satisfactory replacement tenant for HBC's premises at Yorkdale.⁷⁶

63. Ms. Corrado then retreated from the position that Fairweather's merchandise was too inexpensive. In sur-reply, she swore that Oxford's objection "is not based on the fact that Fairweather is not a luxury retailer."⁷⁷ On cross-examination she conceded that Oxford is also interested in catering to customers "looking for more reasonably priced products" and intends to "continue offering a range of prices for its apparel at Yorkdale Mall."⁷⁸

64. Instead, in sur-reply, Ms. Corrado claimed that Oxford's objection was that Fairweather was not a "first class retail operator."⁷⁹ She explained that whether a retailer is "first class" is not based on the price of its merchandise and that merchandisers selling more affordable products can still be first class retailers.⁸⁰

65. However, the "first class" argument is firmly at odds with Oxford's business dealings with Fairweather over the last several decades:

- (a) In cross examination, Ms. Corrado confirmed that Oxford does not lease *any* of its properties to second-class retailers. The "first class" requirement is not unique to Yorkdale.⁸¹
- (b) Fairweather's lease at STC requires it to "operate its business in a first-class manner and keep the store's appearance in first-class condition."⁸² Ms. Corrado

⁷⁶ Putnam Affidavit, at paras. 2-3 (**Receiver Reply Record, Tab 3, pp. 142-143**)

⁷⁷ Corrado Sur-Reply Affidavit, para 18 (**Oxford Sur-Reply Record, Tab 1**)

⁷⁸ Corrado Cross, pp. 37-38, qq. 159-160 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 40-41**)

⁷⁹ Corrado Sur-Reply Affidavit, para 18 (**Oxford Sur-Reply Record, Tab 1, p. 8**)

⁸⁰ Corrado Sur-Reply Affidavit, para 20 (**Oxford Sur-Reply Record, Tab 1, p. 9**)

⁸¹ Corrado Cross, at p. 38, q. 163 (**Cross-Examination Brief, Vol 1, Tab 1, p. 41**)

⁸² Fairweather STC Lease, Schedule 2, s. 2 (**Oxford Responding Record, Tab 1L**)

confirmed that Fairweather has been subject to these obligations for more than 20 years, and not once during that time has Oxford alleged that Fairweather has failed to operate in a first-class manner at STC.⁸³

- (c) While Fairweather's lease at Upper Canada Mall does not contain a specific "first class" provision, Ms. Corrado confirmed that Upper Canada Mall is a first-class shopping centre with first-class tenants, and that Oxford has never asserted that Fairweather is failing to operate in a first-class manner at that mall over the 36 years it has been a tenant.⁸⁴

66. Given the late appearance of Oxford's "first class" objection and the fact that Oxford has never asserted any failure of Fairweather to operate in a first-class manner in a 30+ year business relationship, it regrettably appears that Oxford's position on this issue is purely tactical. Fairweather is a long-established Canadian retailer operating at first-class shopping centres. It is an entirely suitable tenant.

C. Fairweather is Sufficiently Experienced

i) Fairweather has Significant Experience

67. Fairweather has decades of experience in the retail apparel industry and plans to operate a traditional department store in the HBC premises, as the Head Lease requires.

68. The Head Lease requires a subtenant to be "sufficiently experienced and competent in operating a business of the type required to be operated in the Tenant Department Store."⁸⁵ The required business is a "single integrated traditional retail department store."⁸⁶ The Head Lease

⁸³ Corrado Cross, at pp. 41-42, qq. 172-175 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 44-45**)

⁸⁴ Corrado Cross, at pp. 42-43, qq. 176-178 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 45-46**)

⁸⁵ Head Lease, s. 21.00 (**Receiver Motion Record, Tab 2B, p. 101**)

⁸⁶ Head Lease, s. 6.00 (**Receiver Motion Record, Tab 2B, p. 81**)

goes on to specify that the stores operated by Sears, Bloomingdale's, Macy's and Nordstrom's in 2002 were examples of single integrated traditional retail department stores and that the nature of a department store is "fluid and dynamic" and "subject to changes over time."⁸⁷

69. As Mr. Tate explained, "integrated traditional retail department store" is not an industry term.⁸⁸ Nordstrom (which the Head Lease offers as an example of such a business) is classified by Statistics Canada as a "Family Clothing Retailer", a category that also includes Simons and Holt Renfrew, which currently operate as anchor tenants at Yorkdale.⁸⁹

70. In Mr. Tate's opinion, modern department stores fall within this class of "Family Clothing Retailers." They are large-scale stores, primarily focused on apparel, offering a range of products broken into different departments. The proposed Ailes store is the same and also qualifies as a modern department store.⁹⁰

71. Oxford's expert, Scott Lee, has a similar view. His view is that "traditional department stores" include stores such as Simons and Macy's.⁹¹ Oxford did not ask Mr. Lee to opine on whether the proposed Ailes store would qualify as a "traditional department store." However, given his agreement with Mr. Tate that Simons is a traditional department store, and Mr. Tate's unchallenged opinion that Ailes would be in the same category as Simon's, there can be no dispute that the Ailes store satisfies the Head Lease requirement that the subtenant operate a single integrated traditional retail department store.

⁸⁷ Head Lease, s. 6.00 (**Receiver Motion Record, Tab 2B, p. 81**)

⁸⁸ Tate Report, at p. 10 (**Receiver Reply Record, Tab 2A, p. 132**)

⁸⁹ Tate Report, at p. 10 (**Receiver Reply Record, Tab 2A, p. 132**)

⁹⁰ Tate Report, at p. 10 (**Receiver Reply Record, Tab 2A, p. 132**)

⁹¹ Lee Cross, at pp. 7-8, qq. 25-30 (**Cross-Examination Brief, Vol 1, Tab 2, pp. 96-97**)

ii) Oxford's Attacks on Fairweather's Experience

72. Fairweather has a vast amount of experience in the retail apparel market. Oxford argues that Fairweather's experience as a "retailer" is not relevant- that it must demonstrate specific experience operating a traditional department store.⁹² A proper reading of the Head Lease rebuts Oxford's argument.

73. The Head Lease requires a subtenant to be "sufficiently" experienced in operating a store of the "type" required. The intentional use of the word "sufficiently" makes clear that subtenant need not have extensive or perfect experience. It need only have sufficient experience such that it could reasonably be expected to be capable of operating the required type of business.

74. As Mr. Tate explained, the modern department store is primarily focused on apparel, separated into different departments. Fairweather has decades of experience operating apparel retailers selling goods in various departments: men's, women's, children's, outerwear and sportswear.⁹³ It also sells footwear, cosmetics and jewelry.⁹⁴ Fairweather is also a retailer of housewares, including kitchen accessories and home décor products.⁹⁵ It is an authorized retailer of Authentic Brands Group and Blue Star Alliance, which are notable brand-management firms.⁹⁶ In short, it has significant experience selling the full range of goods that make up the offerings in a modern department store.

75. Fairweather's many years of retail experience in apparel, cosmetics, home décor and other categories, operating in major shopping centres, is more than "sufficient" to satisfy the requirements of the Head Lease.

⁹² Corrado Affidavit, at para. 64 (**Oxford Responding Record, Tab 1, pp. 21-22**)

⁹³ Blasutti Reply, at paras. 35-41 (**RioCan Record, Tab 2, pp. 326-327**)

⁹⁴ Blasutti Reply, at para. 49 (**RioCan Record, Tab 2, p. 328**)

⁹⁵ Blasutti Reply, at paras. 42-43 (**RioCan Record, Tab 2, p. 327**)

⁹⁶ Blasutti Reply, at para. 25 (**RioCan Record, Tab 2, p. 323**)

D. Oxford's Refusal is Unreasonable

i) Oxford's Evidence Has Been Misleading

76. Oxford has unreasonably objected to each of the three prongs of s. 20.01 of the Head Lease. Unfortunately, Oxford's position in this motion suggests that it has collateral reasons for objecting to Fairweather and is willing to advance any possible argument to avoid the Sublease. In its zeal to defeat this motion, Oxford has given evidence that is misleading and exaggerated. Examples of such evidence are as follows.

77. Ms. Corrado insisted that Oxford has been reducing Fairweather's presence in its malls for years, and went so far as to swear that since 2006, Oxford:

has only entered into short-term agreements with Fairweather and other brands controlled by Mr. Benitah, typically containing clear landlord termination rights, simply to keep the applicable premises occupied and operating while Oxford searches for a more suitable, longer-term retailer that it can transition into the space.⁹⁷

78. This evidence was false or misleading in three different respects:

- (a) First, it is not true that Oxford has only entered into short-term agreements with Fairweather since 2006. On cross-examination, Ms. Corrado admitted that in 2007, Oxford agreed to a ten-year extension for Fairweather's tenancy at Upper Canada Mall.⁹⁸ She also admitted that Oxford agreed to a seven-year extension for Fairweather's tenancy at STC in 2012.⁹⁹ Ms. Corrado ultimately admitted there are several examples of Oxford entering into longer-term leases with Fairweather since 2006.¹⁰⁰

⁹⁷ Corrado Affidavit, at para. 46 (**Oxford Responding Record, Tab 1, p. 16**)

⁹⁸ Corrado Cross, at pp. 15-16, qq. 55-57 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 18-19**)

⁹⁹ Corrado Cross, at pp. 16-17, qq. 59-60 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 19-20**)

¹⁰⁰ Corrado Cross, at p. 17, qq. 61-63 (**Cross-Examination Brief, Vol 1, Tab 1, p. 20**)

- (b) Second, there is no evidence that Oxford's agreements with Fairweather since 2006 have contained "clear landlord termination rights." Ms. Corrado did not produce copies of the many agreements between Oxford and Fairweather since 2006 and admitted that she has not reviewed them.¹⁰¹ Her assertion about the content of these agreements was made without any knowledge.
- (c) Third, Ms. Corrado's affidavit suggests that Oxford has been permitting Fairweather to occupy space in its malls while it "searches for a more suitable" tenant. That was not true either. When challenged on the suggestion that Oxford has spent 19 years looking for "more suitable" tenants, Ms. Corrado demurred and said she was not suggesting that to be the case.¹⁰²

79. A second example of Oxford's exaggerated evidence is Ms. Corrado's description of Fairweather's tenancy at Kingsway Mall in Edmonton. Fairweather operates a Designer Depot store in the former HBC premises in that mall on a short-term basis. Ms. Corrado levied a variety of criticisms about that store, including that exterior signage was not illuminated and that "boxes are strewn across the sales floor (giving the appearance that the sales floor is used for shipping and receiving)."¹⁰³

80. In cross-examination, Ms. Corrado admitted that she has never been to the Designer Depot store, which only opened on October 31, 2025, has not spoken to any of the store's staff and has not even spoken with Oxford's leasing coordinator at the mall.¹⁰⁴ Although her affidavit purported to rely upon an email from the leasing coordinator as proof that the store's exterior

¹⁰¹ Corrado Cross, at p. 17, qq. 62-63 (**Cross-Examination Brief, Vol 1, Tab 1, p. 20**)

¹⁰² Corrado Cross, at p. 15, q. 54 (**Cross-Examination Brief, Vol 1, Tab 1, p. 18**)

¹⁰³ Corrado Sur-Reply, at para 10 (**Oxford Sur-Reply Record, Tab 1**)

¹⁰⁴ Corrado Cross, at p. 18, qq. 67-70 (**Cross-Examination Brief, Vol 1, Tab 1, p. 21**)

signage is not illuminated, Ms. Corrado admitted that the email does not say anything about this, vaguely speculating that it “may have been another email.”¹⁰⁵

81. Worse, when confronted with her description of the store having boxes “strewn across the sales floor”, Ms. Corrado admitted that the photos of the store she had attached to her affidavit do *not* show boxes strewn across the floor. The only boxes visible anywhere in the photos are hidden behind curtains.¹⁰⁶ When asked if she thought she had fairly described the actual condition of the store, Ms. Corrado admitted “not in the photos, but based on others’ experience.”¹⁰⁷ She has not disclosed who these “others” are and the photos do not support their alleged “experience.”

82. A third example of Oxford’s misleading evidence concerns the rent Fairweather pays at STC and Upper Canada Mall. Ms. Corrado claimed that desirable tenants pay “triple net” rent (base rent plus certain costs) but Fairweather typically pays rent based on a percentage of its store’s sales, rather than on a triple net basis.¹⁰⁸

83. Once again, Ms. Corrado’s evidence was misleading. On cross-examination, she admitted that Fairweather paid triple net rent at STC and Upper Canada Mall for decades, only converting to alternate methods of calculating rent in February 2025.¹⁰⁹ She also failed to note that in the GROC calculations she attached (faulty as they are), 25 of the 33 months considered were months when Fairweather was paying triple net rent, even though she suggested otherwise.¹¹⁰

¹⁰⁵ Corrado Cross, at p. 21, q. 78 (**Cross-Examination Brief, Vol 1, Tab 1, p. 24**)

¹⁰⁶ Corrado Cross at pp. 22-24, qq. 83-91 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 25-26**)

¹⁰⁷ Corrado Cross, at p. 25, q. 95 (**Cross-Examination Brief, Vol 1, Tab 1, p. 28**)

¹⁰⁸ Corrado Affidavit, at para. 39 (**Oxford Responding Record, Tab 1, p. 14**)

¹⁰⁹ Corrado Cross, at pp. 30-34, qq. 120-137 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 33-37**)

¹¹⁰ Corrado Cross, at p. 35, qq. 147-149 (**Cross-Examination Brief, Vol 1, Tab 1, p. 38**)

ii) Oxford's Collateral Reasons for Opposing the Sublease

84. Oxford's eagerness to oppose the Sublease likely stems from a desire to dispose of the Head Lease entirely. In addition to its long term and below market rent, the Head Lease establishes a "no build" zone, within which Oxford is prohibited from developing without YSS 1's consent.¹¹¹ It also requires Oxford to maintain a certain number of parking spots, preventing Oxford from developing parking areas.¹¹² It also provides YSS 1 with approval rights over tenants within a certain proximity of the HBC store.¹¹³

85. All of these restrictions limit Oxford's control of the property. In cross-examination, Ms. Corrado confirmed that landlords prefer to control their own real estate.¹¹⁴ She confirmed that Oxford would rather be free of the restrictions imposed by the Head Lease.¹¹⁵

86. For a commercial landlord, freeing oneself of these sorts of restrictions can be very valuable. In 2014, Oxford paid HBC \$5 million for a reduction in its parking spot requirements under the Head Lease.¹¹⁶ Oxford's expert, Mr. Lee, confirmed that removal of the sort of restrictions found in the Head Lease can allow a landlord to unlock a site's development potential and could be worth tens of millions of dollars.¹¹⁷

87. Ms. Corrado admitted that there is value to Oxford in getting rid of the HBC lease.¹¹⁸ She also revealed Oxford is not planning to try and find a tenant to lease the entire premises. Rather, among a "slew of options", Oxford would "probably" reconfigure the space to be occupied by

¹¹¹ Head Lease, s. 20.05 (**Receiver Motion Record, Tab 2B, p. 100**)

¹¹² Head Lease, s. 7.04(a) (**Receiver Motion Record, Tab 2B, p. 84**); April 2014 Amendment to Head Lease, s. 5 (**Oxford Responding Record, Tab 1E**)

¹¹³ Head Lease, 14.00 (**Receiver Motion Record, Tab 2B, p. 96**)

¹¹⁴ Corrado Cross, at p. 52, q. 220 (**Cross-Examination Brief, Vol 1, Tab 1, p. 55**)

¹¹⁵ Corrado Cross, at p. 48, qq. 201-202; p. 50, qq. 209-210 (**Cross-Examination Brief, Vol 1, Tab 1, pp. 51, 53**)

¹¹⁶ April 2014 Amendment to Head Lease, s. 5 (**Oxford Responding Record, Tab 1E**)

¹¹⁷ Lee Cross, at pp. 4-5, qq. 8-11 (**Cross-Examination Brief, Vol 1, Tab 2, p. 93-94**)

¹¹⁸ Corrado Cross, at p. 51, q. 213 (**Cross-Examination Brief, Vol 1, Tab 1, p. 54**)

multiple tenants, potentially requiring a complete demolition of the space.¹¹⁹ Oxford refused to provide any further information about its plans for the space.¹²⁰

88. The little information Oxford was willing to disclose about its plans in its materials filed for this motion reveal that it is refusing to consent to the Sublease for purposes collateral to the lease. The real issue is not Fairweather's suitability. Oxford wishes to regain control of the premises for its purposes and eliminate the Head Lease and financial parameters and restrictions contained therein. The case law is clear that collateral purposes like this are an unreasonable basis for refusing consent.¹²¹

89. Further, Oxford and HBC had been in discussions in the Fall of 2024 in an effort to address various HBC locations in Oxford-owned or operated properties on a consensual and commercial basis, with such discussions including potential amendments to the leases, Oxford's possible buy-out of the leases, and potential assignments to third parties. If the Sublease is approved, Oxford can still pursue all of these options with the Receiver.

PART IV - ORDER REQUESTED

90. The Head Lease is YSS 1's key asset. It is valuable, offering a long-term tenancy for low rent at a highly desirable location. Its preservation is necessary in order for YSS 1's creditors to recover the sums owed to them. The Receiver believes that the Sublease represents the best option for all stakeholders. If not approved, the inevitable alternative is the termination of the Head Lease and resulting loss of all of its value.

91. The Receiver requests that this Court make an Order approving the Sublease.

¹¹⁹ Corrado Cross, at pp. 43-45, qq. 179-185 (**Cross-Examination Brief, Vol 1, Tab 1, p. 46-47**)

¹²⁰ Corrado Cross, at p. 46, qq. 190-191 (**Cross-Examination Brief, Vol 1, Tab 1, p. 49**)

¹²¹ [HBC v OMERS, 2015 ONSC 4671 \(CanLII\), at para 36](#)

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of January, 2025.



Orestes Pasparakis/Evan Cobb/James
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SCHEDULE "A"

LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10
2. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508
3. *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41
4. *In Re Hudson's Bay Company*, 2025 ONSC 5998
5. *1455202 Ontario Inc. v. Welbow Holdings Ltd.*, 2003 CanLII 10572 (ON SC)
6. *Tradedge Inc. (Shoeless Joe's) v. Tri-Novo Group Inc.*, 2009 CanLII 22578 (ON SC)
7. *HBC v OMERS*, 2015 ONSC 4671

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 2, 2026



James Renihan

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, s. 23(2):

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.

Application to court where consent to assignment or subletting withheld

(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.

RIOCAN REAL ESTATE INVESTMENT TRUST et al.
Applicants

-and- 2455034 ONTARIO LIMITED PARTNERSHIP et al.
Respondents

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

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE MOVING PARTY
FTI CONSULTING CANADA INC., AS RECEIVER**

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