

DATED this 6th day of October, 2003

BETWEEN:

**BROCK UNIVERSITY**

- and -

**RODMAN HALL ARTS CENTRE**

**A G R E E M E N T**

**Sullivan•Mahoney**

**BARRISTERS & SOLICITORS**

40 Queen Street  
P.O. Box 1360  
St. Catharines, ON  
L2R 6Z2

## TABLE OF CONTENTS

### ARTICLE 1

Defined Terms . . . . .	1
Intellectual Property . . . . .	3
Articles, Headings and Table of Contents . . . . .	5
Schedule References . . . . .	5
Statute References . . . . .	5
Interpretation Not Affected by Party Drafting . . . . .	5
Number and Gender . . . . .	6
Including . . . . .	6

### ARTICLE 2

Further Assurances . . . . .	6
Entire Agreement . . . . .	6
Severability . . . . .	7
Expenses . . . . .	7
Waiver . . . . .	8
Successors and Assigns . . . . .	8
Governing Law . . . . .	8
Counterparts . . . . .	8
Time of the Essence . . . . .	8

### ARTICLE 3

Agreement to Purchase and Sell . . . . .	8
Purchase Price . . . . .	9
Payment of Purchase Price . . . . .	9
GST Exemption . . . . .	9

### ARTICLE 4

Conditions to the Obligations of the Purchaser . . . . .	9
Waiver or Termination by Purchaser . . . . .	11
Conditions to the Obligations of the Vendor . . . . .	11
Waiver or Termination by Vendor . . . . .	12

### ARTICLE 5

Representations and Warranties of the Vendor . . . . .	12
Representations and Warranties of the Purchaser . . . . .	16
Covenants of the Purchaser . . . . .	18

### ARTICLE 6

Indemnity by the Vendor . . . . .	19
Indemnity by the Purchaser . . . . .	19

Notice of Claim . . . . .	20
ARTICLE 7	
Closing . . . . .	21
Vendor's Closing Deliveries . . . . .	21
Purchaser's Closing Deliveries . . . . .	22
Possession . . . . .	22
Notices . . . . .	22
Non-Transferrable and Non-Assignable Purchased Assets . . . . .	22
ARTICLE 8	
Insurance . . . . .	23
ARTICLE 9	
Winding Up . . . . .	24
Non-Merger . . . . .	24

**THIS AGREEMENT** made as of the 6th day of October, 2003.

**BETWEEN :**

**BROCK UNIVERSITY**, an institution duly incorporated under the laws of the Province of Ontario, having its head office in the City of St. Catharines, in the Regional Municipality of Niagara

(hereinafter referred to as the "**Purchaser**")

- and -

**RODMAN HALL ARTS CENTRE**, a company incorporated under the laws of the Province of Ontario, having its head office in the City of St. Catharines, in the Regional Municipality of Niagara

(hereinafter referred to as the "**Vendor**")

**THIS AGREEMENT WITNESSES** that for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, it is agreed among the Parties hereto as follows:

## **ARTICLE 1**

### **INTERPRETATION**

1.1 **Defined Terms.** In this Agreement and in the Schedules hereto, the following terms shall have the meanings set out below unless the context requires otherwise (in which case the term will not be capitalized):

(a) "**Advisory Committee**" means a group of not less than eight (8) individuals, four (4) of whom shall be past members of the Vendor and the balance appointed by the Purchaser. The Advisory Committee as appointed

from time to time shall function as an adviser to the Purchaser in the operation of Rodman Hall as an art gallery, particularly in the area of the disposition or acquisition of art works for the Permanent Collection. The role of the Advisory Committee shall be advisory and not managerial or executive. The time, place of meetings and frequency thereof, shall be as adopted by the Advisory Committee from time to time;

(b) "**Agreement**" means this Agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

(c) "**Art Rental Agreements**" means any agreements for the rental of works of art which the Vendor has outstanding at the Closing Date;

(d) "**Assumed Liabilities**" means the liabilities of the Vendor, as set out in **Schedule 1.1(d)** hereto, which are to be assumed by the Purchaser pursuant to section 3.1 hereof;

(e) "**Books and Records**" means all books, records, files and papers Related to the Undertaking or the Purchased Assets, including books of account, ledgers, journals, art inventories, provenances, cost and pricing information, plans, projections, drawings, surveys, documents of title, engineering information, blueprints or building plans, computer programs (including source codes), software programs, manuals and data, advertising materials, sales and purchases, correspondence, personnel, employment and other records and all copies and recordings of the foregoing;

(f) "**Business Day**" means any day other than a day which is a Saturday, a Sunday or a statutory holiday in the Province of Ontario;

(g) "**Closing**" means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

(h) "**Closing Date**" means the 17th day of October, 2003, or such other date as the Vendor and Purchaser may agree upon in writing;

(i) "**Consents and Approvals**" means all consents and approvals required to be obtained in connection with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement, including the consents and approvals listed in **Schedule 5.1(g)** attached hereto;

- (j) **"Consigned Art"** means any works of art which are not owned by the Vendor and are held by it on consignment from the artist, other galleries or owners thereof;
- (k) **"Contracts"** means all existing, pending and/or executory contracts, agreements, leases and arrangements Related to the Undertaking to or by which the Vendor or Undertaking is bound or affected;
- (l) **"Data Processing System"** means the computer equipment and associated peripheral devices and the related operating and application systems and other software, subject to transferable licences, owned, leased or licensed by the Vendor and used by it in connection with the Undertaking;
- (m) **"Employee"** means an individual who is employed by the Vendor and is identified in **Schedule 5.1(n)** hereto;
- (n) **"Environmental Laws"** means Applicable Law together with all current policies, guidelines, environmental quality objectives and codes of practice relating to the natural environment, public, occupational health or safety, product safety, product liability, Hazardous Substances and the manufacture, use, labelling, importation, handling, transportation, storage, disposal and treatment of Hazardous Substances, including the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 (Ontario), (the "**EPA**"), the *Canadian Environmental Protection Act*, R.S.C. 1985, c. 16 (4th supp.), (the "**CEPA**"), the *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1 (Ontario), (the "**OHSA**"), and the *Ontario Water Resources Act*, R.S.O. 1990, c. O. 40, (the "**OWRA**").
- (o) **"Equipment"** means all, office and maintenance equipment Related to the Undertaking and all repair parts and spare parts on hand at the Closing Date, including the equipment listed in **Schedule 5.1(i)3.3(b)** attached hereto;
- (p) **"Hanson Family Fund"** means a fund established by the Hanson Family in the original principal amount of \$200,000.00 in which fund there is a current balance of \$161,000.00 more or less and which fund was settled by the Hanson Family pursuant to an unwritten agreement whereby the fund and any income derived therefrom would be used for the purpose of funding the acquisition of works of art and the general operation of the gallery;
- (q) **"Intellectual Property"** means all rights to and interest in all business and trade names, corporate names, brand names and slogans related to the Undertaking;

(r) "**Lands and Buildings**" means all of the lands owned by the Vendor which are described in **Schedule 1.1(r)** hereto and all buildings and other improvements located thereon;

(s) "**Liabilities**" means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, accrued, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment, undertaking, or Taxes;

(t) "**Notices**" means the notices required to be given to any Person under any applicable law or pursuant to any contract or other obligation to which the Vendor is a party or by which the Vendor is bound or which is applicable to any of the Purchased Assets, in connection with the execution and delivery of this Agreement or the completion of the transactions contemplated by this Agreement;

(u) "**Party**" means a party to this Agreement and any reference to a Party includes its successors and permitted assigns; "**Parties**" means every Party;

(v) "**Permanent Art Collection**" means any paintings etchings, prints, sculptures, or any other work of art which are owned by the Vendor whether or not actually on display in the Vendor's galleries;

(w) "**Person**" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, governmental agency, board, commission or authority and any other form of entity or organization;

(x) "**Purchased Assets**" means all the properties, assets, interests and rights of the Vendor which are Related to the Undertaking, on an "as is, where is" condition, including the following:

- (i) the Lands and Buildings;
- (ii) the Permanent Art Collection;
- (iii) the Hanson Family Fund;
- (iv) all rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or the Assumed Liabilities or otherwise Related to the Undertaking;

- (v) the Intellectual Property;
- (vi) the Contracts;
- (vii) the Books and Records;
- (viii) the Data Processing System;
- (ix) any benefits payable under any insurance policies Related to the Undertaking or the other Purchased Assets in respect of claims based on occurrences prior to the Closing Date;
- (x) all goodwill Related to the Undertaking, including the present telephone numbers, internet addresses and other communications numbers and addresses of the Undertaking;
- (y) "**Receivables**" means all accounts receivable, bills receivable, loans receivable, trade accounts, book debts and insurance claims Related to the Undertaking, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits;
- (z) "**Related to the Undertaking**" means, directly or indirectly, used in, arising from or relating in any manner to the Undertaking;
- (aa) "**Undertaking**" means, the corporate operations carried on by the Vendor related to the Rodman Hall art gallery and ancillary functions thereto;

1.2 **Articles, Headings and Table of Contents.** The division of this Agreement into articles, sections, paragraphs, subparagraphs and clauses, the insertion of headings, and the provision of a table of contents is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 **Schedule References.** The Schedules which are attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part hereof, and shall include the regulations promulgated thereunder.

1.4 **Statute References.** In this Agreement, any reference to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.5 **Interpretation Not Affected by Party Drafting.** Each Party acknowledges that it and its solicitor have reviewed and participated in settling the terms of this



Agreement, and each of the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement.

1.6 **Number and Gender.** In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.7 **Including.** In this Agreement "including" means "including without limitation" and "includes" means "includes without limitation".

## ARTICLE 2

### GENERAL

2.1 **Further Assurances.** Each Party hereby covenants and agrees that at any time, and from time to time, after the Closing Date it will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, documents and assurances as may be required for the better carrying out and performance of the terms of this Agreement.

2.2 **Entire Agreement.** This Agreement and the Schedules referred to herein together with any deeds, conveyances, assignments and/or other documentation delivered by the Parties on closing constitute the entire agreement between the Parties and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. None of the Parties shall be bound or charged with any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or in the Schedules, documents and instruments to be delivered on or before the Closing Date pursuant to this Agreement. The Parties further acknowledge and agree that, in entering into this Agreement and in delivering the Schedules, documents and instruments to be delivered on or before the Closing Date, they have not in any way relied, and will not in any way rely upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, express or implied, not specifically set forth in this Agreement or in such Schedules, documents or instruments.

2.3 **Severability.** Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.

2.4 **Expenses.** Except as herein specifically provided, each Party shall be responsible for its own legal and other expenses incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement.

2.5 **Notices.** Any notice required or permitted to be given hereunder may be effectively given by letter delivered either by personal delivery, registered mail or by electronic means, addressed to the recipient as follows:

(i) in the case of the Vendor:

Rodman Hall Arts Centre  
109 St. Paul Crescent  
St. Catharines, ON L2S 1M5

Attention: Joseph O'Brien, Esq.

with a copy to:

Peter Partington, Esq., Q.C.  
Barrister & Solicitor  
205 King Street  
St. Catharines, ON L2R 3J5

(ii) in the case of the Purchaser:

Brock University  
500 Glenridge Avenue  
St. Catharines, ON L2S 1A1

Attention: Dr. David Atkinson, President

with a copy to:

Sullivan Mahoney LLP  
Barristers & Solicitors  
40 Queen Street, P.O. Box 1360  
St. Catharines, ON L2R 6Z2

Attention: Victor F. Muratori, Esq. Q.C.

and, in each case, mailed by ordinary mail, postage prepaid, or delivered to that address; and, if mailed as aforesaid, any such notice shall have been deemed to have been given on the fifth (5th) business day following that on which the letter containing the notice was posted. If any notice is given by electronic communication, such notice shall be deemed to be delivered on the day of transmittal thereof if given during normal business hours of the recipient and on the next business day if given after normal business hours. Any Party may change its address for service from time to time by notice given in accordance with the foregoing.

**2.6 Waiver.** Any Party which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the time when such term or condition is required to be fulfilled under this Agreement; provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such Party. The waiver by a Party of any term or condition hereof shall not operate as a waiver of that Party's rights under this Agreement in respect of any other term and condition (whether of the same or any other nature).

**2.7 Successors and Assigns.** This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any Person, other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**2.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated, in all respects, as an Ontario contract.

**2.9 Counterparts.** This Agreement may be executed in several counterparts. A counterpart once executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

**2.10 Time of the Essence.** Time shall be of the essence of this Agreement.

## ARTICLE 3

### PURCHASE AND SALE

**3.1 Agreement to Purchase and Sell.** At Closing, subject to the terms and conditions of this Agreement, and on the basis of and in reliance upon the

representations, warranties, covenants, obligations and agreements set forth in this Agreement, the Vendor shall sell the Purchased Assets and the Purchaser shall purchase the Purchased Assets and assume the Assumed Liabilities as they exist at Closing.

**3.2 Purchase Price.** The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be equal to the sum of:

- (a) Two Dollars (\$2.00);
- (b) an amount equal to the Assumed Liabilities; and
- (c) an amount equal to the costs to be incurred by the Vendor, post Closing, to effect the legal winding up of the Vendor including any filing, legal fees or disbursements for such winding up (the "Winding Up Cost").

**3.3 Payment of Purchase Price.** The Purchase Price shall be paid and satisfied as follows:

- (a) at Closing;
- (b) at Closing, the Purchaser shall assume the Assumed Liabilities by the execution and delivery of a general conveyance and assumption of liabilities agreement in the form of **Schedule 3.3(b)**; and
- (c) at Closing, the Purchaser shall assume the Winding Up Costs by delivery of an assumption of liability agreement in the form of **Schedule 3.3(b)**.

**3.4 GST Exemption.** At the Closing the Vendor and the Purchaser shall jointly execute, in prescribed form, an election under section 167(1) of the *Excise Tax Act*, R.S.C. 1985, c. E-15 to have the sale of the Purchased Assets take place on a GST-free basis under Part IX of that Act and the Purchaser shall file such election with its GST return for the reporting period in which the sale of the Purchased Assets takes place.

## ARTICLE 4

### CONDITIONS

**4.1 Conditions to the Obligations of the Purchaser.** The obligation of the Purchaser to complete the transactions contemplated in this Agreement is subject to the

fulfilment of the following conditions at or prior to Closing, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time and the Vendor covenants that it will take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before Closing:

(a) **Accuracy of Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement or in any other agreements, documents or certificates delivered pursuant to this Agreement shall be true and accurate on the date hereof and at Closing.

(b) **Performance.** The Vendor shall have performed and complied in all material respects with all of the terms and conditions required by this Agreement to be performed or complied with by the Vendor at or prior to Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all of the documents contemplated in section 7.2 or elsewhere in this Agreement.

(c) **Corporate Action.** The Board of Trustees of the Purchaser shall have taken all corporate action necessary to approve the transactions contemplated by this Agreement.

(d) The directors of the Vendor and the members of the Vendor, as required, shall have taken all corporate action necessary to approve the transactions contemplated by this Agreement.

(e) **No Litigation.** There shall be no litigation or proceedings:

- (i) pending or threatened for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated in this Agreement or otherwise claiming that such completion is improper; or
- (ii) pending or threatened which, if decided adversely, would adversely affect the right of the Purchaser to acquire or retain the Purchased Assets or to continue the operations of the Business after Closing and which, in the reasonable judgment of the Purchaser, would make the completion of the transactions contemplated by this Agreement inadvisable.

(f) **Termination of Other Agreements.** The Vendor shall have taken any and all steps required to terminate a certain purchase and sale agreement dated the 11th day of May, 2001, and a certain designation agreement dated the 13th day of February, 2002, (collectively the "Municipal Agreements") which it has with the City of St. Catharines whereby the Lands and Buildings have been designated as a Municipal Capital Facility pursuant to the provision of Section 110 of the *Municipal Act*. On Closing the Vendor shall deliver the Consent and Approval of the City of St. Catharines consenting to the transfer of the Lands and Buildings to the Purchaser and approving the termination of the Municipal Agreements.

(g) **Consents and Approvals.** All of the Consents and Approvals required shall have been obtained.

(h) **Due Diligence Investigation.** The Purchaser shall have confirmed or verified to its satisfaction, acting reasonably, the truth and accuracy of the information provided to the Purchaser by the Vendor in respect of the Business and the Purchased Assets.

4.2 **Waiver or Termination by Purchaser.** The conditions contained in section 4.1 hereof are inserted for the exclusive benefit of the Purchaser, who may, if such condition has not been fulfilled at or before the Closing Date, in its sole discretion, without limiting any rights or remedies available to the Purchaser at law or in equity, either:

(a) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfilment of any other condition; or

(b) terminate this Agreement by notice in writing to the Vendor and in such event the Purchaser shall be released from its obligations under this Agreement to complete the purchase of the Purchased Assets.

4.3 **Conditions to the Obligations of the Vendor.** The obligations of the Vendor to complete the transactions contemplated in this Agreement is subject to the fulfilment of the following conditions at or prior to Closing, it being understood that the following conditions are included for the exclusive benefit of the Vendor and may be waived, in whole or in part, in writing by the Vendor at any time and the Purchaser covenants that it will take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before Closing:

(a) **Accuracy of Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement or in any other

agreement, document or certificate delivered pursuant to this Agreement shall be true and accurate on the date hereof and at Closing.

(b) **Performance.** The Purchaser shall have performed and complied with all of the terms and conditions required by this Agreement to be performed or complied with by the Purchaser at or prior to Closing and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all of the documents contemplated in section 7.3 or elsewhere in this Agreement.

(c) **Corporate Action.** The directors and members of the Vendor shall have taken all corporate action necessary to approve the transactions contemplated by this Agreement.

(d) **Consents and Approvals.** All of the Consents and Approvals required shall have been obtained.

(e) **Covenants of the Purchaser.** The Purchaser shall have delivered to the Vendor the covenants which are to survive the Closing, a copy of which covenants are attached hereto as **Schedule 5.3** to this Agreement.

**4.4 Waiver or Termination by Vendor.** The conditions contained in section 4.3 hereof are inserted for the exclusive benefit of the Vendor, who may, if such condition has not been fulfilled at or before the Closing Date, in its sole discretion without limiting any rights or remedies available to the Vendor at law or in equity, either:

(a) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfilment of any other condition; or

(b) terminate this Agreement by notice in writing to the Purchaser and in such event the Vendor shall be released from its obligations under this Agreement to complete the purchase of the Purchased Assets.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

**5.1 Representations and Warranties of the Vendor.** The Vendor hereby represents and warrants to the Purchaser as follows, and acknowledges that the Purchaser is relying upon the accuracy of all representations and warranties of the Vendor set out

in this Agreement in connection with the purchase of the Purchased Assets and the completion of the other transactions contemplated by this Agreement:

(a) ***Incorporation and Power.*** The Vendor is a corporation duly incorporated under the laws of the Province of Ontario and is duly organized, validly subsisting and in good standing under such laws. The Vendor has the full corporate power, absolute authority and is qualified to own and dispose of its properties and assets and to carry on the Business as presently carried on by it.

(b) ***Corporate Authority.*** The Vendor has taken all necessary corporate action required to be taken by it to authorize this Agreement and the transaction contemplated hereunder and has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments.

(c) ***Execution and Delivery.*** The execution and delivery of this Agreement and all other agreements and instruments to be executed and delivered as contemplated by this Agreement and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendor and its members.

(d) ***Binding Obligation.*** This Agreement is a legal, valid and binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms, subject to:

- (i) bankruptcy, insolvency, moratorium, reorganization and other laws affecting the enforcement of creditors' rights generally; and
- (ii) the extent that equitable remedies, including the remedies of specific performance and injunction, are only available in the discretion of the court from which they are sought.

(e) ***Title to Purchased Assets.*** The Vendor is the owner of and has good and marketable title to all of the Purchased Assets, which constitute all of the assets of the Vendor used in carrying on the Undertaking, free and clear of any and all Encumbrances, except for Assumed Liabilities. No Person owns any assets which are used in the Undertaking. Other than this Agreement, there is no agreement, option or other right or privilege outstanding in favour of any



Person for the purchase from the Vendor of the Undertaking or any of the Purchased Assets out of the ordinary course of business. The Purchased Assets are sufficient to permit the continued operation of the Undertaking in substantially the same manner as conducted in the year ended on the date of this Agreement.

(f) **Compliance with Other Instruments.** The execution, delivery and performance of this Agreement and all other agreements and instruments to be executed, delivered and performed as contemplated by this Agreement and the completion by the Vendor of the transactions (with any required Consents, Approvals and Notices) contemplated hereby do not and will not constitute or result in any of the following:

- (i) a default, breach, violation or an event that, with notice or lapse of time or both, would be a default, breach or violation of any of the terms, conditions or provisions of the articles, by-laws or other constating documents of the Vendor or of any Contract or License or Permit;
- (ii) an event which, pursuant to the terms of any Contract or License or Permit, causes any right or interest of the Vendor to come to an end or be amended in any way that is detrimental to the Business or entitles any other Person to terminate or amend any such right or interest;
- (iii) the creation or imposition of any Encumbrance on any of the properties or assets of the Vendor; or
- (iv) the violation of any Applicable Law applicable to or affecting the Vendor which is Related to the Business.

(g) **Consents and Approvals.** The Consents and Approvals are listed in **Schedule 5.1(g)**. Except for the Consents and Approvals, no consent or approval of any Person is required in connection with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement or to permit the Purchaser to carry on the Business after the Closing as the Business is currently carried on by the Vendor.

(h) **Work Orders and Deficiencies.** There are no outstanding work orders, non-compliance orders, deficiency notices or other such notices related to the Lands and Buildings, the other Purchased Assets or the Undertaking which have been issued by any regulatory authority, police or fire department, sanitation, environment, labour, health or other governmental authorities or agencies.

There are no matters under discussion with any such department or authority relating to work orders, non-compliance orders, deficiency notices or other such notices. No amounts are owing by the Vendor in respect of Lands and Buildings to any governmental authority or public utility, other than current accounts which are not in arrears.

(i) **Personal Property and Equipment.** Schedule 5.1(i) lists each item of personal property and equipment.

(j) **Data Processing.** Schedule 5.1(j) sets out a brief description of the Data Processing System and a list of all agreements, including warranties, leases and licences relating to the Data Processing System. The Data Processing System adequately meets the data processing needs of the Business and operations of the Vendor as presently conducted. The Vendor has taken appropriate action by instruction, agreement or otherwise with its Employees or other persons permitted access to system application programs and data files used in the Data Processing System to protect against unauthorized access, use, copying, modification, theft and destruction of such programs and files. The data processing and data storage facilities of the Vendor are adequate and properly protected. The Vendor has arranged for back-up data processing services adequate to meet its data processing needs in the event the Data Processing System or any of its components is rendered temporarily or permanently inoperative as a result of a natural or other disaster. The Data Processing System is free from viruses and the Vendor has taken, and will continue to take, all steps and implement all procedures necessary to ensure, so far as reasonably possible, that the Data Processing System is free from viruses and will remain so until Closing.

(k) **Liabilities.** There are no liabilities (contingent or otherwise) of the Vendor of any kind whatsoever in respect of which the Purchaser may become liable on or after the consummation of the transactions contemplated by this Agreement, except for the Assumed Liabilities.

(l) **GST.** The Purchased Assets constitute all or substantially all of the property used in a "commercial activity" for the purposes of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 that forms all or part of a business carried on by the Vendor and the Vendor is a "registrant" under Part IX of the *Excise Tax Act* (Canada). The Vendor's GST registration number is 119122349RT0001.

(m) **Vendor's Residency.** The Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.).

(n) **Employees.**

- (i) The Vendor acknowledges and confirms that proper notice has been provided to all Employees for termination of employment other than the employees to be assumed by the Purchaser which employees are shown in **Schedule 5.1(n)**.
- (ii) The Vendor will settle or pay to all of the Employees, all amounts (both common law and statutory) that are payable to or in respect of or receivable by the Employees as of Closing, including termination allowances and accumulated vacation pay credits.

(o) **Compliance with Laws.** The Vendor is not in violation of any Applicable Law or Environmental Laws Related to the Undertaking.

(p) **Copies of Documents.** Complete and correct copies (including all amendments) of all Contracts, Leases and other documents referred to in this Agreement or any Schedule hereto or required to be disclosed hereby have been delivered to the Purchaser.

**5.2 Representations and Warranties of the Purchaser.** The Purchaser hereby represents and warrants to the Vendor as follows, and acknowledges that the Vendor is relying upon the accuracy of the representations and warranties of the Purchaser set out in this Agreement in connection with the sale of the Purchased Assets and the completion of the other transactions contemplated by this Agreement:

(a) **Incorporation and Power.** The Purchaser is an institution duly incorporated under the laws of the Province of Ontario and is duly organized, validly subsisting and in good standing under such laws. The Purchaser has the full corporate power, absolute authority and is qualified to own and dispose of its properties and assets and to carry on the Undertaking as presently carried on by it.

(b) **Corporate Authority.** The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments.

(c) **Execution and Delivery.** The execution and delivery of this Agreement and all other agreements and instruments to be executed and delivered as contemplated by this Agreement and the completion of the transactions

contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser and its shareholders.

(d) ***Binding Obligation.*** This Agreement is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms subject to:

- (i) bankruptcy, insolvency, moratorium, reorganization and other laws affecting the enforcement of creditors' rights generally; and
- (ii) the extent that equitable remedies, including the remedies of specific performance and injunction, are only available in the discretion of the court from which they are sought.

(e) ***Compliance with Other Instruments.*** The execution, delivery and performance of this Agreement and all other agreements and instruments to be executed, delivered and performed as contemplated by this Agreement and the completion by the Purchaser of the transactions contemplated hereby do not and will not constitute or result in any of the following:

- (i) a default, breach, violation or an event, that with notice or lapse of time or both, would be a default, breach or violation of:
  - (A) any of the terms, conditions or provisions of the articles, by-laws or other constating documents of the Purchaser;
  - (B) any agreement or instrument to which the Purchaser is a party or by which it or any of its property and assets are bound, or
  - (C) any note, bond, debt instrument, trust indenture or other indebtedness of the Purchaser;
- (ii) the violation of any Applicable Law applicable to or affecting the Purchaser;
- (iii) the creation or imposition of any Encumbrance on any of the properties or assets of the Purchaser; or

- (iv) the creation or imposition of any obligation, contractual or otherwise, to obtain the consent of any Person or to obtain any permits, licenses, certifications, authorizations or approvals of, or to notify any federal, provincial, municipal or local government or governmental agency, board, commission or authority.

(f) **GST.** The Purchaser is a "registrant" under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 and its registration number is 118819531RT0001.

5.3 ***Covenants of the Purchaser.*** The Purchaser hereby covenants and agrees with the Vendor that:

(a) The Purchaser shall not, for a period of not less than twenty (20) years, as long as it is a continuing institution carrying on its undertaking as a university, sell or otherwise dispose of the Lands and Buildings or the Permanent Art Collection. Provided however that this covenant shall not limit or be construed to limit the ability of the Purchaser to deal with, sell, trade or otherwise dispose of and/or acquire works of art as additions or deletions to the Permanent Art Collection;

(b) As long as the Purchaser is the owner of the Lands and Buildings the building located thereon shall be named and called "Rodman Hall";

(c) It will not use the Lands and Buildings for any commercial purpose which is not related to general university uses or purposes. For greater clarity, "general university uses or purposes" means any and all uses or undertakings which a university is permitted to carry on and, for the pursuit of said uses and purposes, no distinction shall be made between the uses permitted on the Lands and Buildings and the uses permitted on the Purchaser's other lands and buildings;

(d) Notwithstanding the provisions of section 5.3(c) hereof, the Purchaser shall dedicate a substantial portion of the buildings located on the Lands to the non-exclusive use of an art gallery open to the public at certain designated times and dedicated to the showing and exhibition of the arts including the Permanent Art Collection;

(e) In its operation of the Lands and Buildings and the Permanent Art Collection, the Purchaser shall do so as an independent ancillary unit of the University so that the operation shall be under the direct control and

management of the general administration of the Purchaser and reporting directly to it;

(f) It will appoint, within reasonable period of time subsequent to Closing, a qualified art curator responsible for the Permanent Art Collection and any other works of art added subsequently thereto;

(g) The provisions of the covenants contained in sections 5.3(a) to 5.3(e) inclusive shall survive the Closing and shall not merge therewith and shall remain in full force and effect for a period of twenty (20) years from the Date of Closing.

## ARTICLE 6

### INDEMNIFICATION

6.1 ***Indemnity by the Vendor.*** The Vendor agrees to indemnify and hold the Purchaser, its Representatives and its respective directors, officers and employees harmless from and against any claim, demand, action, cause of action, damage, loss, deficiency, cost, liability or expense ("**Claim**") which may be made or brought against such Indemnified Party or which it may suffer or incur, directly or indirectly, as a result of, in respect of, or arising out of:

(a) any incorrectness, inaccuracy, misrepresentation or breach of any representation or warranty made by the Vendor in this Agreement or under any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

(b) any non-performance or non-fulfilment of any covenant or agreement on the part of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement; and

(c) all costs and expenses, including legal fees on a solicitor-and-client basis, incidental to or in respect of the foregoing.

6.2 ***Indemnity by the Purchaser.*** The Purchaser agrees to indemnify and hold the Vendor, its Representatives and its respective directors, officers and employees harmless from and against any Claim which may be made or brought against such Indemnified Party or which it may suffer or incur directly or indirectly as a result of in respect of or arising out of:

- (a) any incorrectness, inaccuracy, misrepresentation or breach of any representation or warranty made by the Purchaser in this Agreement or under any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (b) any non-performance or non-fulfilment of any covenant or agreement on the part of the Purchaser contained in this Agreement or under any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (c) indemnify and hold harmless the current directors only (for the purpose hereof the "current directors" shall mean those members of the board of directors of the Vendor who are legally holders of such office as of the date of the execution of the Agreement) for any past acts or omissions of those directors except for:
  - (i) any acts or omissions of said directors for which they knew or ought to have known they would or could be held liable and which they have not disclosed to Purchaser; and
  - (ii) any fraudulent acts of those directors;
- (d) assume the defence of any Claim, and any liability attachable thereto which may be brought by any member of the Vendor but only in relation to the transactions contemplated under this Agreement; and
- (e) all costs and expenses, including legal fees on a solicitor-and-client basis, incidental to or in respect of the foregoing.

**6.3 Notice of Claim.** If an Indemnified Party becomes aware of a Claim in respect of which indemnification is provided for pursuant to either section 6.1 or 6.2, as the case may be, the Indemnified Party shall promptly give written notice of the Claim to the Indemnifying Party. Such notice shall specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim; and
- (b) the amount of the Claim, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of any Claim in time to effectively contest the determination of any liability susceptible of being contested, then the Liability of the Indemnifying Party to the Indemnified Party under this Article 6 shall be reduced by the amount of any losses

incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis.

## ARTICLE 7

### CLOSING

7.1 **Closing.** The Closing shall take place on the Closing Date at the offices of Sullivan Mahoney LLP, Barristers & Solicitors, 40 Queen Street, St. Catharines, Ontario, or at such other place as may be agreed by the Vendor and the Purchaser.

7.2 **Vendor's Closing Deliveries.** At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) a Deed/Transfer for the Lands and Buildings;
- (b) a general conveyance substantially in the form of **Schedule 3.3(b)** duly executed by the Vendor, together with such other bills of sale or instruments of conveyance, assignment or transfer as may be reasonably required by the Purchaser;
- (c) an assignment of the Hanson Family Fund in the form of **Schedule 7.2(c)**;
- (d) a general assignment of any contracts to be assumed by the Purchaser in the form of **Schedule 7.2(d)**;
- (e) a bring-down certificate of the President or other senior officer of the Vendor dated as of the Closing Date in the form of **Schedule 7.2(e)**;
- (f) a corporate certificate of the Secretary or other officer of the Vendor in the form of **Schedule 7.2(f)**;
- (g) the Consents and Approvals as set out in **Schedule 5.1(g)**;
- (h) the section 167 election referred to in section 3.4;
- (i) all deeds of conveyance, bills of sale, assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement;



**7.3 Purchaser's Closing Deliveries.** At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor the following documents and payments:

- (a) a general conveyance substantially in the form of **Schedule 3.3(b)** duly executed by the Purchaser;
- (b) a bring-down certificate of the President or other senior officer of the Purchaser dated as of the Closing Date in the form of **Schedule 7.3(b)**;
- (c) a written offer of employment to the assumed employees;
- (d) the payments referred to in section 3.3;
- (e) the section 167 election referred to in section 3.4; and
- (f) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by the Vendor to complete the transactions provided for in this Agreement.

**7.4 Possession.** On the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser possession of the Purchased Assets.

**7.5 Notices.** On the Closing Date, the Vendor shall deliver the Notices to the Persons to whom they are addressed.

**7.6 Non-Transferrable and Non-Assignable Purchased Assets.** Without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, to the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "Rights") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of an obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, except as expressly otherwise provided in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained. After the Closing and until all such rights are transferred to the Purchaser, the Vendor shall:

- (a) maintain its existence and hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;

(c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and

(d) enforce, at the request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against a third Person, including the right to elect to terminate any such Rights in accordance with the terms of such rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendor shall promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken pursuant to this section.

## ARTICLE 8

### INSURANCE

8.1 **Insurance.** Upon the execution of this Agreement the Purchaser shall be entitled to, at its option, place insurance on any or all of the Purchased Assets.

8.2 Any insurance placed by the Purchaser on any of the Purchased Assets shall be owned by the Purchaser and in the event of any loss any proceeds of insurance payable as a result of said loss shall be the sole and only property of the Purchaser.

8.3 Notwithstanding the receipt of proceeds of insurance, the Purchaser shall have the right to continue and proceed with the terms of this Agreement and complete the purchase of the Purchased Assets in accordance with the terms hereof.

**SCHEDULE D – Officers and Directors**

**President.....Joseph O'Brien**  
**Vice-President.....Percy Webb**  
**Secretary.....Dr. Carl Croy**  
**Treasurer.....Andy Kurcz**  
**Director.....Randy Cyopik**  
**Director.....Robin Fancott**  
**Director.....Stephen Oprici**  
**Director.....Bill Auchterlonis**  
**Director.....Cort Day**  
**Director.....Rosemary Hale**  
**Director.....John Smeulders**  
**Director.....Jim Wells**  
**Director.....James Almas**

## ARTICLE 9

### POST-CLOSING MATTERS

9.1 **Winding Up.** The Vendor intends to move post-closing to wind up. The Purchaser acknowledges the winding up of the Vendor and if necessary, will consent to the said winding up.

9.2 **Assignment of Covenants.** In the event the Vendor moves to wind up, the Vendor may assign the benefit of the covenants to a Board of Trustees (for the purpose hereof the "Board of Trustees" shall mean the then Board of Directors of the Vendor), who shall hold the covenants in trust for the then membership at the time of winding up. The Purchaser acknowledges the above and if necessary, will consent to such assignment.

9.3 **Non-Merger.** Each Party hereby agrees that all provisions of this Agreement, other than (i) the conditions contained in Article 4; (ii) the representations and warranties contained in Article 5 (excluding therefrom the continuing covenants contained in Article 5.3 and the related indemnities contained in sections 6.1 and 6.2 hereof (which shall be subject to the special arrangements provided in such Articles or sections) shall forever survive the execution, delivery and performance of this Agreement, the Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first written above.

#### BROCK UNIVERSITY

By: 

Name:

David W. Atkinson

Title:

President & Vice-Chancellor

By: 

Name:

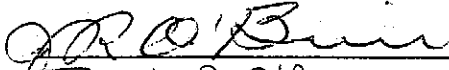
Steven Pillar

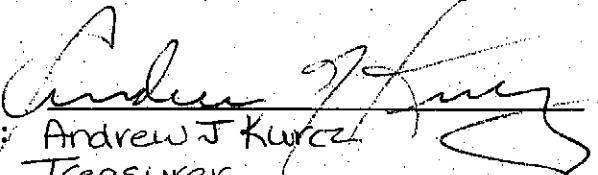
Title:

Vice President, Finance and Administration

We have authority to bind the Corporation.

RODMAN HALL ARTS CENTRE

By:   
Name: Joseph R. O'Brien  
Title: President

By:   
Name: Andrew J. Kurca  
Title: Treasurer

We have authority to bind the Corporation.

f:\users\...\brock.uni\rodman5.agr  
October 3, 2003

Schedule 1.1 (d) - Assumed Liabilities

City of St. Catharines - Property Taxes	\$17,183.47
City of St. Catharines - Maintenance of Walker Arboretum	\$11,592.03
Rodman Hall Arts Centre - Liabilities	\$3,800.42
Crawford, Smith & Swallow - Audit Fee	\$4,000.00

---

Assumed Liabilities	\$36,575.92
---------------------	-------------

CLIENT HOLDING REPORT

INVESTMENT ADVISOR: N73 KURCZ ANDREW  
CLIENT: 46501529 ROWMAN HALL ARTS CENTRE, (Corporate)  
DATE OF BIRTH:  
PHONE NUMBERS: Business: (905) 694-2925

ACCOUNT	SECURITY DESCRIPTION	TRADE DATE BALANCE		VALUE DATE BALANCE		BUYING POWER/REQUIRED TO MARGIN		REQUIRED TO		HOLD STMT	SUS QTY	R
		13	0.00	0.00	149,315	161,390	UNREAL GAIN/LOSS	% GAIN/LOSS	PRICE DATE			
	21BC CALL 03/10/99 7.1%	10MAR04	30000	0.000	102.0500	30615	18.97	NOV98	30615	5.58	13	
	2DN OXY DDCALL 6.45%	11JUL07	40000	98.500	104.0000	41600	25.76	NOV98	2200	5.58	13	
	3ELL CDA DDCALL 6.25%	12APR12	50000	100.250	104.4000	52200	32.34	OCT02	2075	4.14	13	
	4OLSON DDCALL 9.10%	11MAR13	30000	104.652	123.2500	36975	22.91	NOV95	5579	17.77	13	
	<u>POSITION TOTALS</u>			130,921		161,390			40,469			
	<u>NET EQUITY</u>					161,390						

- Average cost reflects Feb. 22 valuation.

The information shown on this report is accurate to the best of our knowledge but cannot be guaranteed by BMO Nesbitt Burns. Clients are encouraged to bring discrepancies to the attention of their Investment Advisor.