

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

BETWEEN:

OTÉRA CAPITAL INC.

Applicant

- and -

2495065 ONTARIO INC.

Respondent

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

APPLICATION RECORD

November 2, 2023

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Tel: 416-862-7525

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Email: thomas.gertner@gowlingwlg.com

Counsel to the Applicant

TO: **THE SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE
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TAB 1



Court File No. CV-

**ONTARIO
SUPERIOR COURT OF JUSTICE
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NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made by the Applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

1. In person
2. By telephone conference
3. By video conference

at the following location: Video conference details to be established.

on: November 6, 2023 at 12:00pm.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November 2, 2023

Issued by _____
Local Registrar

Address of Court Office:
330 University Avenue
Toronto, Ontario, Canada

TO: THE ATTACHED SERVICE LIST

1. **THE APPLICANT, MAKES APPLICATION FOR, *inter alia*:**

- (a) An Order substantially in the form of Order attached at Tab 3 of the Application Record, to be filed, appointing KSV Restructuring Inc. as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, including without limitation the lands and premises municipally known as 39 Newcastle Street, Toronto, Ontario (the “**Mortgaged Property**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended (the “**CJA**”); and
- (b) Such further and other relief as may be just and equitable.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) The Debtor is a single-purpose real estate holding company;
- (b) The Applicant (“**Otéra**”) made available certain credit facilities to the Debtor pursuant to a commitment letter dated as of July 4, 2022 as amended by a commitment letter amending agreement dated as of July 25, 2023 (collectively, as amended, restated, supplemented and / or modified from time to time, the “**Commitment Letter**”);
- (c) Under Commitment Letter, the Debtor provided Otéra with a first charge/mortgage against the Mortgaged Property in the principal amount of \$105,000,000 (as amended,

- the “**Otéra Mortgage**”) and a general security agreement in respect of all of the personal property of the Debtor relating to the Mortgaged Property (the “**GSA**”);
- (d) On August 15, 2023, the maturity date under the Commitment Letter expired without extension;
 - (e) On September 29, 2023, Otéra through its counsel, issued a formal demand letter to the Debtor, demanding repayment of all amounts owing under the Commitment Letter by no later than October 9, 2023 (the “**Demand Letters**”). The Demand Letter additionally enclosed a notice of intention to enforce security issued to the Debtor pursuant to section 244 of the BIA (the “**NITES**”);
 - (f) The statutory notice period provided for under the BIA and outlined in the Demand Letter and the NITES has expired;
 - (g) As of October 23, 2023, the Debtor is indebted to Otéra in the approximate amount of \$72,945,844.99, excluding legal fees accrued to date (the amount owing from time to time, the “**Indebtedness**”), and the Indebtedness continues to increase;
 - (h) The Debtor has confirmed that it cannot service the debt, and the Debtor has not been able to repay or refinance the Indebtedness;
 - (i) The Otéra Mortgage and the GSA each provide Otéra with the right to appoint a receiver;
 - (j) It is just or convenient, at this time, for the Court to appoint a receiver over the Property;

- (k) Those other grounds set forth in the affidavit of Leonard Damiani (the “**Damiani Supporting Affidavit**”);
- (l) The provisions of the BIA, including Section 243;
- (m) Section 101 of the CJA;
- (n) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43;
and
- (o) Such further and other grounds as counsel may advise and this Honourable Court permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Damiani Supporting Affidavit and the exhibits thereto; and
- (b) Such further material as counsel may advise and this Honourable Court may permit.

Date: November 2, 2023

GOWLING WLG (CANADA) LLP

Barrister and Solicitors

Suite 1600, First Canadian Place

100 King Street West, Toronto, ON M5X 1G5

Virginie Gauthier (LSO# 41097D)

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Lawyers for the Applicant

Court File No.

8

OTÉRA CAPITAL INC.

- and -

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Applicant

Respondents

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

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

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

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Lawyers for the Applicant

TAB 2

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

BETWEEN:

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- and -

2495065 ONTARIO INC.

Respondent

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

**AFFIDAVIT OF LEONARD DAMIANI
(Sworn October 31, 2023)**

I, LEONARD DAMIANI of the city of Toronto, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Managing Director, Real Estate Finance of the Applicant, Otéra Capital Inc. (“**Otéra**”). As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.

2. This affidavit is sworn in support of an application by Otéra to the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) for an Order (the “**Appointment Order**”) appointing

KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property, assets and undertakings of 2495065 Ontario Inc. (the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, including without limitation the Mortgaged Lands (as defined below) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”).

3. As will be further explored below, Otéra is seeking the Appointment Order on the basis, among other things, that:

- (a) The loans advanced by Otéra to the Debtor have matured without extension and the Indebtedness (as defined herein) is due and payable in full to Otéra at this time;
- (b) The Debtor has advised Otéra that it is not in a position to continue servicing interest on its Indebtedness to Otéra;
- (c) The financial difficulties facing the Debtor appear to be part of broader financial issues facing the Vandyk Group and the Grand Mimico Project more generally (each as defined below); and
- (d) Otéra has lost faith in the ability of the Debtor to repay the Indebtedness in the near term.

I. DESCRIPTION OF THE PARTIES

4. Otéra is a private lender in the business of originating and administering commercial real estate loans in North America.

5. The Debtor is a private corporation incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16.

6. According to a corporate profile report (the “**Corporate Profile Report**”) obtained from the provincial ministry, with a file currency date of October 12, 2023:

- (a) The registered and head office of the Debtor is 1944 Fowler Drive, Mississauga, Ontario, Canada; and
- (b) John Vandyk (the “**Personal Guarantor**” or “**Mr Vandyk**”) is the sole director and officer of the Debtor.

Attached hereto and marked as **Exhibit A** is a true copy of the Corporate Profile Report.

II. DESCRIPTION OF THE BUSINESS OF THE DEBTOR

7. The Debtor is the registered owner of 39 Newcastle Street in the Mimico neighborhood of Toronto (the “**Mortgaged Lands**”). It is a real estate holding company that is part of a broader development group - Vandyk Properties (the “**Vandyk Group**”).

8. The Debtor acquired the Mortgaged Lands with a view to developing it with other adjacent lands owned by the Vandyk Group as part of a mixed-use development branded “Grand Central Mimico” (the “**Grand Mimico Project**”). On its website, the Vandyk Group describes the Grand Mimico Project as spanning four city blocks with over 1.85 million square feet of new condominium residences. The Grand Mimico Project is further described on the Vandyk Group’s website as a “transit-oriented development”. Attached hereto and marked as **Exhibit B** is a true copy of a screenshot of the Vandyk Group’s website describing the Grand Mimico Project.

9. Central to the “transit-oriented” nature of the Grand Mimico Project, is the modernization of the Metrolinx Go Station in conjunction with the Grand Mimico Project. To facilitate the Grand Mimico Project, Metrolinx and the Debtor are party to a number of agreements. I understand from Otéra’s counsel Gowling WLG (Canada) LLP, that Metrolinx will be served a copy of Otéra’s Application for the appointment of a Receiver.

III. THE COMMITMENT LETTER

10. Pursuant to an amended and restated commitment letter dated as of July 4, 2022, among the Debtor, as borrower, the Personal Guarantor and Vandyk Properties Inc. (collectively, the “**Guarantors**”), as guarantors, and Otéra, as lender (the “**Original Commitment Letter**”), Otéra agreed to establish credit facilities in favour of the Debtor in the maximum principal amount of \$84,350,000. Attached hereto and marked as **Exhibit C** is a true copy of the Original Commitment Letter.

11. The Original Commitment Letter was subsequently amended pursuant to an amending agreement dated as of July 25, 2023 (the “**Amending Agreement**” and together with the Original Commitment Letter, the “**Commitment Letter**”). Attached hereto and marked as **Exhibit D** is a true copy of the Amending Agreement.

IV. THE SECURITY

12. As security for its indebtedness and liability to Otéra pursuant to the Commitment Letter, the Debtor provided Otéra with broad security, including but not limited to the following:

- (a) A first charge/mortgage against the Mortgaged Lands in the principal amount of \$105,000,000 (the “**Otéra Mortgage**”);

- (b) An assignment of material agreements dated as of July 20, 2022 (the “**AMA**”);
- (c) A general assignment of rents dated as of July 20, 2022, and registered on title to the Mortgaged Lands (the “**GAR**”); and
- (d) A general security agreement in respect of all of the personal property of the Debtor related to, located at, or used in connection with, the Mortgaged Lands dated as of July 20, 2022 (the “**GSA**” together with the Otéra Mortgage, the AMA and the GAR, the “**Security**”).

Attached hereto and marked as **Exhibit E, Exhibit F, Exhibit G, and Exhibit H**, respectively, are true copies of the Otéra Mortgage, the AMA, the GAR and the GSA.

REGISTRATION OF OTERA MORTGAGE AGAINST THE MORTGAGED LANDS

13. Both the Otéra Mortgage and a notice of the GAR were registered with the Land Registry Office in Ontario on July 22, 2022. Attached hereto and marked as **Exhibit I** are true copies of title searches obtained against the Mortgaged Lands, each with a file currency date of October 24, 2023 (the “**Title Searches**”).

14. I have been advised by Gowling WLG, that they have reviewed the Title Searches, and that the following instruments are registered against title to the Mortgaged Lands:

- (a) The Otéra Mortgage and the GAR;
- (b) A second charge / mortgage in favour of CIC Management Services Inc. (“**CIC**”), in the principal amount of \$25,000,000 (the “**CIC Mortgage**”); and

- (c) A construction lien in the amount of \$700,465 (the “**Construction Lien**”), in favour of Kohn Partnership Architects Inc. (“**Kohn**”).

15. I understand that the CIC Mortgage is a vendor take back (VTB) mortgage, in favour of the property’s former owner CIC that secures part of the purchase price for the Mortgage Lands. I note that CIC and Otéra are party to a priority and standstill agreement dated as of July 20, 2022 (the “**Priority Agreement**”), pursuant to which, CIC subordinated the CIC Mortgage to the Otéra Mortgage on the terms set out in the Priority Agreement. Attached hereto and marked as **Exhibit J** is a true copy of the Priority Agreement.

16. The Construction Lien appears to relate to amounts claimed to be owed to the architect for the Grand Mimico Project, Kohn.

REGISTRATION OF OTÉRA’S SECURITY INTEREST UNDER THE PPSA

17. Otéra has also registered its security interest against the Debtor’s personal property with the provincial registry maintained under the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (the “**PPSA**”). Attached hereto and marked as **Exhibit K** are true copies of an Ontario PPSA search against the Debtor with a file currency date of October 11, 2023 (the “**PPSA Searches**”).

18. I have been advised by Gowling WLG that the PPSA Searches do not disclose any registrations against the Debtor’s personal property, other than the registration in favour of Otéra described above.

V. FINANCIAL DIFFICULTIES OF THE DEBTOR

19. In February 2023 Otéra began discussions with the Debtor regarding upcoming maturity of its loan. Otéra communicated to the Debtor that Otéra would consider a 12-month extension to

the term of the loan, subject to, such terms as Otéra may require, including receipt of a 12-month prepaid interest reserve of approximately \$7,560,000.

20. On April 11, 2023, Otéra indicated to the Debtor that as part of these discussions, Otéra required a comprehensive update regarding the Vandyk Group's financial position including liquidity position and project cost reports so as to confirm no material unfunded overruns. The Debtor did not provide the project cost reports and other requested information.

21. On May 19, 2023, Otéra received a liquidity report from the Debtor which indicated that their liquidity position was constrained and that the Debtor would not be able to service its debt obligations starting in September 2023.

22. Ultimately, the discussions between Otéra and the Debtor did not result in a further extension of the maturity date under the Commitment Letter.

23. On August 15, 2023, the maturity date under the Commitment Letter expired without extension.

24. On September 29, 2023, Otéra through its counsel, Gowling WLG, issued formal demand letters to the Debtor and Guarantors, demanding repayment of all amounts owing under the Commitment Letter by no later than October 9, 2023 (the "**Demand Letters**"). The Demand Letters additionally enclosed a notice of intention to enforce security issued to the Debtor pursuant to section 244 of the BIA (the "**NITES**"). Attached hereto and marked as **Exhibit L** are true copies of the Demand Letters and the NITES.

25. As of October 23, 2023 the Debtor is indebted to Otéra in the approximate amount of \$72,945,844.99, excluding legal fees accrued to date and the interest payment that was due on

October 23rd (the amount owing from time to time, the “**Indebtedness**”). The Indebtedness has not been repaid and interest, fees and costs continue to accrue.

26. Despite the passage of the maturity date under the Commitment Letter, the Debtor remains obligated to make monthly interest payments to Otéra under the Commitment Letter. The Debtor has failed to make both its September and October monthly interest payments of approximately \$1,260,000 when due. On Sunday September 24, 2023, at a meeting at Vandyk’s office between Mr. Vandyk, myself, and other employees and representatives of the Vandyk Group it was communicated that the Debtor was not going to be able to service these interest payments given the company’s financial problems.

VI. Financial Issues of the Vandyk Group

27. I understand that, aside from the liquidity issues facing the Debtor, other Vandyk Group companies are facing financial issues.

28. On many occasions since May 2023, Mr. Vandyk and other employees and representatives of the Vandyk group, advised Otéra that the Vandyk Group was in discussions with several prospective parties regarding a purchase of, or investment in, all or part of the Grand Mimico Project. These discussions have not resulted in a firm commitment to purchase or investment from any third parties.

29. My understanding is that the Vandyk Group engaged the services of Franco & Co. sometime in July 2023 to assist with a restructuring (the recapitalizing of projects and/or soliciting joint venture partners). A plan was in place in which a new lender was going to provide preferred equity with respect to Lakeshore DXE and a mezzanine loan for King’s Mill. The proceeds from

the preferred equity financing would be used in part to establish a 6 to 12-month interest reserve for the Indebtedness.

30. On Sunday September 24, 2023, at a meeting at Vandyk's office between Mr. Vandyk, other employees and representatives of the Vandyk Group and myself, I was advised that the preferred equity and the mezzanine financing would not be available. I was advised that as a result of cost overrun, Lakeshore DXE required a further \$15,000,000 equity injection from the Vandyk Group, which equity injection Vandyk was unable to provide

31. At meetings between representatives of Otéra and the Debtor on October 18th and 19th, 2023 (the "**October 18/ 19 Meeting**"), Otéra was advised that:

- (a) KingSett Capital ("**KingSett**") who has lent funds secured against other real estate that is part of the Grand Mimico Project, has made demand and issued notices of intention to enforce security under Section 244 of the BIA to members of the Vandyk Group;
- (b) MCAP, who has lent funds secured against other real estate owned by the Vandyk Group has made demand and issued notices of intention to enforce security under Section 244 of the BIA to members of the Vandyk Group;
- (c) construction on a number of the Vandyk Group's projects has ceased (including the projects branded as "Uptowns", "the King's Mill", and "the Buckingham" (the latter is part of the Grand Mimico Project)); and
- (d) there are significant cost overruns on projects owned by the Vandyk Group, including "Uptowns" in the amount of approximately \$7,000,000, King's Mill in

the amount of approximately \$10,000,000 and “the Buckingham”. These overruns have existed for 6 months or longer. The Vandyk Group has attempted to find new capital sources to fund the overruns or recapitalize these projects, however these efforts have failed.

VII. CONCLUSION AND NEED FOR THE APPOINTMENT OF A RECEIVER

32. The statutory notice period provided for under the BIA and outlined in the Demand Letters and the NITES has expired and the full amount of the Indebtedness is due.

33. It is my view that the appointment of a receiver over the Mortgaged Lands will create a clear and transparent way forward for the repayment of amounts owed to the Debtor’s creditors through a court-supervised sale of the Mortgaged Lands.

34. I note that both the Otéra Mortgage and the GSA provide Otéra with the right to appoint a receiver.

35. If this Honourable Court sees fit to make such an appointment, KSV has consented to act as Court-appointed Receiver. KSV is a licensed insolvency trustee and has significant experience in mandates of this nature. Attached hereto and marked as **Exhibit M** is a true copy of KSV Consent to Act as receiver.

36. This Affidavit is sworn in support of Otéra’s Application for the Appointment Order and for no other or improper purpose.

SWORN BEFORE ME VIA VIDEOCONFERENCE, the affiant being located in the City of Toronto in the Province of Ontario and the Commissioner being located in the City of Toronto in the Province of Ontario on October 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



LEONARD DAMIANI

THIS IS **EXHIBIT A** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING*
OATH OR DECLARATION REMOTELY, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

Ministry of Public and
Business Service Delivery

Profile Report

2495065 ONTARIO INC. as of October 12, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2495065 ONTARIO INC.
Ontario Corporation Number (OCN)	2495065
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	December 08, 2015
Registered or Head Office Address	1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name JOHN VANDYK
Address for Service 1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1
Resident Canadian Yes
Date Began December 08, 2015

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Active Officer(s)**Name****Position****Address for Service****Date Began**

JOHN VANDYK

President

1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1

December 08, 2015

Name**Position****Address for Service****Date Began**

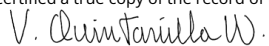
JOHN VANDYK

Secretary

1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1

December 08, 2015

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

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Corporate Name History**Name**

2495065 ONTARIO INC.

Effective Date

December 08, 2015

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

Filing Name	Effective Date
Annual Return - 2019 PAF: JOHN VANDYK - DIRECTOR	August 09, 2020
Annual Return - 2018 PAF: JOHN VANDYK - DIRECTOR	August 09, 2020
Annual Return - 2017 PAF: JOHN VANDYK - DIRECTOR	August 09, 2020
Annual Return - 2016 PAF: JOHN VANDYK - DIRECTOR	August 09, 2020
Annual Return - 2020 PAF: JOHN VANDYK - DIRECTOR	July 26, 2020
CIA - Notice of Change PAF: BRUCE MILBURN - OTHER	March 04, 2019
CIA - Initial Return PAF: DAVID SPENCER - DIRECTOR	December 08, 2015
BCA - Articles of Incorporation	December 08, 2015

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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THIS IS **EXHIBIT B** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

(https://:sd114)

Grand Central Mimico

LOCATION

23 Buckingham St., 39 Newcastle St, 327
Royal York Road

As one of Toronto's priority "Regeneration Areas," the reinvestment and intensification of the Mimico Triangle will open up new residential and employment opportunities within the community. Vandyk Properties has invested in the Mimico Triangle as majority owners, aimed at redefining the roots of city building.

Grand Central Mimico is a master-planned, transit-tailored community comprising over 2 million square feet of mixed-use development. Anchoring the community is a groundbreaking partnership with Metrolinx, securing the build towards a brand new Mimico GO Station.

The development spans four city blocks and will create over 1.85 million square feet of new condominium residences. It will be cohesively designed as a high-

lifestyle amenities.

grandcentralmimico.com





A new Greenway will span the entirety of the southern edge of Grand Central Mimico. This multi-use trail will increase neighbourhood connectivity and promote active transportation.





NEXT PROJECT

Highgrove II

MISSISSAUGA, ON

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the most up to date info or
send us a message.

First Name

Last Name

Email

Phone

Interested in

Are You A Realtor?

Message

Yes, please email me updates &
news from Vandyk Properties.
Don't worry, you can unsubscribe at
anytime.

Canada

1944 Fowler Drive
Mississauga, ON L5K 0A1

905.823.4606

United States

625 S Orange Avenue
Sarasota, FL 34236

941.954.4449

Connect
with us

THIS IS **EXHIBIT C** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.



3610-81 Bay Street
 Toronto, Ontario M5J 0E7
 Tel. 416 360-1979
 Fax 416 360-8709
 www.oteracapital.com

July 4, 2022

Franc&Co
 27 Lynngrove Ave.
 Etobicoke, Ontario
 M8X 1M5

Attention: Mr. James Tobias

Re: Proposed senior land facility and junior land facility by Otéra Capital Inc. (the "**Lender**") in respect of 39 Newcastle Street, Toronto, Ontario and all buildings and improvements thereon from time to time (as more specifically described in Section 5 hereof, the "**Property**")

And Re: Loan No. 2021-0354-10

WHEREAS pursuant to a commitment letter dated May 18, 2022 made among 2495065 Ontario Inc. (the "**Borrower**"), as borrower, John Vandyk and Vandyk Properties Incorporated, as guarantor, and the Lender, as lender, (the "**Original Commitment**"), the Lender agreed to make a senior land facility and a junior land facility in the aggregate principal amount of **\$84,350,000** available to the Borrower in connection with the Project;

AND WHEREAS the Lender has agreed to amend and restate the terms of the Original Commitment on the terms and conditions set out in this amended and restated commitment letter (as may be further amended, restated, or modified from time to time, the "**Commitment**"). This Commitment, the Security Documents and all other documents required in connection therewith as amended herein and as may be further amended and restated from time to time are, collectively, the "**Loan Documents**".

Unless otherwise provided, all capitalized terms and expressions used herein (including the Schedules) shall have the meanings ascribed in this Commitment.

1. BORROWER AND OWNERSHIP OF BORROWER

1.1 The Borrower represents and warrants that:

1.1.1 the Borrower is the legal and beneficial owner of:

- (a) the Property;
- (b) the Project as described in Section 5.1.3 below; and
- (c) the other assets of the Borrower comprising the Security;

1.2 The Borrower covenants to perform all of the terms, conditions and requirements contained in this Commitment and the Loan Documents required to be performed by the Borrower, including, without limitation, the obligation to repay the Loans.

2. GUARANTOR

2.1 John Vandyk and Vandyk Properties Incorporated on a joint and several basis (collectively and individually as the context requires, the "**Guarantor**"). Each Person comprising the Guarantor jointly

and severally covenants with the Borrower and among themselves to perform all of the terms, conditions and requirements contained in the Loan Documents required to be performed by the Borrower, including, without limitation, the obligation to repay the Loans and acknowledges, for greater certainty, that the Lender shall have full recourse to all assets of the Guarantor for the payment and performance thereof. The Guarantor hereby waives the benefit of division, discussion and, to the extent permitted by law, subrogation, until the indefeasible payment in full of the obligations, indebtedness and liabilities, and hereby postpones in favour of the Lender any claims or debts which it or they may have against the Borrower in favour of the Lender.

- 2.2 The Borrower and the Guarantor shall grant the Debt Service Covenant Guarantee pursuant to which the Borrower shall undertake to make and the Guarantor shall guarantee, jointly and severally, the discharge of any construction lien, as well as the minimum debt service of the Loans.

3. INDEMNIFICATION

- 3.1 The Borrower and the Guarantor shall be jointly and severally liable and shall hereby indemnify and save harmless the Lender and its officers, directors, employees, shareholders, representatives, agents, contractors, licensees, invitees, assignees, successors and assigns (the “**Indemnified Persons**”) from and against any and all losses, liabilities, damages, costs, expenses and claims of any nature whatsoever that may, at any time and from time to time, be suffered or incurred by or claimed from the Indemnified Persons or paid by such Indemnified Persons with respect to the Loan and the Loan Documents.
- 3.2 The Borrower and the Guarantor shall be jointly and severally liable (notwithstanding the date on which such liability arose) and shall indemnify and save harmless the Indemnified Persons for any and all costs, expenses, damages or liabilities, including, without limitation, all reasonable legal fees, directly or indirectly relating to all liability pertaining to the Misconduct Events.

In this Commitment, “**Misconduct Events**” shall mean all liability arising or in connection directly or indirectly with or from: (i) all taxes, including without limitation Taxes, arrears, interest and penalties; (ii) the Property’s non-compliance with applicable building, zoning, planning, development, construction, construction lien, occupation and other laws; (iii) the failure by the Borrower or any party acting on their behalf (including any property manager) to remit Property funds collected by them (including, without limitation, rents and other amounts received from tenants of the Property) to the Lender, provided that they were obligated to so remit; (iv) all acts of fraud, misrepresentation, willful misconduct and/or gross negligence committed by the Borrower, the Guarantor and from any Persons for whom they are liable at law in connection, directly or indirectly, with the Property or the personal property related thereto; (v) the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Property or migrating from the Property of any Hazardous Substance including, without limitation, all relevant obligations and provisions contained in the Loan Documents; and (vi) the existence and/or removal of any construction lien or prior claim affecting the Property or any other property charged by the Security Documents.

- 3.3 The covenants and agreements of the Borrower and the Guarantor set forth in this Section 3:
- 3.3.1 are separate and distinct obligations from the Borrower’s and the Guarantor’s other obligations;
- 3.3.2 survive the payment and satisfaction of their other obligations and the discharge of the Security Documents from time to time taken as security therefor;
- 3.3.3 are not discharged or satisfied by foreclosure of the charges created by any of the Security Documents; and

3.3.4 shall continue in effect after any transfer of the Property including, without limitation, transfers pursuant to foreclosure proceedings (whether judicial or non-judicial) or by any transfer in lieu of foreclosure, or if such is imposed by common law or statutory.

4. FULL RECOURSE LOAN

4.1 The Lender shall have full recourse to all assets of the Borrower and the Guarantor.

5. PROPERTY AND PROJECT

5.1 The Property comprises the following lands (including all buildings and other improvements thereon from time to time):

5.1.1 Legal Description:

(a) PIN : 07617 - 0047LT Interest/Estate : Fee Simple

Description : PCL 1-1, SEC M177; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PLM177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILLST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177; ETOBICOKE, CITY OF TORONTO

(b) PIN : 07617 - 0270LT Interest/Estate : Fee Simple

Description : PCL 6-1, SEC M177; LT 6, PL M177; ETOBICOKE, CITY OF TORONTO

(c) PIN : 07617 - 0269LT Interest/Estate : Fee Simple

Description : PCL LANE-1, SEC M177 ; PT LANE, PL M177, THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE, CITY OF TORONTO

5.1.2 Municipal Description:

39 Newcastle Street, Toronto, Ontario

5.1.3 Description of the project on the Property (the "Project"):

Refinancing the Property.

The Property has an area of 1.95-acres.

The Property is to be developed to include 4-towers ranging in height from 22 to 36 storeys with a total GFA of ~1,024,723 sq.ft. including ~990,279 sq. ft. GFA of residential space, and ~34,444 sq. ft. GFA of retail space.

6. PURPOSE AND USE

6.1 Facility 1 – Senior Land Facility

6.1.1 The purpose of the senior land facility (“**Facility 1**”) is to provide first mortgage financing on a non-revolving basis to assist the Borrower in refinancing the Property.

6.2 Facility 2 – Junior Land Facility

6.2.1 The purpose of the junior land facility (“**Facility 2**”) is to provide additional indebtedness on a non-revolving basis to assist the Borrower in refinancing the Property.

6.3 Facility 1 and Facility 2 are, collectively, referred to as the “**Loans**”.

6.4 The Borrower covenants that the Loans shall be utilized solely for the purpose set out above and the Property shall at all times be used for the purpose described in Section 5.1.3 above.

7. APPROVED AMOUNT OF LOANS

7.1 The aggregate principal amount outstanding under the Loans shall at no time exceed \$71,542,000 until such time that the Borrower satisfies the conditions outlined in Section 12 at which point the aggregate principal amount outstanding under the Loans shall at no time exceed \$76,712,398. Following satisfaction of the conditions outlined in Section 12 the aggregate principal amount outstanding under the Loans shall at no time exceed \$76,712,398 until such time that the Borrower satisfies the conditions outlined in Section 13 at which point the aggregate principal amount outstanding under the Loans shall at no time exceed \$84,350,000.

7.2 Facility 1 – Senior Land Facility

7.2.1 Prior to the satisfaction of conditions outlined in Section 13 the aggregate principal amount outstanding under Facility 1 shall at no time exceed \$62,328,823. The aggregate principal amount outstanding under Facility 1 shall be funded in one single advance of \$58,560,087 upon closing of Facility 1 with the remaining \$3,768,736 to be withheld as an Interest Reserve (the “**Initial Facility 1 Commitment**”).

7.2.2 Upon satisfaction of the conditions outlined in Section 13, Facility 1 shall be increased by \$5,218,097 to \$67,546,920. The entire \$5,218,097 increase will be withheld as Interest Reserve, and at no time shall the aggregate principal amount of Facility 1 exceed \$67,546,920 (the “**Increased Facility 1 Commitment**”).

7.3 Facility 2 – Junior Land Facility

7.3.1 Prior to the satisfaction of conditions outlined in Section 12 the aggregate principal amount outstanding under Facility 2 shall at no time exceed \$9,213,177. Facility 2 shall be funded in one single advance of \$8,119,112 upon closing of Facility 2 with the remaining \$1,094,065 to be withheld as an Interest Reserve (the “**Initial Facility 2 Commitment**”).

7.3.2 Upon satisfaction of the conditions outlined in Section 12, Facility 2 shall be increased by \$5,170,397 to \$14,383,575. Of the \$5,170,397 increase, \$4,863,024 shall be funded in one single advance and \$307,374 will be withheld as Interest Reserve, and at no time shall the aggregate principal amount of Facility 2 exceed \$14,383,575 (the “**Increased Facility 2 Commitment**”).

- 7.3.3 Upon satisfaction of the conditions outlined in Section 13, Facility 2 shall be increased by \$2,419,505 to \$16,803,080. The entire \$2,419,505 increase will be withheld as Interest Reserve, and at no time shall the aggregate principal amount of Facility 2 exceed \$16,803,080 (the “**Further Increased Facility 2 Commitment**”).

7.4 Financing Program

- 7.4.1 Prior to the satisfaction of conditions outlined in Section 12 the sources and uses of funds shall be as follows:

Sources & Uses - 39 Newcastle	%	On Closing	\$ / unit	\$ / sq. ft. (GFA)	\$ / sq. ft. (NSA)
Uses of Funds					
Land Cost	89%	89 938 727	107 840	128	147
Appraisal Surplus	6%	5 951 770	7 136	9	10
Interest Reserve	5%	4 862 801	5 831	7	8
Total Uses of Funds	100%	100 753 297	120 807	144	165
Sources of Funds					
Cash Equity	23%	23 259 528	27 889	33	38
Appraisal Surplus	6%	5 951 770	7 136	9	10
Facility 1 - Senior Land Loan					
Principal	58%	58 560 087	70 216	84	96
Interest Reserve	4%	3 768 736	4 519	5	6
	62%	62 328 823	74 735	89	102
Facility 2 - Senior Stretch Loan					
Principal	8%	8 119 112	9 735	12	13
Interest Reserve	1%	1 094 065	1 312	2	2
	9%	9 213 177	11 047	13	15
Otera Total Loans	71%	71 542 000	85 782	102	117
Total Sources of Funds	100%	100 753 297	120 807	144	165

- 7.4.2 Upon satisfaction of the conditions outlined in Section 12 the sources and uses of funds shall be as follows:

Sources & Uses - 39 Newcastle	%	Upon Satisfaction of Section 12 Conditions	\$ / unit	\$ / sq. ft. (GFA)	\$ / sq. ft. (NSA)
Uses of Funds					
Land Cost	89%	89 938 727	107 840	128	147
Appraisal Surplus	6%	5 951 770	7 136	9	10
Interest Reserve	5%	5 170 174	6 199	7	8
Total Uses of Funds	100%	101 060 671	121 176	144	166
Sources of Funds					
Cash Equity	18%	18 396 504	22 058	26	30
Appraisal Surplus	6%	5 951 770	7 136	9	10
Facility 1 - Senior Land Loan					
Principal	58%	58 560 087	70 216	84	96
Interest Reserve	4%	3 768 736	4 519	5	6
	62%	62 328 823	74 735	89	102
Facility 2 - Senior Stretch Loan					
Principal	13%	12 982 136	15 566	19	21
Interest Reserve	1%	1 401 438	1 680	2	2
	14%	14 383 575	17 246	21	24
Otera Total Loans	76%	76 712 398	91 981	110	126
Total Sources of Funds	100%	101 060 671	121 176	144	166

7.4.3 Upon satisfaction of the conditions outlined in Section 13 the sources and uses of funds shall be as follows:

Sources & Uses - 39 Newcastle	%	Upon Satisfaction of Section 13 Conditions	\$ / unit	\$ / sq. ft. (GFA)
Uses of Funds				
Land Cost	70%	89 938 727	71 437	88
Appraisal Surplus	19%	24 846 563	19 735	24
Interest Reserve	<u>10%</u>	<u>12 807 777</u>	<u>10 173</u>	<u>12</u>
Total Uses of Funds	100%	127 593 067	101 345	125
Sources of Funds				
Cash Equity	14%	18 396 504	14 612	18
Appraisal Surplus	19%	24 846 563	19 735	24
Facility 1 - Senior Land Loan			-	
Principal	46%	58 560 087	46 513	57
Interest Reserve	<u>7%</u>	<u>8 986 833</u>	<u>7 138</u>	<u>9</u>
	53%	67 546 920	53 651	66
Facility 2 - Senior Stretch Loan				
Principal	10%	12 982 136	10 311	13
Interest Reserve	<u>3%</u>	<u>3 820 944</u>	<u>3 035</u>	<u>4</u>
	<u>13%</u>	<u>16 803 080</u>	<u>13 346</u>	<u>16</u>
Otera Total Loans	<u>66%</u>	<u>84 350 000</u>	<u>66 998</u>	<u>82</u>
Total Sources of Funds	100%	127 593 067	101 345	125

8. FINANCING TERMS

8.1 Term

8.1.1 The term of Facility 1 & Facility 2 (as extended from time to time pursuant to this Section 8.1, the “**Term**”, and the last day of the Term being the “**Maturity Date**”) shall be 12 months commencing on July 15, 2022.

8.1.2 The Term shall be extended for an additional 12 months subject to the following:

- (a) Lender’s receipt of the Borrower’s written notice indicating its intention to exercise the applicable extension option no more than 90 days and no less than 30 days prior to the Maturity Date;
- (b) There shall be no continuing default or Event of Default; and
- (c) The satisfaction of the condition’s precedent outlined in Section 12 and 13.

8.1.3 The Borrower shall be entitled to further extend the Term for two (2) subsequent three-month periods conditional upon the following:

- (a) Lender’s receipt of Borrower’s written notice indicating its intention to exercise the applicable extension option no more than 90 days and no less than 30 days prior to the Maturity Date (or the expiry date of the first extension option, as the case may be);
- (b) There shall be no continuing default or Event of Default;
- (c) The satisfaction of the condition’s precedent outlined in Section 12 and 13.

- (d) Payment to the Lender of an extension fee equal to 0.10% of the then outstanding principal balance under the Loans per each extension option exercised; and
- (e) With the first extension pursuant to this Section 8.1.3 only, Lender's receipt of a current appraisal confirming an as-is value of the Property of not less than \$105,437,500.

8.1.4 Upon the expiry of the Term, the principal balance of Facility 1 & Facility 2, together with interest and all other amounts due and owing by the Borrower to the Lender, if any, shall become immediately due and payable.

8.2 Facility 1 & Facility 2 – Interest Rate

8.2.1 The interest rate for Facility 1 will accrue on the outstanding balance of Facility 1 from time to time commencing from the date of the first advance of Facility 1 at the per annum interest rate equal to the sum of the per annum rate of interest announced from time to time by The Bank of Nova Scotia as its prime lending rate for Canadian dollar loans to its customers in Canada (the "**Prime Rate**") plus 2.55% per annum, subject to a minimum Prime Rate of 2.45% per annum (the "**Facility 1 Interest Rate**").

8.2.2 The interest rate for Facility 2 will accrue on the outstanding balance of Facility 2 from time to time commencing from the date of the first advance of Facility 2 at the per annum interest rate equal to the Prime Rate plus 7.55% per annum, subject to a minimum Prime Rate of 2.45% per annum (the "**Facility 2 Interest Rate**").

8.2.3 The Facility 1 Interest Rate and the Facility 2 Interest Rate shall be calculated based on a 365-day year, shall be calculated in accordance with the Lender's usual practices (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower.

Each change in the Facility 1 Interest Rate and Facility 2 Interest Rate resulting from a corresponding change in the Prime Rate shall occur without the necessity for any notice to the Borrower.

Payment of interest under Facility 1 and Facility 2 shall be payable monthly in arrears on the first day of each month throughout the Term, commencing with the first day of the month following the first advance of Facility 1 and/or Facility 2.

8.2.4 The Borrower is responsible for paying interest on each advance of Facility 1 and Facility 2 from the date of the advance, even if the advance has been made into the trust account of the Lender's solicitor (i) on a Friday or on a day preceding a non-Business Day (a "**Business Day**" being a day, excluding Saturdays, Sundays and statutory holidays, on which the offices of the Lender are open for commercial business in Montréal, Québec and Toronto, Ontario) and the Borrower does not receive funds until the next Business Day or (ii) is not disbursed to the Borrower from such trust account if any condition precedent pertaining to the disbursement of such advance is not fulfilled to the Lender's satisfaction.

8.3 Interest on Excess Loans, Unpaid Costs and Expenses

8.3.1 Unless the payment of interest is otherwise specifically provided for herein, where the Borrower fails to pay any amount required to be paid by it hereunder when due (including, without limitation, the portion of any Loan hereunder that exceeds the Facility 1 Commitment or the Facility 2 Commitment, as applicable), the Borrower shall pay interest

on such unpaid amount from the time such amount is due until paid at any annual rate equal to the Facility 1 Interest Rate plus 5.0% per annum and/or the Facility 2 Interest Rate plus 5.0% per annum, as applicable.

8.4 Requisition – Facility 1 and Facility 2

8.4.1 No advance under Facility 1 or Facility 2 shall be made until the receipt by the Lender by noon (Eastern Time) at least 5 Business Days (unless otherwise specified in this Commitment) prior to the date of each advance of the documents and items required under Sections 11, 12, 13 and 14 as the case may be, and elsewhere in this Commitment, in form and substance satisfactory to the Lender, and upon fulfillment by the Borrower of the conditions precedent set out in Sections 11, 12, 13 and 14, as the case may be, and elsewhere in this Commitment, to the entire satisfaction of the Lender.

8.5 Method of Payment

8.5.1 With respect to the Loans and provided that no Event of Default has occurred and is continuing, the Lender shall capitalize all interest payments (and add the same amount to the principal balance outstanding from time to time under Facility 1 or Facility 2, as applicable) and debit the same amount from the interest reserve amounts set out in Sections 7.2 and 7.3 (as such amounts are reduced from time to time, the “**Interest Reserve**”), up to the point where the Interest Reserve is depleted. Thereafter, the Borrower shall pay all interest payments to the Lender as they become due.

8.5.2 On the date that is 12 months from the date of the Initial Advance, if “**A**” (where A is equal to the undrawn Interest Reserve for Facility 1) is less than “**B**” (where B is the then applicable Facility 1 Interest Rate multiplied by the then outstanding balance under Facility 1) the Borrower shall repay Facility 1 by an amount equal to B minus A within 15 days of receipt of written notice from the Lender. Such repayment shall reduce the outstanding balance under Facility 1 only and the authorized limit shall remain unchanged.

8.5.3 On the date that is 12 months from the date of the Initial Advance, if “**C**” (where C is equal to the undrawn Interest Reserve for Facility 2) is less than “**D**” (where D is the then applicable Facility 2 Interest Rate multiplied by the then outstanding balance under Facility 2) the Borrower shall repay Facility 2 by an amount equal to D minus C within 15 days of receipt of written notice from the Lender. Such repayment shall reduce the outstanding balance under Facility 2 only and the authorized limit shall remain unchanged.

8.5.4 All payments required to be made by the Borrower hereunder shall be made by automatic withdrawal from the Borrower’s bank account or any other manner, as may be required from time to time by the Lender.

8.5.5 The Loans may be repaid in full but not in part at any time during the Term without penalty.

8.5.6 All payments required to be made by the Borrower hereunder which become due and payable on a date that is not a Business Day shall be deemed to be due and payable on the Business Day immediately preceding such date.

9. SECURITY

9.1 As security for the Loans, the following shall be granted in favour of the Lender, in form and content satisfactory to the Lender and the Lender’s solicitor and in the Lender’s standard form, (as amended and restated from time to time, the “**Security Documents**”):

- 9.1.1 a first-ranking charge/mortgage from the Borrower in respect of the Property in the amount of \$105,000,000 (the “**Mortgage**”);
- 9.1.2 a first-ranking general assignment of all present and future rents, leases and deposits pursuant to leases and offers to lease (such offers to lease and leases being hereinafter collectively referred to as the “**leases**”) affecting the Property together with all insurance indemnities covering the said rents and of all income and accounts derived from the Property including all proceeds receivable from early termination of any of the leases and all other benefits and advantages to be derived therefrom;
- 9.1.3 first-ranking general security agreement charging (i) cash deposited with the Lender in accordance with the terms of this Commitment and (ii) the personal property and undertaking of the Borrower relating to, located upon or used predominantly in connection with, the Property or which is necessary to the use and operation of the Property including, without limitation, goods, chattel paper, equipment, inventory, documents, accounts, intangibles, securities, monies, books and records and all replacements of, substitutions for and increases, additions and accessories to the foregoing and proceeds thereof, present and future of the Borrower;
- 9.1.4 a first-ranking specific assignment, to be acknowledged by the relevant counterparty, of all of the right, title and interest of the Borrower in, to and under all material contracts relating to the Property and the Project as required by the Lender including, without limitation, all building and construction contracts, any agreement entered into with Metrolinx, fixed price construction contracts, plans, and permits and insurance policies with respect to the Property and the Project, with all necessary consents of the other parties thereto;
- 9.1.5 an Acknowledgement, signed by the Borrower and the Guarantor, of receipt of the Standard Charge Terms of the Lender filed as No. 201704;
- 9.1.6 a guarantee executed by the Guarantor in accordance with Section 2 (the “**Debt Guarantee**”);
- 9.1.7 a debt service guarantee from the Borrower and the Guarantor in respect of the Project in accordance with Section 2.2 (the “**Debt Service Covenant Guarantee**”);
- 9.1.8 an unlimited indemnity agreement from the Borrower and the Guarantor in accordance with Section 3 (the “**Misconduct Events Indemnity**”);
- 9.1.9 a priority and standstill agreement in favour of the Lender with respect to the CIC Charge (defined in Section 18.6), if applicable, which shall provide for, among other things, the postponement and subordination of the CIC Charge to the Lender’s security to the extent of a maximum principal amount (excluding any interest and fees and other protective disbursements) of \$71,542,000;
- 9.1.10 an assignment of all present and future agreements of purchase and sale of units in the Project (the “**Purchase Agreements**”) which shall include, without limitation, assignment to the Lender of all deposits paid and to be paid under the Purchase Agreements, with appropriate irrevocable directions to the solicitors holding such deposits to pay them to the Lender. Deposit monies will be held in trust and not used towards the cost of construction of the Project unless the Borrower complies with the statutory requirements relating to deposit insurance applicable in Ontario and the Borrower has obtained the prior consent of the Lender;

- 9.1.11 such other security customary in the financing of condominium construction as determined by the Lender acting reasonably;
- 9.1.12 any other documents, instruments, certificates, agreements or security required by the Lender or the Lender's solicitor, acting reasonably.

10. DUE DILIGENCE

- 10.1 Following receipt by the Lender of all information and documents provided by the Borrower or on its behalf including, without limiting the foregoing, documents provided pursuant to this Commitment, the Lender will complete its due diligence in connection with the Loans. If the Lender is not satisfied, at its sole and absolute discretion, with the results of its due diligence, the Lender shall have the right to terminate this Commitment by delivering to the Borrower a notice to this effect at any time prior to any disbursement of the Loans, without further recourse by any party hereto against the other. In such event, the Borrower will be responsible for paying all Costs and Expenses.

11. INITIAL ADVANCE REQUIREMENTS

11.1 General

Subject to the other terms and conditions set forth in this Commitment, the Lender shall disburse the proceeds of Facility 1 and Facility 2 to or on behalf of the Borrower in the amounts and as specified herein.

11.2 Initial Advance Requirements – Facility 1 and Facility 2

The advance of Facility 1 and Facility 2 (the “**Initial Advance**”) is conditional upon the receipt by the Lender of the following documents, in form and substance satisfactory to the Lender, and upon fulfillment by the Borrower and the Guarantor of the conditions precedent set out below and elsewhere herein to the entire satisfaction of the Lender, failing which the Lender may terminate this Commitment without further recourse by any party hereto against the other:

11.2.1 Security, Opinions and Other Matters

- (a) delivery of the Security Documents charging, among other things, the Property, and the other Loan Documents that are required or contemplated hereunder or which the Lender or the Lender's solicitor may deem necessary, all in form and content satisfactory to the Lender and the Lender's solicitor in their sole discretion;
- (b) delivery of a title opinion/title report for the Property, issued by a law firm acceptable to the Lender or by the Lender's solicitor, indicating that the Borrower is the registered owner of the Property with good and marketable title thereto, listing all registered encumbrances (which shall be limited to those encumbrances delivered to and approved by the Lender as confirmed by such opinion/report), and unregistered but applicable agreements, indicating that the Security Documents have been duly registered (and providing the registration particulars of the applicable Security Documents) and confirming that the Mortgage constitutes a good and valid first charge of the Property, disclosing the results of all off-title searches (as designated by and satisfactory to the Lender), confirming that there are no writs of execution outstanding against the Borrower, disclosing the results of all corporate/personal/litigation searches (as designated and approved by the Lender), identifying all requirements for consent from third parties in connection with the issuance, registration and enforcement of the Security Documents and addressing

all other matters requested by the Lender, all in form and content satisfactory to the Lender and being issued by a firm which has provided evidence of professional liability coverage satisfactory to the Lender. In the alternative, the Lender may require, acting reasonably, as a substitute to the title opinion, a policy of title insurance from a title insurance company satisfactory to the Lender that insures the interest of the Lender for the principal amount of the Loans, in a form satisfactory to the Lender (including endorsements and appropriate construction and lien related endorsements) and at the cost of the Borrower;

- (c) delivery of an opinion of the Borrower's and the Guarantor's solicitors in respect of the existence, power and capacity of each of the Borrower and the Guarantor as the case may be, and the authorization, execution, delivery and enforceability of this Commitment and the other Loan Documents along with such other matters as the Lender may request, all in form and content satisfactory to the Lender and being issued by a firm which has provided evidence of professional liability coverage satisfactory to the Lender, together with a certified copy of the resolutions of the board of directors (or similar authority) authorizing the execution and delivery of this Commitment and the other Loan Documents to which each it is a party;
- (d) evidence that all Taxes, rates, assessments and charges which may be levied or imposed against the Property or the Borrower's business, including all utilities and other amounts capable of forming a charge against the Property, have been paid in full, together with evidence that all Fiscal Debts (as hereinafter defined) have been paid in full;
- (e) a chart indicating the ownership structure of the Borrower and the Guarantor identifying voting and non-voting shares and the percentage of shares held by each shareholder;
- (f) delivery of a copy of all partnership agreements / joint venture / co-ownership agreements if applicable and of all development management agreements with third parties and property management agreements; and
- (g) copies of the constating documents/articles of incorporation of the Borrower and the Guarantor.

"Fiscal Debts" means all deductions at source, fiscal debt, GST/HST and any other sum due by the Borrower to any tax authority regarding which a charge or a lien may have priority over the security to be created pursuant to this Commitment.

11.2.2 **Equity**

Receipt of evidence confirming that the Borrower has invested not less than \$29,211,297 of equity in the Property, including \$5,951,770 in appraisal surplus in accordance with Section 7.4.1.

11.2.3 **Purchase and Sale Agreement**

Receipt of a copy the original purchase and sale agreement dated December 10, 2018, or other evidence acceptable to the Lender, for the Property confirming a purchase price of \$89,938,727.

11.2.4 **Mortgage Payout Statement**

Receipt of a copy of the mortgage payout statement for the existing mortgages confirming an outstanding balance of \$71,542,223 more or less.

11.2.5 **Ministers Zoning Order**

Receipt of a Ministers Zoning Order approving a 4-tower Project with a total gross floor area of 1.02 M sq.ft. of GFA including no less than 990,279 sq.ft. of residential gross floor area and no less than 34,444 sq.ft. of commercial gross floor area. The MZO shall indicate that Inclusionary Zoning does not apply to the Project.

11.2.6 **Project Budget**

Receipt of a current project budget (the "**Project Budget**") for the proposed development of the Property under the 3 and 4 tower scenarios.

11.2.7 **Project Budget Review**

Receipt of a report from Finnegan Marshall addressed to and acceptable to the Lender confirming and validating the Borrower's Project Budget for the 3 and 4 tower scenarios.

11.2.8 **Appraisal**

Delivery of a current appraisal report by an Accredited Appraiser Canadian Institute (AACI) qualified appraiser, at the Borrower's expense, addressing current market value of the Property on an as is basis and confirming a value of not less than \$96,000,000 under the 3-tower scenario and not less than \$105,500,000 under the 4-tower scenario.

The appraisal must be acceptable to the Lender in its sole discretion and addressed to the Lender or accompanied by a satisfactory reliance letter from the author thereof (in the Lender's standard form attached hereto as Schedule "A").

11.2.9 **Environmental Site Assessment**

Receipt of a Phase I Environmental Site Assessment entitled Phase One Environmental Site Assessment, prepared by Toronto Inspection Limited dated June 16, 2020, a Phase II Environmental Site Assessment entitled Phase Two Environmental Site Assessment, prepared by Toronto Inspection Limited dated September 17, 2020 and letter entitled Environmental Status – Proposed Remediation, prepared by Toronto Inspection Limited dated August 18, 2020, (collectively the "**Environmental Report**") in form and substance acceptable to the Lender.

The Environmental Report must be addressed to the Lender or accompanied by a reliance letter in the Lender's standard form attached hereto as Schedule "A".

11.2.10 **Geotechnical Investigation**

Receipt of a geotechnical report confirming the satisfactory nature of the soil conditions to support the Project and acceptable to the Lender.

11.2.11 **Personal Net Worth Statement and Financial Statements**

Receipt of a copy of a current personal net worth statement for John Vandyk and current financial statements for Vandyk Properties Incorporated, as well as any other statement or supporting documentation that the Lender may require.

11.2.12 **Insurance Review**

Receipt of a report from the insurance consultant selected by the Lender (the “**Insurance Consultant**”) confirming the compliance and sufficiency of the insurance coverage.

11.2.13 **Property Inspection**

An inspection of the Property satisfactory to the Lender in its sole discretion must be completed by the Lender prior to the Initial Advance being made.

11.2.14 **“Know Your Client” Due Diligence**

Receipt of all information and documents requested by the Lender in connection with its “**Know Your Client**” due diligence requirements.

11.2.15 **Credit Reports**

Receipt of a credit report and information on the Borrower and the Guarantor.

11.2.16 **Survey**

If available, receipt of a survey of the Project by a Ontario licensed land surveyor, indicating no encroachments, easements or rights of way, save those which the Lender may specifically accept and showing the relationship of the lands to public thoroughfares for access purposes.

11.2.17 **Other**

All other agreements, documents, reports and other information required to be delivered herein or reasonably requested by the Lender and the Lender’s solicitor.

12. **ADVANCE REQUIREMENTS FOR AN INITIAL LOAN INCREASE**

12.1 **General**

Subject to the other terms and conditions set forth in this Commitment, the Lender shall disburse the proceeds of Facility 1 and Facility 2 to or on behalf of the Borrower in the amounts and as specified herein.

12.2 **Advance Requirements for an Initial Loan Increase – Facility 2**

The increase of Facility 2 (the “**Facility 2 Initial Loan Increase**”) is conditional upon the receipt by the Lender of the following documents, in form and substance satisfactory to the Lender, and upon fulfillment by the Borrower and the Guarantor of the conditions precedent set out below and elsewhere herein to the entire satisfaction of the Lender including the conditions set out in Section 11:

12.2.1 **Priority and Standstill Agreement**

Receipt of a priority and standstill agreement in favour of the Lender with respect to the CIC Charge (defined in Section 18.6), which shall provide for, among other things, the postponement and subordination of the CIC Charge to the Lender's security to the extent of a maximum principal amount (excluding any interest and fees and other protective disbursements) of \$84,350,000 or the complete discharge of the CIC Charge;

13. **ADVANCE REQUIREMENTS FOR A SECOND LOAN INCREASE AND EXTENSION**

13.1 **General**

Subject to the other terms and conditions set forth in this Commitment, the Lender shall disburse the proceeds of Facility 1 and Facility 2 to or on behalf of the Borrower in the amounts and as specified herein.

13.2 **Advance Requirements for a Second Loan Increase and Extension – Facility 1 and Facility 2**

The further increase and extension of Facility 1 and Facility 2 (the “**Second Loan Increase and Extension**”) is conditional upon the receipt by the Lender of the following documents, in form and substance satisfactory to the Lender, and upon fulfillment by the Borrower and the Guarantor of the conditions precedent set out below and elsewhere herein to the entire satisfaction of the Lender including the conditions set out in Section 11 and Section 12:

13.2.1 **Final Form Metrolinx Agreements**

Receipt of the following executed final form agreements between the Borrower and Metrolinx:

- a) Final Form of Land Exchange Agreement;
- b) Final Form of Development and Construction Agreement;
- c) Final Form of Ground Lease;
- d) Three-party agreement in form satisfactory to the Lender between the Lender, Metrolinx and the Borrower.

13.2.2 **Environmental Site Assessment – Metrolinx Lands**

Receipt (i) of a Phase I environmental site assessment report for the additional lands contributed by Metrolinx pursuant to the Land Exchange Agreement (the “**Environmental Report**”), in form and substance acceptable to the Lender from a consultant acceptable to the Lender, and (ii) of a certification from the Borrower to the effect that there has been no site activity since the date of the Environmental Report which would have had an adverse impact on the environmental site conditions. The Environmental Report shall mention any known contamination and shall indicate whether further tests are required (Phase 2 or others).

13.2.3 **Geotechnical Investigation – Metrolinx Lands**

Receipt of a geotechnical report for the additional lands contributed by Metrolinx pursuant to the Land Exchange Agreement confirming the satisfactory nature of the soil conditions to support the Project and acceptable to the Lender.

14. ALL ADVANCE REQUIREMENTS – FACILITY 1 AND FACILITY 2

14.1 General

Subject to the other terms and conditions set forth in this Commitment, the Lender shall disburse the proceeds of Facility 1 and Facility 2 to or on behalf of the Borrower as specified herein.

14.2 Advance Requirements

The following shall apply for each advance under Facility 1 and Facility 2, at the entire satisfaction of the Lender:

- 14.2.1 no event shall have occurred and be continuing or would result from the making of such advance which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or the passage of time or both;
- 14.2.2 all conditions precedent under Section 11 and any pertinent item indicated in Section 11 and anywhere else in the Loan Documents have been fulfilled to the satisfaction of the Lender;
- 14.2.3 confirmation and title report from the Lender's solicitor, as of the date of any advance, confirming that (i) no lien or other encumbrance not approved by the Lender has been registered against the Property, (ii) there are no writs of execution outstanding against the Borrower, and (iii) the Mortgage remains a first-ranking charge against the Property;
- 14.2.4 all Taxes, assessments, duties, utility charges and other levies and charges affecting the Property, other than amounts which are not yet due and payable, shall have been paid prior to each advance under any of the Loans, failing which they shall be paid from the proceeds of any advance;
- 14.2.5 the Borrower acknowledges that the Lender has the right to make payments directly to contractors and suppliers if it defaults to make such payments;
- 14.2.6 the Borrower shall allow the Lender to have access to the Property at all times; and
- 14.2.7 the Borrower shall deliver or fulfill such other documents and conditions reasonably required by the Lender or the Lender's solicitor.

15. PARTIAL DISCHARGES

15.1 Discharge Facility 1 and Facility 2

No partial discharges shall be provided by the Lender. The Lender shall provide a discharge of the applicable Security Documents upon full repayment and/or cancellation of Facility 1 and Facility 2.

16. DISBURSEMENT IN TRUST

- 16.1 The Borrower authorizes the Lender, upon fulfillment of all conditions for the disbursement of the proceeds of the Loans to the satisfaction of the Lender, to disburse the proceeds of the Loans to the Lender's solicitor in trust, with instructions to disburse such proceeds in the manner and subject to the fulfillment of all conditions for the disbursement of the proceeds of the Loans, and the Borrower acknowledges that upon such disbursement to the Lender's solicitor as aforesaid, such funds shall bear interest from the date of such disbursement.

17. **BORROWER'S SEGREGATED ACCOUNTS**

- 17.1 The Borrower shall be required to maintain a segregated bank account to receive all advances made on account of the Loans, over which the Security Documents shall create a first ranking security interest in accordance with this Commitment. The Borrower acknowledges and agrees that the Lender's solicitor shall only be required to advance proceeds of the Loans by depositing the same to such segregated bank account unless otherwise agreed to in writing by the Lender.

18. **COVENANTS, WARRANTIES AND REPRESENTATIONS**

18.1 **General Representations and Warranties**

The Borrower and the Guarantor each warrants and represents as to itself to the Lender that:

- 18.1.1 the Borrower is the sole legal owner and beneficial owner of the Property with good and marketable title thereto and the Borrower is the sole legal owner and beneficial owner of the personal property related thereto or used for the operation of the Property or which is necessary for the use and operation thereof. The Property and such other personal property related to or used for the operation of the Property is free and clear of all security interests, charges, liens, mortgages, prior claims or other encumbrances except for the encumbrances accepted in writing by the Lender;
- 18.1.2 the Borrower and the Guarantor have the power and authority to execute and deliver this Commitment and the other Loan Documents;
- 18.1.3 the Commitment and the other Loan Documents shall constitute when executed legally binding obligations of the Borrower and the Guarantor enforceable against them in accordance with their respective terms;
- 18.1.4 the Borrower and the Guarantor are duly organized, validly existing and in good standing under the laws of the jurisdictions in which they are constituted and have adequate power and authority and are duly licensed to carry on their businesses as presently conducted, own their properties, including the Property, and to observe and perform their obligations under this Commitment and the other Loan Documents;
- 18.1.5 there are no lawsuits outstanding or litigation or any legal or administrative proceedings pending or threatened in respect of either the Borrower or the Guarantor or the Property (i) which have not been disclosed by the Borrower or the Guarantor to the Lender in writing in connection with the Borrower's application for the Loans; or (ii) which would adversely affect the ability of the Borrower or the Guarantor to the Lender in writing in connection of its application to perform their respective obligations hereunder or under the other Loan Documents or which would have an adverse effect on the financial condition of the Borrower, the Guarantor or the Property;
- 18.1.6 there are no outstanding judgments, writs of execution or orders against the Borrower, the Guarantor or the Property;
- 18.1.7 all financial statements delivered to the Lender are true and correct and accurately represent the financial position of the Borrower and the Guarantor as at the date thereof and there has been no material adverse change in the financial condition or results of operations of the Borrower or the Guarantor since such date and the date hereof;
- 18.1.8 no Event of Default has occurred and is continuing;

- 18.1.9 the Property is and shall be used for the specific purpose and use as set out under Section 5 and for no other purpose than the present use, and the proposed use and development of the Project complies with and will continue to comply with all applicable laws, including without limitation, all building, zoning, planning, development, environmental, occupation and use requirements, laws, bylaws and regulations, and is not non-conforming;
- 18.1.10 the Borrower covenants to comply with the provisions of the *Construction Act (Ontario)*;
- 18.1.11 all information pertaining to the current and proposed use and viability of the Property and the Borrower's and the Guarantor's financial condition has been fully disclosed to the Lender;
- 18.1.12 the Borrower has no notice of any work orders, deficiency notices or notices of violation pertaining to the Property;
- 18.1.13 there are no construction or builders' liens outstanding or inchoate with respect to the Property;
- 18.1.14 all Taxes, assessments, duties, utility charges and other levies and charges affecting the Property including without limitation, payments in lieu of taxes, other than amounts which are not yet due and payable, have been paid in full; and all Fiscal Debts have been paid in full ;
- 18.1.15 the Borrower is not and will not be at any time prior to the repayment in full of the Loans a non-resident of Canada as defined in the *Income Tax Act (Canada)*; and
- 18.1.16 the Borrower shall comply with all statutory requirements for deductions at source and shall submit remittances to applicable fiscal authorities, including without limitation those under the *Income Tax Act (Canada)*, HST/GST authorities and other authorities for which a charge or a lien may have priority over the security to be created pursuant to the Security Documents.

18.2 Material Agreements

- 18.2.1 The Borrower covenants and agrees not to enter into any material agreement without the prior written consent of the Lender, including any agreement(s) with Metrolinx. The Lender's acceptance of any Metrolinx agreement(s) (excluding any other material agreement) shall be from the perspective of ensuring that the said agreements are not detrimental to the value of the Property.

18.3 Environmental Representations and Warranties

- 18.3.1 To the Borrower's and Guarantor's knowledge and belief, after due inquiry, the Property and its existing and prior uses comply and have at all times complied with all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance and operation of the Property (the "**Environmental Laws**") and, without limiting the generality of the foregoing:
 - (a) the Property has never been used as a land fill site or to store or transport Hazardous Substances either above or below ground, in storage tanks, pipes, conduits or otherwise;

- (b) all Hazardous Substances used in connection with the business conducted at the Property have at all times been received, handled, used, stored, treated, shipped and disposed of in strict compliance with all Environmental Laws;
- (c) no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Property as a result of the conduct of business on the Property; and
- (d) no notices of any violation of any matters referred to above relating to the Property or its use have been received by the Borrower and there are no directions, writs, injunctions, orders or judgments outstanding, no law suits, claims, proceedings or investigations pending or threatened, relating to the ownership, use, maintenance or operation of the Property nor is there any basis for such lawsuits, claims, proceedings or investigations being instituted or filed.

18.3.2 For purposes of this Commitment, “**Hazardous Substances**” shall include, without limitation, all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to Environmental Laws and shall include “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances”, all as defined in, referred to and/or contemplated in Environmental Laws.

18.4 Environmental Covenants

18.4.1 The Borrower shall strictly comply with the requirements of applicable Environmental Laws (including, but not limited to obtaining any permits, licenses or similar authorizations to construct, occupy, operate or use the Property or any fixtures or equipment located thereon by reason of the applicable Environmental Laws) and shall notify the Lender promptly in the event of any spill or location of Hazardous Substances upon the Property that would require reporting under applicable Environmental Laws, and shall promptly forward to the Lender copies of all orders, notices, permits, applications or other communications and reports in connection with any spill or other matters relating to applicable Environmental Laws, as they may affect the Property.

18.4.2 The Borrower shall promptly remove from the Property, at its sole expense, any Hazardous Substances upon discovery.

18.5 Sale or Change of Control

18.5.1 The Borrower shall not sell, assign, lease in its entirety or otherwise dispose of the legal ownership or title to the Property or its beneficial interest therein or of the personal property related thereto or which is necessary to the use and operation of the Property, without the prior written consent of the Lender, which may be withheld at the discretion of the Lender. Each of the Borrower and the Guarantor shall not make, nor shall they allow others to make, directly or indirectly, any changes or amendments to their share capital or partnership capital or the allocation or ownership thereof (in this paragraph, the “**Equity Holder(s)**”), or any other action, which would result directly or indirectly in (i) a change of the Equity Holder(s) holding, directly or indirectly, 10% or more of the interest of the Borrower or the corporate Guarantor or (ii) a change of Control of the Borrower or the corporate Guarantor without the prior consent of the Lender, which may be withheld at the discretion of the Lender. In any event above, the Lender may in its sole discretion deny such consent or

may require as one of the terms for giving consent that the purchaser/transferee shall execute in favour of the Lender an assumption agreement as well as any other document that may be required to update the file and protect the Lender's rights including, without limitation, any further guarantee and indemnities that the Lender may deem necessary. In the event the Borrower is in breach of the foregoing, the Lender may, in its discretion, demand without limitation to its other recourses, immediate repayment of the Loans in full together with accrued interest.

18.5.2 In this Commitment:

- (a) **"Control"** means the possession, directly or indirectly, of the power to direct or cause direction of the management or policies of a Person, whether through the ownership of voting securities, the ability to exercise voting power, by contract, family relationship or otherwise.
- (b) **"Person"** means any natural person, corporation or other legal person, any partnership, including, without limitation, any limited partnership, general partnership, sole proprietorship, association, group of persons or trust.

18.6 Restriction on Further Financing and Encumbrances

- 18.6.1 Pursuant to section 3.2 of the original purchase and sale agreement dated December 10, 2018, between 2423441 Ontario Inc. as purchaser and CIC Management Services Inc. as vendor, CIC Management Services Inc. shall be permitted, subject to the execution of the priority and standstill agreement referred to in Section 9.1.9, to register a security mortgage in a principal amount no greater than \$25,000,000 (the **"CIC Charge"**).
- 18.6.2 The Borrower agrees not to enter into any further financing of the Property or any other property charged by the security created pursuant to the Security Documents and not to further encumber same in any manner or pledge any of its shares as security without the prior written approval of the Lender which approval may be withheld in the Lender's sole discretion.
- 18.6.3 Save and except for the CIC Charge, the Borrower covenants and agrees that it shall not, without the prior written consent of the Lender, which consent may be withheld in the Lender's sole and absolute discretion, execute, deliver, suffer to exist or permit to be registered any mortgage, security interest, charge, lien or other encumbrance on the Property or on any other property which is the subject of any of the Security Documents.

18.7 Management

- 18.7.1 The Property shall only be managed by the Borrower, by a corporation that is an affiliate (as this term is defined in the *Canada Business Corporations Act*) of the Borrower approved by the Lender or by a professional arm's length manager approved by the Lender. The Borrower shall not entrust the management of the Property to a Person other than those mentioned above without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed. No management fee in excess of market rates shall be payable to the manager of the Property without the prior written authorization of the Lender.
- 18.7.2 To the extent that the property manager is not at arm's length with the Borrower, the property manager will acknowledge by way of an amendment to the property management agreement or by a written acknowledgement by the property manager in favour of the

Lender that the Lender has the right to terminate the property management agreement on 5 Business Days' notice following an Event of Default (the "**Property Manager Acknowledgement**").

19. **INSURANCE**

19.1 From the date of the Initial Advance until the Loans are repaid in full, the Borrower shall obtain and maintain the insurance coverage as set out below or such other insurance coverage as reasonably required from time to time by the Lender or its Insurance Consultant, including the following:

19.1.1 **General Liability**

A commercial general liability insurance policy covering physical damages and injury arising at the Property or in the vicinity of the Property, in an amount satisfactory to the Lender and not less than \$5,000,000 per occurrence (the Lender to be named additional insured, but only with respect to claims arising out of the operations of the named insured(s)).

19.2 **Additional Provisions**

19.2.1 In addition to any of the foregoing, the Lender shall be entitled to request that the Borrower obtain any other insurance coverage it deems necessary, useful or appropriate.

19.2.2 The provisions relating to cancellation of the insurance policies or alteration clauses in the policies, including the mortgage clause, shall provide that a prior written notice of not less than 30 days must in such event be given to the Lender.

19.2.3 The Borrower shall provide the Lender, at least 30 days before the expiry of any insurance policy, or before the cancellation notice has been received, with a certificate of insurance from the insurer addressed to the Lender evidencing renewal or replacement of such insurance policy, otherwise the Lender may (without obligations) subscribe to another insurance policy and all the fees, premiums and other amounts payable by the Lender shall be immediately refunded by the Borrower to the Lender.

19.2.4 All proceeds of expropriation or of insurance from insurance policies, other than liability insurance, shall be paid to the Lender directly and at the option of the Lender, may either be applied on account of the Loans, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by the Lender as security and, so long as there is no Event of Default, may be subject to withdrawal by the Borrower in instalments, on a cost to complete basis, as the repair or replacement progresses, subject to the Lender's receipt of appropriate certificates, opinions and other documents which may include, without limitation, cost consultant report, proof of payments, as required by the Lender and the Lender's solicitor. The Insurance Consultant will review the insurance requirements herein for the Lender.

19.2.5 No co-insurance will be allowed. Save for the general liability insurance, each policy above shall contain a waiver by the insurer of all rights of subrogation or indemnity against the Lender.

19.2.6 The Borrower shall provide to the Lender such evidence as the Lender may request that all of the above required insurance is in place prior to any advance of the Loans being made.

All required insurance policies shall be forwarded to the Insurance Consultant for verification and approval, at the expense of the Borrower, prior to the disbursement of the Initial Advance and, in addition, if permanent financing is being provided hereunder, at the time of Substantial Completion of the Project. The Lender reserves the right to obtain a copy of all insurance policies during the Term of the Loans.

20. REALTY TAXES

- 20.1 The Borrower shall pay Taxes to taxing authorities as they fall due and shall supply the Lender with evidence of such payment.

“**Taxes**” shall mean all taxes, duties, rates, imports, assessments and other similar charges whether general or special, ordinary or extraordinary, foreseen or unforeseen and all related interest penalties and fines which at any time may be levied, assessed or imposed or be a lien on the Property or any part thereof.

21. FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

- 21.1 During the Term, each of the Borrower and the Guarantor covenants to provide or arrange for delivery to the Lender of the following:
- 21.1.1 within 180 days following the Borrower’s and Vandyk Properties Incorporated fiscal year, notice-to-reader financial statements in respect of the Borrower and Vandyk Properties Incorporated, prepared by a firm of professional chartered accountants, in accordance with generally accepted accounting principles in Canada as in effect from time to time (“**GAAP**”) or International Financial Reporting Standards, as such standards are accepted by the Canadian Accounting Standards Board (“**IFRS**”), as applicable, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information;
 - 21.1.2 on June 30 of each year unaudited certified personal net worth statement for John Vandyk, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information;
 - 21.1.3 immediate notification of the occurrence of any Event of Default or any event which, with the giving of notice, or passage of time, would become an Event of Default;
 - 21.1.4 immediate notification of any material damage or destruction to the building(s) on the Property or the land forming part of the Property immediately upon the occurrence of such damage or destruction;
 - 21.1.5 any information concerning the Property, the Borrower and the Guarantor as the Lender may reasonably request from time to time.
- 21.2 The Borrower shall keep and maintain proper books of account and records accurately covering all aspects of the business and affairs of the Borrower relating to the Property and shall, upon reasonable notice being given and during regular hours, permit the Lender or agents of the Lender to inspect the same.
- 21.3 In addition to the above financial statements, each of the Borrower and the Guarantor covenants to provide to the Lender, from time to time, upon request, any further financial information then still undisclosed, pertaining to the Property, the Borrower and the Guarantor, as well as all further financial information pertaining to themselves and the Property, including financial statements prepared and audited by a firm of chartered accountants.

- 21.4 The Borrower shall further supply to the Lender all relevant information relating to the payment of Crown debts for sums due under applicable tax legislation and for the payment of other Crown debts or sums due to public corporations specially provided for by specific legislation that may affect the Property and any relevant information relating to the collection and remittance to the applicable authorities of the GST and the HST for any period covered by the aforesaid financial statements.

22. EVENTS OF DEFAULT

- 22.1 The occurrence of any one or more of the following events will constitute an “**Event of Default**” under this Commitment:
- 22.1.1 an Event of Default (as such term is defined in the Security Documents), or a default under this Commitment or under the other Loan Documents which with the passage of time could constitute an Event of Default;
 - 22.1.2 if the Borrower fails to satisfy the conditions precedent outlined in Section 13 by December 31, 2022.
 - 22.1.3 if the Borrower fails to pay any amount of principal of any Loan as well as any interest, fees or other obligations when due;
 - 22.1.4 if the Borrower or the Guarantor neglects to observe or perform any covenant or obligation contained in this Commitment or any other Loan Document on its part to be observed or performed;
 - 22.1.5 if any information, representation or warranty given or made by any of the Borrower or the Guarantor in this Commitment, any other Loan Document or in any certificate or other document at any time delivered hereunder to the Lender proves to have been incorrect or misleading on and as of the date that it was made or was deemed to have been made;
 - 22.1.6 if any of the Borrower or the Guarantor ceases or threatens to cease to carry on business generally or admits its inability or fails to pay its debts generally;
 - 22.1.7 if any of the Borrower or the Guarantor denies its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part;
 - 22.1.8 if there is a change of Control of the Borrower or the Guarantor;
 - 22.1.9 if any of the Loan Documents or any material provision of any of them becomes unlawful or is changed by virtue of legislation or by a governmental authority or if the Lender concludes that any or all of the transactions entered into by the Borrower or the Guarantor under the Commitment or the other Loan Documents have ceased to constitute (or are reasonably expected to cease to constitute) valid and legal obligations binding upon the Borrower or the Guarantor and enforceable against it in accordance with their terms and conditions, and the Borrower or the Guarantor does not, within 5 Business Days of receipt of notice of such Loan Document or material provision becoming unlawful or being changed, replace such Loan Document and does not sign a new agreement that is in form and substance satisfactory to the Lender, or amend such Loan Document or take any action in order to remedy same to the satisfaction of the Lender;
 - 22.1.10 if a decree or order of a court of competent jurisdiction is entered adjudging the Borrower or the Guarantor a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of the Borrower or the Guarantor under the *Companies’ Creditors*

Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding-up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of the Borrower or the Guarantor, or ordering the winding-up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of 30 days;

- 22.1.11 if the Borrower or the Guarantor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act (Canada)* or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act (Canada)*, the *Winding-up and Restructuring Act (Canada)* or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;
 - 22.1.12 if any Person takes possession, by appointment of a receiver, receiver and manager or otherwise, of: (i) all or any part of the Project, or (ii) all or any material part of the remainder of the Project, or (iii) all or any significant part of the assets of the Borrower or the Guarantor, or gives notice of its intention to do any of the foregoing;
 - 22.1.13 if proceedings are commenced for the dissolution, liquidation or voluntary winding-up of the Borrower or the Guarantor, or for the suspension of the operations of the Borrower or the Guarantor;
 - 22.1.14 if a final judgment or decree for the payment of money due has been obtained or entered against the Borrower or the Guarantor, and such judgment or decree has not been and remained vacated, discharged or stayed pending appeal within the applicable appeal period or the applicable Borrower or Guarantor has not demonstrated to the satisfaction of the Lender that it has the financial ability to satisfy such judgement or decree without affecting such Borrower's or Guarantor's ability to perform its obligations under the Loan Documents;
 - 22.1.15 if, as applicable, the Borrower or the Guarantor: (a) fails to make any payment when such payment is due and payable to any Person in relation to any debt secured by the Project (other than the Loans) and any applicable grace period in relation thereto has expired; or (b) defaults in the observance or performance of any other agreement or condition in relation to any such debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs or condition exists, the effect of which default or other condition, if not remedied within any applicable grace period, would be to cause, or to permit the holder of such debt then to declare, such debt to become due prior to its stated maturity date;
 - 22.1.16 if any security created pursuant to any Security Document ceases to constitute a valid and perfected first priority security interest; or
 - 22.1.17 if a material change under Section 23 has occurred.
- 22.2 It shall be an Event of Default if any representations and warranties set out in the Loan Documents shall be false or misleading as at the time given or at the time deemed to be given or repeated under any of the Loan Documents.

22.3 Upon the occurrence of an Event of Default, the Lender may exercise all rights and remedies available at law and under any Security Documents and other Loan Documents. If any Event of Default shall occur and in addition to its other recourses if such discrepancy or inaccuracy occurs prior to the final advance of the proceeds of any of the Loans, the Lender shall be entitled to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds and to declare any monies thus advanced with interest to be forthwith due and payable. If any Event of Default shall occur and be continuing, the entire principal amount of the Loans then outstanding, all accrued and unpaid interest thereon and all other payments due hereunder or under any Loan Document, shall, upon notice in writing from the Lender to the Borrower, become immediately due and payable with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice (other than the notice just referred to), presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Borrower.

23. MATERIAL CHANGES

23.1 If one or more of the following shall occur prior to the date of the Initial Advance of any of the Loans:

23.1.1 an event (including, without limitation, the commencement of litigation or other proceedings) which has had or will likely have, in the opinion of the Lender, a material adverse effect upon:

- (a) the Property, including, without limitation, restrictions or limitations on the use of the Property or any other property charged by the security created pursuant to the Security Documents,
- (b) the value of the Property or any other property charged by the security created pursuant to the Security Documents;
- (c) the validity of the Security Documents and/or the enforceability thereof; or
- (d) one or more of the Borrower and the Guarantor and/or such entity's ability to comply with their obligations pursuant to this Commitment, the Security Documents and/or the other Loan Documents;

23.1.2 an Event of Default;

23.1.3 there is or has been any material change, discrepancy or inaccuracy in any information, statements, representations or warranties made or furnished to the Lender by or on behalf of the Borrower or the Guarantor, including, without limitation any financial statements or reports; or

23.1.4 the Lender's due diligence inquiries in connection with its "Know Your Client" due diligence requirements are not to the Lender's satisfaction, in its sole and absolute discretion;

then the Lender may, in its sole and absolute discretion, terminate this Commitment and its obligations under this Commitment by providing notice to the Borrower; in such event and without further recourse by any party hereto against the other, notwithstanding Section 10, the Borrower will be responsible for paying all Costs and Expenses. In the cases referred to in subparagraphs 23.1.1, 23.1.2, and 23.1.3 above, the notice shall indicate the reason(s) for the termination and the Borrower shall have 10 Business Days within which to eliminate such reason(s) (provided this elimination is effected not later than 3 Business Days prior to the Expiry Date), failing which the termination shall be effective.

24. SPECIAL PROVISIONS

- 24.1 Each and every obligation contained in this Commitment and to be performed, satisfied, or furnished by the Borrower, is a condition precedent to the Lender's obligation to advance under Facility 1 or Facility 2. In the case of any such advance or issuance, all conditions precedent pertaining to same must be performed or satisfied to the Lender's satisfaction not less than 5 Business Days (unless otherwise provided herein) prior to the scheduled date of such advance or issuance or the Lender shall be under no obligation to make same.
- 24.2 The Borrower shall promptly remove any security interest, mortgage, lien, charge or other encumbrance against the Project and in any event within 5 Business Days of its registration date, other than encumbrances permitted by the Lender in writing.
- 24.3 The Borrower shall request funds solely for the Project.
- 24.4 If applicable, the Borrower acknowledges that the Lender has the right to make payments directly to contractors and suppliers if it defaults to make such payments.

25. PROCESSING FEE

- 25.1 A non-refundable processing fee (the "**Processing Fee**") in the amount of \$843,500 is deemed fully earned upon acceptance of the Commitment and shall be payable as follows:
- 25.1.1 \$250,000 is payable upon execution of this Commitment; and
- 25.1.2 the balance is payable upon and from the Initial Advance.
- 25.2 The parties acknowledge and agree that the Processing Fee is deemed fully earned upon acceptance of this Commitment, shall not be refunded under any circumstances and shall be paid current from the Borrower's own resources.

26. COSTS, FEES AND EXPENSES

- 26.1 The Borrower agrees to pay, regardless of whether any portion of the Loans is advanced, all costs, fees and expenses in connection with the transaction contemplated by this Commitment (the "**Costs and Expenses**") including, without limitation:
- 26.1.1 engineering, appraisal, credit information, inspection, architectural, insurance review and survey fees;
- 26.1.2 legal fees and disbursements of the Lender's solicitor, Cost Consultant and Insurance Consultant; and
- 26.1.3 registration, recording and filing fees, taxes and the like with regard to all documents required by the Lender's solicitor to be registered, recorded or filed.
- 26.2 The Costs and Expenses may, at the option of the Lender, be deducted from any advance of the Loans or be payable by the Borrower upon demand by the Lender to this effect.
- 26.3 The Borrower agrees to pay to the Lender fees for the analysis and the treatment of any request made by the Borrower during the course of the Loans, which fees will be in compliance with the fees charged by the Lender at the time of the request, for a similar request.

27. RIGHT OF FIRST OPPORTUNITY AND LAST REFUSAL

- 27.1 The Lender shall have a right of first opportunity and last refusal to finance or arrange any permanent financing and/or further interim financing for subsequent phases of the Project of which the Property forms part, or for any further development of the Property or any improvements to be developed on the lands adjacent thereto (herein collectively referred to as the “**Permanent Financing and/or further Interim Financing**”).
- 27.2 In connection therewith the Borrower shall provide to the Lender in writing as soon as same is applicable a request for Permanent Financing and/or further Interim Financing for subsequent phases of the Project, together with all information necessary for the Lender to process such request and within a reasonable period of time after delivery to the Lender of all reasonably required information, the Lender shall be given a first opportunity to provide an offer of Permanent Financing and/or further Interim Financing for subsequent phases of the Project of which the Property forms a part.
- 27.3 The Lender shall also be given a right of last refusal to provide an offer of Permanent Financing and/or further Interim Financing for subsequent phases of the Project to the Borrower on terms substantially the same as any other written offer of financing received from a third party lender, which the Borrower is prepared to accept and copy of which the Borrower shall provide to the Lender.

28. CONSENT TO DISCLOSURE

- 28.1 The Borrower and the Guarantor consent to and agree that the Lender and its representatives may gather, maintain, use and/or disclose any information and documents and make any inquiries in connection with the Borrower and the Guarantor. The aforesaid information and documents are inclusive of any information relating to the Lender’s “Know Your Client” due diligence requirements, the Loans applied for and/or in connection with any assignment, sell down, syndication, securitization or enforcement of the Security Documents, the Commitment and/or the Loans by the Lender.
- 28.2 The Borrower and the Guarantor consent to disclosure, without restriction and without notice to or further consent of the Borrower and the Guarantor of any such information and documents to any credit reporting service, financial institution, rating agency, regulatory authority, participant, investor, certificate holder, assignee or purchaser of all or any part of the Loans or interest therein and any interested party as well as the Lender’s auditors, legal advisors and any other Person to whom such information and documents are disclosed pursuant to the Lender’s internal policies, procedures and practices.
- 28.3 In addition, in all circumstances, on any territory and for any purpose, the Lender shall have the right to disclose, communicate and publicize the following information concerning the Loans: the name of the Borrower or the name of its group, the name and address of the Property, images of the Property and the Project, the type of Project and the type and amount of the Loans. The Lender shall have the right to authorize its parent company to make similar disclosure. The Borrower authorizes the Lender, without charge and for any purpose, to use, reproduce, modify, create any derivative work, adapt, distribute and display promotional images or photographs of the Property and the Project provided to the Lender by the Borrower.
- 28.4 Save for the exceptions above, the parties oblige themselves not to make any public declaration or other communication in connection with the Loans without obtaining the prior written consent of the other party, which consent may be withheld at the discretion of each party.
- 28.5 The Borrower and the Guarantor acknowledge and agree that this authorization will remain valid as long as they remain respectively the debtors and the guarantor of the Loans and the Lender may disclose any information and document pursuant to this Section.

29. SIGNAGE

- 29.1 The Lender will have the right to place one or more signs on the Property indicating its participation in the financing of the Project, provided it is permitted by applicable by-laws. Such signs will be provided by the Lender and will be installed by the Borrower at its expense.

30. ASSIGNMENT

- 30.1 The Loans, this Commitment and the Security Documents (including the proceeds of the Loans) may not be assigned, transferred or otherwise disposed of by the Borrower without the prior written consent of the Lender, which consent may be arbitrarily withheld. The Lender may, without notice to and without the consent of the Borrower or the Guarantor, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of the Commitment, the Loans, the other Loan Documents and any and all rights, title, benefits, remedies and obligations relating thereto. The Borrower and the Guarantor agree to co-operate with the Lender in connection with any such assignment, syndication, securitization, transfer or grant of participation interests including, without limitation, the delivery of an estoppel certificate in a form satisfactory to the Lender and confirming the status of the Commitment and of the Security Documents. The Borrower acknowledges and agrees that the Lender may retain the services of a servicer (the “**Servicer**”) to service the Loans and the security created pursuant to the Security Documents, including the collection of payments under the Loans.
- 30.2 The Borrower further acknowledges and agrees that the Servicer is not the Lender and the Servicer owes no obligation to the Borrower to advance funds under the Loans, or continue to be the Servicer. For the purposes of this Commitment and if a Servicer is retained by the Lender, all references to the Lender following the Initial Advance shall be deemed to include the Servicer, and the Servicer shall have and may exercise at all times and without restriction all of the rights and benefits of the Lender under this Commitment, provided, however, the Lender may replace the Servicer in its sole discretion.

31. PROFESSIONAL ADVISORS

31.1 Lender’s Solicitor

The Loan Documents and the processing of all legal steps with respect to advances of funds under all Loans shall be prepared and carried out by Tzen-Yi Goh of the law firm McCarthy Tétrault LLP, located at 66 Wellington Street West, Toronto, ON, M5K 1E6, Suite 5300 (the “**Lender’s solicitor**”).

31.2 Insurance Consultant

All insurance matters shall be reviewed and approved by Intech Risk Management Inc., located at 3 Church Street, Suite 400, Toronto, Ontario, M5E 1M2, Canada.

31.3 Fees and Expenses

The Borrower shall be solely responsible for all costs, fees and expenses of all experts and consultants retained in accordance with this Commitment.

32. APPLICABLE LAW

- 32.1 The terms and conditions of this Commitment as well as all other documents relating to the execution of the transactions provided for by this Commitment shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the Borrower and the Guarantor hereby

irrevocably attorn to the jurisdiction of the courts of such Province.

33. **LOSS OF BENEFIT OF THE TERM**

- 33.1 The Lender shall have the right to remedy any Event of Default which has occurred at the Borrower's expense, and any action taken by the Lender in contemplation of such remediation shall neither constitute nor result in any waiver of such Event of Default, and the Lender's right to invoke same for whatever purpose hereunder or under the Loan Documents. The Borrower shall lose the benefit of the term and the Lender shall be entitled to claim the immediate payment of the entire principal amount of the Loans then outstanding, all accrued and unpaid interest thereon, costs and accessory charges, and to exercise, in its sole discretion, any of its rights and remedies provided herein, in the other Loan Documents or under applicable law, the whole without further demand or notice, unless such demand or notice is expressly required herein, in the other Loan Documents or under applicable law.

34. **NOTICES**

- 34.1 Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Commitment shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, or transmitted by e-mail, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail, and in the case of:

the Lender, addressed as follows:

Otéra Capital Inc.
81 Bay Street, Suite 3610
Toronto, Ontario M5J 0E7

Attention: Vice President, Real Estate Lending
Email: notice@oteracapital.com
with a copy to:

Otéra Capital Inc.
413 St-Jacques Street, Suite 700
Montréal, Québec H2Y 1N9

Attention: Legal Affairs
Email: legal@oteracapital.com

the Borrower, addressed as follows:

2495065 ONTARIO INC.

Attention: Richard Ma
Email: rma@vandyk.com

the Guarantor, addressed as follows:

JOHN VANDYK

Email: jvandyk@vandyk.com

VANDYK PROPERTIES INCORPORATED

Attention: John Vandyk
 Email: jvandyk@vandyk.com

34.2 Any such notice, (i) if delivered personally, shall be deemed to be delivered on the date of delivery thereof, (ii) if transmitted by e-mail prior to 4:00 p.m. on any Business Day shall be deemed to have been delivered on the date of transmission and if delivered by e-mail after 4:00 p.m. on any Business Day shall be deemed to have been delivered on the next following Business Day or (iii) if mailed as aforesaid, the 4th Business Day following the date of mailing. For the purposes hereof, personal delivery, including delivery by way of a courier service, shall be made by delivery to an officer, director or responsible employee of the party for whom it is intended at its address set out above. If on the date of mailing or on or before such 4th Business Day thereafter there is a general interruption in the operation of postal service in Canada, notices shall be delivered personally or by e-mail. Each party may, from time to time, change its address or stipulate an address different from the address set out above by giving notice thereof to each other party in the manner provided in this Section.

35. JOINT AND SEVERAL LIABILITY

35.1 Unless otherwise stipulated herein, if there is more than one Borrower or Guarantor, their liability hereunder shall be joint and several.

36. ENUREMENT

36.1 This Commitment shall enure to the benefit of the Lender and its successors and assigns and be binding upon the heirs, personal representatives and permitted successors and assigns of the Borrower and the Guarantor, including any successors by virtue of any amalgamation or other corporate reorganization and including any trustee in bankruptcy.

37. NON-MERGER

37.1 The Borrower's obligations as contained in this Commitment shall survive the execution and registration of the Security Documents and the other Loan Documents and all advances of funds under the Loans, and the Borrower agrees that those obligations shall not be deemed to be merged in the execution and registration of the Security Documents. All terms and conditions of the Security Documents and other Loan Documents shall be deemed to be incorporated in and form part of this Commitment, except to the extent provided for herein. In the event of conflict, the terms of this Commitment shall prevail.

38. ENTIRE AGREEMENT

38.1 This Commitment together with its schedules and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the parties hereto constitute the entire agreement between the parties hereto pertaining to the subject matter of this Commitment and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the parties hereto in connection with this Commitment provided for herein except as specifically set forth in this Commitment and the Borrower's application relating thereto.

39. AMENDMENT

39.1 The terms or requirements of this Commitment or any other Loan Document may not be waived or

varied orally, or by any course of conduct of any officer, employee or agent of the Lender. Any amendment to this Commitment must be in writing and signed by a duly authorized officer of the parties affected by such amendment; provided, however, that the Lender may unilaterally extend the date for return of this Commitment, receipt of any documentation or extend the Expiry Date upon written notice to the Borrower or any other party to this Commitment.

40. NO AGENCY

40.1 Notwithstanding anything herein provided, the parties hereto acknowledge that any agent, broker and/or consultant engaged with respect to or instrumental in negotiation and/or finalization of this Commitment shall at all times be deemed the agent of the Borrower and not the agent of the Lender, and no representations, statements or other acts of an consultant, agent, broker or other party involved in negotiation of this transaction shall be binding on the Lender unless specifically authorised in writing by the Lender.

41. FURTHER ASSURANCES

41.1 The Borrower and the Guarantor agree to take all actions or to sign all documents necessary or appropriate to give effect to the provisions and intent of this Commitment.

42. WAIVER

42.1 The terms and conditions contained in this Commitment are inserted for the exclusive benefit of the Lender and may be waived in whole or in part by the Lender at any time. No advance, either singularly or collectively, shall constitute a waiver of any of the Borrower's obligations or obligate the Lender to make further advances.

42.2 The Lender's failure to insist upon the strict performance of any obligation or covenant of this Commitment by the Borrower or by any other Person or to exercise any option or right herein shall not be a waiver, or relinquishment for the future of such obligation or covenant, option or right, but the same shall remain in full force and effect and the Lender shall have the right to insist upon the strict performance by the Borrower or such other Person of any and all of the terms and provisions of this Commitment and the other Loan Documents.

43. SCHEDULES

43.1 The following documents are attached as schedules to this Commitment and form a part hereof:

Schedule "A" - Reliance Letter to be used by Professionals

Schedule "B" - Municipal and Government Authorities and Suppliers of Utilities Authorization and Consent

44. EXPIRY DATE

44.1 The Initial Advance must take place prior to July 30, 2022 (the "**Expiry Date**").

44.2 If the Initial Advance has not been disbursed by the Expiry Date, the Lender may at any time thereafter, in its sole discretion, terminate its obligations under the terms of this Commitment and/or the Security Documents without further recourse by any party hereto against the other and in such event, the Lender shall retain the Processing Fee.

44.3 The Lender may, at its sole option from time to time, elect to extend the Expiry Date or any of the other time periods contained in this Commitment. Time shall remain of the essence of this Commitment and all other terms and conditions shall remain unchanged.

45. **TIME FOR ACCEPTANCE**

45.1 If the above terms and conditions are acceptable, please so indicate by executing and returning one original copy of this Commitment to the Lender.

Signature Pages Follow

OTÉRA CAPITAL INC.

By: 

Michael DiCesare
Authorized Signing Officer

By: 

Leonard Damiani
Authorized Signing Officer

ACCEPTANCE

We hereby accept and agree to be bound by the terms and conditions set out in this Commitment on this 8th day of July, 2022.

BORROWER

2495065 ONTARIO INC.

By: 
Name: John Vandyk
Title: CEO

By: _____
Name: _____
Title: _____

I/we have the authority to bind the corporation.

ACCEPTANCE

The undersigned hereby accepts and agrees to be bound by the terms and conditions of this Commitment this 8th day of July, 2022.

GUARANTOR

JOHN VANDYK

By: 
Name: John Vandyk
Title: CEO

VANDYK PROPERTIES INCORPORATED

By: 
Name: John Vandyk
Title: CEO

By: _____
Name:
Title:

I/we have the authority to bind the corporation.

SCHEDULE "A"

RELIANCE LETTER TO BE USED BY PROFESSIONALS

[●] [Date]

Otéra Capital Inc.
413 St-Jacques Street, Suite 700
Montréal, Québec
H2Y 1N9

Dear Sirs:

**Re: Otéra Capital Inc. ("Otéra") mortgage loan to [●] (the "Borrower") municipally known as [●]
[●] (the "Property")**

Re: Letter of transmission of expert reports
Borrower: [●]
Property: [●]
Lender: Otéra Capital Inc.
Loan no.: [●]

Dear Sir/Madam:

This letter is sent to you in respect of the following reports:

- [●];
- [●].

We further confirm that the above-mentioned reports remain in full force and effect and are unamended as at the date hereof and that Otéra Capital Inc. and its successors and assigns may rely on such reports as if such reports had been originally prepared at their request and addressed to them for the purposes of the above-referenced loan.

We further confirm that Otéra Capital Inc. and its successors and assigns may enforce all of their rights arising from such reports as if such reports had been commissioned by and addressed to them for the purposes of the loan and the enforcement of the said mortgage, subject to the limitations set out in such reports.

[NOTE: If a re-assessment letter is required, then a paragraph may be added to confirm that the conclusions of the report have not been changed since the date of the report and the recommendations have not been changed and the Lender may rely upon the above reports.]

[●] [EXPERT FIRM]

Loan No.: 2021-0354-10

Per:

Name:
Title:

SCHEDULE "B"

AUTHORIZATION AND CONSENT

To: All Applicable Municipal and Governmental Authorities and Suppliers of Utilities (the "Authorities")

Subject: **Borrower:** [●]
Lender: Otéra Capital Inc.
Property: [●]
Loan Number: [●]

Dear Madams/Sirs:

1. **Otéra Capital Inc.** (and any person/entity authorized by it as its solicitor, agent or manager) (collectively "**Otéra**") and as such is authorized to make such inquiries, request such information, as may be necessary to confirm that the Property complies with all municipal and other governmental requirements and that there are no outstanding work orders or requirements issued or pending by the building, fire, health, labour, environment and/or air pollution departments or any other Authority having jurisdiction over the Property, requiring any repairs, work, changes and/or additions on or about the Property;
2. all Authorities are hereby authorized to disclose/release to Otéra all information and documents (including copies of real estate tax bills prior to the relevant due date(s) therein) with respect to accounts for real estate taxes, service taxes, local improvement rates and all other statutory charges, liens and levies, if any, collectible in the same manner as real estate taxes, maintained in respect of the Property including details/copies of current accounts, arrears, instalments made on account of arrears and any arrangements for future payment of accounts;
3. all Authorities are hereby authorized to disclose/release to Otéra all information and documents with respect to the utility accounts maintained in respect of the Property including details/copies of current accounts, arrears, instalments made on account of arrears and any arrangements for future payment of accounts and/or the rental of equipment; this authorization pertains to all accounts in the name of [●] [name of Borrower] as well as all other accounts in the name of any tenant of the Property and which may, for any reason whatsoever, become the obligation of [●] [name of Borrower];
4. This Authorization and Consent shall remain valid and in full force and effect during the entire period that Otéra shall be a mortgagee of the Property;
5. You are authorized to accept and rely upon a photocopy of this Authorization and Consent as evidence of the authorization of [●] [name of Borrower].

Thank you for your assistance.

DATED this [●] day of [●], 20[●].

[●] [BORROWER]

Loan No.: 2021-0354-10

By: _____
Authorized Signatory

I/we have the authority to bind the [corporation]

THIS IS **EXHIBIT D** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.



Otéra Capital
 3610-81 Bay Street
 Toronto, Ontario M5J 0E7
 Canada

July 25, 2023

2495065 Ontario Inc.

Attention: Richard Ma

Email: rma@vandyk.com

-and-

John Vandyk

Email: jvandyk@vandyk.com

-and

Vandyk Properties Incorporated

Attention: John Vandyk

Email: jvandyk@vandyk.com

Re: Amendment to Commitment
Borrower: 2495065 Ontario Inc.
Property: 39 Newcastle Street, Toronto, Ontario
Lender: Otéra Capital Inc.
Loan No.: 2021-0354-10

We are pleased to provide this amendment to the amended and restated commitment letter (the "**Commitment**") dated as of July 4, 2022 among 2495065 Ontario Inc., as borrower (the "**Borrower**"), John Vandyk and Vandyk Properties Incorporated, as guarantors (collectively, the "**Guarantor**"), and together with the Borrower, the "**Obligors**"), and Otéra Capital Inc., as lender (the "**Lender**"), under the terms and conditions as noted herein (the "**Terms and Conditions**") to amend certain terms and conditions of the Commitment.

In this amendment to the Commitment (the "**Amendment to Commitment**"), unless otherwise defined herein or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Commitment.

1. AMENDMENT TO COMMITMENT

- 1.1. The first recital of the Commitment is hereby amended by deleting reference to "\$84,350,000" and replacing it with "\$71,542,000".

- 1.2. Section 7.1 of the Commitment is deleted and replaced with the following:
- “The aggregate principal amount outstanding under the Loans shall at no time exceed \$71,542,000.”
- 1.3. Section 7.2.1 of the Commitment is deleted and replaced with the following:
- “The aggregate principal amount outstanding under Facility 1 shall at no time exceed \$62,526,385. The aggregate principal amount outstanding under Facility 1 shall be funded in one single advance of \$58,560,087 upon closing of Facility 1 with the remaining \$3,966,298 to be withheld as an Interest Reserve (the “**Initial Facility 1 Commitment**”).”
- 1.4. Section 7.2.2 of the Commitment is deleted.
- 1.5. Section 7.3.1 of the Commitment is deleted and replaced with the following:
- “The aggregate principal amount outstanding under Facility 2 shall at no time exceed \$9,015,615. Facility 2 shall be funded in one single advance of \$8,119,112 upon closing of Facility 2 with the remaining \$896,503 to be withheld as an Interest Reserve (the “**Initial Facility 2 Commitment**”).”
- 1.6. Section 7.3.2 of the Commitment is deleted.
- 1.7. Section 7.3.3 of the Commitment is deleted.
- 1.8. Section 7.4.1 of the Commitment is amended by deleting the words “Prior to the satisfaction of the conditions outlined in Section 12”.
- 1.9. Section 7.4.2 of the Commitment is deleted.
- 1.10. Section 7.4.3 of the Commitment is deleted.
- 1.11. Section 8.1.1 of the Commitment is deleted and replaced with the following:
- “The Term of Facility 1 & Facility 2 (the “**Term**”, and the last day of the Term being the “**Maturity Date**”) shall be 13 months ending August 15, 2023.”
- 1.12. Sections 8.1.2 and 8.1.3 of the Commitment are deleted.
- 1.13. Section 12 of the Commitment is deleted.
- 1.14. Section 13 of the Commitment is deleted.
- 1.15. Section 22.1.2 of the Commitment is deleted.
- 1.16. Section 22 of the Commitment is hereby amended by adding the following subsections:
- “22.1.18 failure by the applicable affiliate of the Borrower to register the condominium corporation in connection with the project known as “Backyard Queensview Limited (Building C)” and complete the closing of 86% of sale transactions in connection with all pre-sold condominium units therein by August 3, 2023;

22.1.19 any default by John Vandyk under any other financings to which John Vandyk is a party to.”

- 1.17. Notwithstanding anything to the contrary in the Loan Documents, the amount of the Loans shall not, at any time, exceed an aggregate amount of \$71,542,000.

2. CONDITIONS PRECEDENT

The conditions precedent to the closing of this Amendment to Commitment are as follows:

- 2.1. Payment by the Borrower to the Lender of an extension fee equal to \$72,000.00;
- 2.2. Receipt by the Lender of (i) a guarantee of the Loans from the shareholder(s) of the Borrower, with the Lender’s recourse thereunder being limited to enforcing the Share Pledge (as hereinafter defined), and (ii) an executed share pledge agreement (the “**Share Pledge**”) on the Lender’s standard form from the shareholder(s) of the Borrower pledging all of the shares of the Borrower, and physical delivery of the share certificates representing such shares to the Lender;
- 2.3. Receipt by the Lender of a current liquidity report in respect of the Vandyk group satisfactory to the Lender;
- 2.4. Receipt by the Lender of a current personal net worth statement for John Vandyk and current financial statements for Vandyk Properties Incorporated, as well as any other statement or supporting documentation that the Lender may require;
- 2.5. Receipt by the Lender of current financial statements of the Borrower, as well as any other statement or supporting documentation that the Lender may require;
- 2.6. Receipt of current design drawings for the Project and the adjacent project known as “327 Royal York”;
- 2.7. Receipt by the Lender of current copies of all agreements (including current draft agreements) with Metrolinx, including copies of all meeting minutes related thereto; and
- 2.8. Receipt by the Lender of a clear sub-search of title to the Property.

3. CONFIRMATIONS OF THE OBLIGORS

- 3.1. Each of the Obligors confirms to the Lender as follows:
 - 3.1.1. all of its representations and warranties contained in the Commitment and the other Loan Documents are true and correct in all material respects on and as of the date hereof as though made on and as of the date hereof;
 - 3.1.2. all of its covenants contained in the Commitment and in the other Loan Documents to be complied with by it have been fully complied with in all material respects; and
 - 3.1.3. no Event of Default, or event which with the passage of time or the giving of notice, or both, would constitute an Event of Default, has occurred.

- 3.2. The Guarantor hereby consents to the entering into by the Borrower of this Amendment to Commitment.

4. CONFIRMATION OF SECURITY

- 4.1. Each of the Obligors acknowledges, confirms and agrees that, notwithstanding this Amendment to Commitment, (a) each of the Security Documents entered into by it continues in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of the indebtedness and terms and conditions as set forth in such Security Document and the Commitment, as amended by this Amendment to Commitment, (b) each Security Document to which it is a party constitutes a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium, reorganization and other laws of general application limiting the enforcement of creditor's rights generally and the fact that the courts may deny the granting or enforcement of equitable remedies, and (c) each Security Document to which it is a party is hereby ratified and confirmed.

5. SUPPLEMENTAL

- 5.1. This Amendment to Commitment is an amendment to the Commitment. Unless the context of this Amendment to Commitment otherwise requires, the Commitment and this Amendment to Commitment shall be read together and shall have effect as if the provisions of the Commitment and this Amendment to Commitment were contained in one agreement.

6. EXPENSES

- 6.1. The Borrower shall pay all reasonable fees and expenses (including, without limitation, attorneys' fees) incurred by the Lender in connection with the preparation, negotiation, completion, execution, delivery and review of this Amendment to Commitment.

7. CONTINUANCE OF THE SECURITY DOCUMENTS AND THE COMMITMENT

- 7.1. Except as modified by this Amendment to Commitment, all other terms and conditions of the Commitment shall remain the same. The Security Documents and the Commitment, as changed, altered, amended or modified by this Amendment to Commitment, shall be and continue in full force and effect and are hereby ratified and confirmed by the parties in all respects. The rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for in this Amendment to Commitment.

8. COUNTERPARTS

- 8.1. This Amendment to Commitment may be executed in any number of separate counterparts, each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of this Amendment to Commitment by facsimile or other electronically scanned method of delivery shall be as effective as delivery of a manually executed original counterpart of this Amendment to Commitment.

9. GOVERNING LAW AND LANGUAGE

- 9.1. This Amendment to Commitment and the rights and obligations of the parties hereunder shall be governed by and interpreted in accordance with the laws of the Province of Ontario and each of the Obligors hereby irrevocably attorns to the jurisdiction of the courts of such Province.
- 9.2. This Amendment to Commitment has been drawn up in the English Language at the request of the Borrower and Guarantor. *Le présent amendement a été rédigé en anglais à la demande de l'emprunteur et de la caution.*

10. TIME OF ESSENCE

- 10.1. Time shall be of the essence of this Amendment to Commitment and the agreement created by the acceptance thereof.

11. SUCCESSORS AND ASSIGNS

- 11.1. The provisions of this Amendment to Commitment shall be binding upon each of the undersigned Obligors and their respective permitted successors and assigns and shall enure to the benefit of the Lender and its successors and assigns.

12. SEVERABILITY

- 12.1. If any term or provision of this Amendment to Commitment or the application thereof to any party or circumstance shall be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining terms and provisions of this Amendment to Commitment shall not in any way be affected or impaired thereby, and the affected term or provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Amendment to Commitment.

[Signature Pages Follow]

OTÉRA CAPITAL INC.

By: 

Michael DiCesare
Authorized Signing Officer

By: 

Leonard Damiani
Authorized Signing Officer

ACCEPTANCE

The undersigned hereby accepts and agrees to be bound by the terms and conditions of this Amendment to Commitment this 25th day of JULY, 2023.

BORROWER

2495065 ONTARIO INC.

By: 
Name: JOHN L. VANDYK
Title: PRESIDENT & CEO

By: _____
Name:
Title:


I/we have the authority to bind the corporation.

GUARANTOR

JOHN VANDYK

By: 
Name:

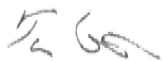
VANDYK PROPERTIES INCORPORATED

By: 
Name: JOHN L. VANDYK
Title: PRESIDENT & CEO

By: _____
Name:
Title:

I/we have the authority to bind the corporation.

THIS IS **EXHIBIT E** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING*
OATH OR DECLARATION REMOTELY, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 07617 - 0047 **LT** *Interest/Estate* Fee Simple
Description PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO
Address 39 NEWCASTLE STREET
 ETOBICOKE

PIN 07617 - 0269 **LT** *Interest/Estate* Fee Simple
Description PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO
Address 39 NEWCASTLE STREET
 ETOBICOKE

PIN 07617 - 0270 **LT** *Interest/Estate* Fee Simple
Description PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO
Address 39 NEWCASTLE STREET
 ETOBICOKE

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 2495065 ONTARIO INC.
Address for Service 1944 Fowler Drive
 Mississauga, Ontario
 L5K 0A1

A person or persons with authority to bind the corporation has/have consented to the registration of this document.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name OTÉRA CAPITAL INC.
Address for Service 3610-81 Bay Street, Toronto, Ontario M5J 0E7

Provisions

Principal \$105,000,000.00 *Currency* CDN
Calculation Period
Balance Due Date ON DEMAND
Interest Rate 25%
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 201704
Insurance Amount Full insurable value
Guarantor

Additional Provisions

See Schedules

Signed By

Natasha Khan Box 48 Suite 5300, TD Bank Tower acting for Signed 2022 07 22
 Toronto Chargor(s)
 M5K 1E6

Tel 416-362-1812

Fax 416-868-0673

I have the authority to sign and register the document on behalf of the Chargor(s).

The applicant(s) hereby applies to the Land Registrar.

Submitted By

MCCARTHY TETRAULT LLP

Box 48 Suite 5300, TD Bank Tower
Toronto
M5K 1E6

2022 07 22

Tel 416-362-1812

Fax 416-868-0673

Fees/Taxes/Payment

Statutory Registration Fee \$66.30

Total Paid \$66.30

File Number

Chargee Client File Number : 205796-559402

Additional Charge Provisions Schedule re Standard Charge Terms #201704 (the “Standard Charge Terms”)

In this Charge, the following terms shall have the following meanings:

"Commitment Letter" shall mean the amended and restated commitment letter dated as of July 4, 2022 among, *inter alia*, the Chargor, as borrower, and the Chargee, as lender, as the same may be further amended, supplemented, extended, renewed, restated, replaced or superseded from time to time.

In addition, in this Charge:

- 1) Notwithstanding anything otherwise contained in the Standard Charge Terms forming part of this Charge, the calculation and payment of interest and fees shall be in accordance with the terms of the Commitment Letter, including, without limitation, the specifics listed under the section headings titled “Financing Terms” of the Commitment Letter.
- 2) This Charge shall be expressly construed to be subject to the terms of the Commitment Letter, and to the extent of any inconsistency between the terms, conditions, definitions or other provisions of this Charge and the Commitment Letter, the terms of the Commitment Letter shall prevail.
- 3) **“Event of Default”** shall have the meaning ascribed to it as set out in the Commitment Letter.
- 4) To the end of Section 14 of Standard Charge Terms 201704, add “other than the encumbrances permitted by the Chargee”.

LAND REGISTRATION REFORM ACT
SET OF STANDARD CHARGE TERMS

STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE 88

Filing No. 201704 Cote

Filing Date Date de Dépôt

Page 1 of 28 Pages

John St. Lem
DIRECTOR OF TITLES
DIRECTRICE DES DROITS IMMOBILIERS

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**LAND REGISTRATION REFORM ACT
SET OF STANDARD CHARGE TERMS**

Filed By: Otéra Capital Inc.

Filing Number: _____

Filing Date: _____

The following set of Standard Charge Terms shall be deemed to be included in every Charge in which the set is referred to by its filing number, as provided in Section 9 of the *Land Registration Reform Act* (Ontario), as amended or replaced from time to time (the "**Land Registration Reform Act**"), except to the extent that these Standard Charge Terms are modified by additions, amendments or deletions in any schedule forming part of this Charge.

1. STATUTORY COVENANTS

The covenants deemed to be included in a Charge by Subsection 7(1) of the Land Registration Reform Act, to the extent that they are inconsistent with any of the provisions of these Standard Charge Terms, are hereby expressly excluded from the terms of this Charge.

2. RIGHT TO CHARGE LANDS

The Chargor has good right, full power and lawful and absolute authority to charge the Lands and to give this Charge to the Chargee upon the covenants contained in this Charge.

3. PROVISIO FOR REDEMPTION

This Charge shall be void upon payment of the principal sum herein (together with any and all amounts provided for herein to be added from time to time to the principal sum), with interest as herein provided, taxes and all other amounts secured hereby, and performance of all covenants in this Charge. The principal sum secured hereunder together with interest thereon and all other sums payable by the Chargor hereunder and under the Commitment Letter for the loan secured by this Charge, as well as all other loan and security documents pertaining to such loan, shall collectively be referred to as the "**Indebtedness**".

4. GRANT OF CHARGE

The Chargor hereby mortgages and charges the Lands to the Chargee as continuing security for the payment of the Indebtedness and performance of all obligations of the Chargee under this Charge or secured hereby.

5. INTEREST PRIOR TO AND AFTER MATURITY AND DEFAULT

Interest at the rate set out in this Charge is payable as well after as before maturity and both before and after default.

6. CHARGOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

The Chargor represents, warrants and covenants with the Chargee that the Chargor:

- (a) will pay the Indebtedness when due, including, without limitation;
 - (i) the principal secured pursuant to this Charge and interest thereon as herein provided;
 - (ii) all Taxes, whether municipal, local, provincial, federal or otherwise, which now are or may hereafter be imposed, charged or levied upon the Lands and, when required by the Chargee, shall transmit the receipts therefor to the Chargee;
 - (iii) all amounts which are payable hereunder or which are capable of being added to the principal sum herein pursuant to the provisions of this Charge, including, without limiting the generality of the foregoing: all servicing or other fees, costs or charges provided for herein; all insurance premiums; the amount paid for the supply of any fuel or utilities to the Lands; all costs, commissions, fees and disbursements incurred by the Chargee in constructing, inspecting, appraising, selling, managing, repairing or maintaining the Lands; all costs incurred by the Chargee, including, without limitation, legal costs on a substantial indemnity basis, with respect to this Charge or the enforcement thereof or incurred by the Chargee arising out of or in any way

related to this Charge; any amounts paid by the Chargee on account of any encumbrance, lien or charge against the Lands and any and all costs incurred by the Chargee arising out of, or in any way related to, the Chargee realizing on its security by sale or lease or otherwise;

- (b) has good and marketable title in fee simple to the Lands and has good right, full power and lawful and absolute authority to charge the Lands and to give the Chargee the covenants contained in this Charge; and
- (c) has not at any time done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Lands, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as may have been agreed to in writing by the Chargee.

7. COMPOUND INTEREST

It is agreed that if default is made in the payment of any amount to become due for interest at any time appointed for payment thereof, compound interest shall be payable and the amount in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate provided for in this Charge, and in case the interest and compound interest are not paid on the next instalment payment date after the date of default a rest shall be made, and compound interest at the rate provided for in this Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Lands and shall be secured by this Charge.

8. OBLIGATION TO ADVANCE

The Chargor agrees that neither the preparation, execution nor registration of this Charge shall bind the Chargee to advance the monies hereby secured, nor shall the advance of a part of the principal sum herein bind the Chargee to advance any unadvanced portion thereof, but nevertheless the estate hereby charged shall take effect forthwith upon the execution of this Charge by the Chargor, and any and all costs of any nature whatsoever incurred or to be incurred by the Chargee in connection with the transaction reflected in this Charge, including without in any way limiting the generality of the foregoing, any costs expressly provided for elsewhere in this Charge, together with all of the expenses of the examination of the title and of this Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum herein not being advanced, the same to be charged hereby upon the Lands, and shall be, without demand thereof, payable forthwith with interest at the rate provided for in this Charge, and in default the remedies herein shall be exercisable.

9. INSURANCE

The Chargor covenants and agrees that it will insure and keep insured during the term of this Charge the buildings on the Lands (now or hereafter erected) on an all-risk basis in an amount of not less than the greater of the full replacement value of the buildings located thereon from time to time, or the principal money secured herein, with no co-insurance provisions and with the Chargee's standard mortgage clause forming part of such insurance policy and with such insurance to include liability insurance and business interruption insurance if required by the Chargee. All such policies shall provide for loss payable to the Chargee and contain such clauses, coverages and provisions as the Chargee or its insurance consultant may require from time to time, whether or not consistent with or supplemental to the provisions set forth in this Charge. An original of all insurance policies and endorsements from the insurer to the effect that coverage has been initiated and/or extended for a minimum period of at least one year and that all premiums with respect to such term of coverage have been paid for in full, shall be produced to the Chargee prior to any advance and at least 30 days before expiration of any term of any such respective policy, failing which the Chargee may provide therefor and charge the premium paid therefor and interest thereon at the aforesaid rate to the Chargor and any amounts so paid by the Chargee shall be payable forthwith to the Chargee and shall also be a charge upon the Lands secured by this Charge.

In the event of any loss or damage, the Chargor shall forthwith notify the Chargee in writing and, notwithstanding any other provision to the contrary, statutory or otherwise, in the event of any monies becoming payable pursuant to any insurance policy herein required, the Chargee may, at its option, require the said monies to be applied by the Chargor in making good the loss or damage in respect of which the money is received or, in the alternative, may at the Chargee's option require that any or all of the monies so received be applied towards satisfaction of any or all of the Indebtedness, whether or not such Indebtedness has become due. No damage may be

repaired nor any reconstruction effected without the approval in writing of the Chargee in any event.

In the event of damage or destruction of all or any part of the buildings, structures or Improvements located on the Lands, the Chargee shall have the ability to retain the services of an engineer or such other advisor or consultant as the Chargee deems appropriate to examine, review and repair the damage if necessary, all at the cost of the Chargor.

10. REPAIR

The Chargor covenants and agrees that it will keep the Lands in good condition and repair according to the nature and description thereof. The Chargee may, whenever it deems necessary, enter upon and inspect the Lands, and the cost of such inspection shall be added to the Indebtedness and if the Chargor neglects to keep the Lands in good condition and repair, or commits or permits any act of waste on the Lands (as to which the Chargee shall be the sole judge) or makes default as to any of the covenants or provisos herein contained, this Charge shall, at the option of the Chargee, forthwith become due and payable in full, and all remedies provided for in this Charge or otherwise available to the Chargee at law may be exercised forthwith and the Chargee may make such repairs as it deems necessary, and the costs, charges and expenses including servicing fees for the time and services of any employee of the Chargee with interest at the rate provided for in this Charge aforesaid shall be added to the monies hereby secured and shall be payable forthwith and be a charge upon the Lands prior to all claims thereon subsequent to this Charge.

11. ALTERATIONS OR ADDITIONS

The Chargor covenants and agrees that it will not make or permit to be made any alterations or additions to the Lands without the prior written consent of the Chargee, which consent may be withheld in the Chargee's sole discretion or may be given only subject to the compliance with such terms and conditions at the cost of the Chargor as the Chargee may impose.

12. LANDS INCLUDE ALL ADDITIONS

The Lands shall include all structures and installations brought or placed on the Lands for the particular use and enjoyment thereof or as an integral part of or especially adapted for the buildings thereon whether or not affixed (in law) to the Lands, including, without limiting the generality of the foregoing, piping, plumbing, electrical equipment or systems, aerials, refrigerators, stoves, clothes washers and dryers, dishwashers, incinerators, radiators and covers, fixed mirrors, fitted blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment, cooking and refrigeration equipment, elevators, electric light fixtures and all component parts of any of the foregoing and it is understood and agreed that the same shall become fixtures and an accession to the freehold and a part of the Lands.

13. FURTHER ASSURANCES

The Chargor covenants that it will execute such further assurances of the Lands as may be required by the Chargee.

14. QUIET POSSESSION

Until default hereunder, the Chargor shall have quiet possession of the Lands. On default, the Chargee shall have quiet possession of the Lands free from all encumbrances.

15. CHANGE OF USE

The Chargor covenants and agrees that it will not change or permit to be changed the use of the Lands without the prior written consent of the Chargee and, further, at no time shall the Lands be used in a manner that would contravene the legislation, laws, rules, requirements, orders, directions, ordinances and regulations of any applicable governmental authority in force from time to time.

16. CHANGE OF CONTROL

The Chargor and the Covenantors shall not make, nor shall they allow others to make, any changes or amendments to their share capital or partnership capital or the allocation or ownership thereof, or any other action, which would result in a change of Control of the Chargor or any Covenantor without the prior written consent of the Chargee, which consent may be withheld or denied at the sole discretion of the Chargee.

In this Charge:

- (a) **"Control"** means the possession, directly or indirectly, of the power to direct or cause direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.
- (b) **"Person"** means any natural person, corporation or other legal person, any partnership, including, without limitation, any limited partnership, general partnership, sole proprietorship, association, group of persons or trust.

17. CONSTRUCTION LIENS

Upon the registration of any lien against the Lands which is not discharged within a period of 10 days after the date of registration thereof, or in the event of any buildings being erected thereon being allowed to remain unfinished or without any work being done on them for a period of 21 days, the principal sum then outstanding and interest and all other amounts secured by this Charge shall, at the option of the Chargee, forthwith become due and payable. In the event that a construction lien is registered against title to the Lands, the Chargee shall have the right, but not the obligation, to pay such amounts as may be required to remove such lien from title to the Lands to either the lien claimant or to a court of competent jurisdiction, at the sole option of the Chargee. Any amounts so paid by the Chargee, together with all costs, charges, and expenses incurred by the Chargee in connection therewith, including all solicitor's charges (on a substantial indemnity basis) or commission, shall be added to the principal sum secured by this Charge and shall bear interest at the rate provided for in this Charge and shall, with such interest, be a charge on the Lands prior to all claims thereon subsequent to this Charge and shall be payable forthwith on demand.

18. UTILITIES

The Chargor covenants that it will pay all utility and fuel charges related to the Lands as and when they are due and that it will not allow or cause the supply of utilities or fuel to the said Lands to be interrupted or discontinued and that, if the supply of fuel oil or utilities is interrupted or discontinued, it will take all steps that are necessary to ensure that the supply of utilities or fuel is restored forthwith. It is specifically agreed that the failure to pay all fuel and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel or utilities to the said lands shall constitute a default by the Chargor under this Charge and, in addition to all other remedies provided for herein or otherwise at law, this Charge shall, at the sole option of the Chargee, forthwith become due and payable in full.

19. TAXES

With respect to all taxes, rates and assessments, whether municipal, local, parliamentary or otherwise, including school taxes and local improvement rates and charges (hereinafter collectively referred to as **"Taxes"**) chargeable or levied against the Lands, the Chargor covenants and agrees with the Chargee that:

- (a) the Chargee may deduct from any advance of the monies secured by this Charge an amount sufficient to pay the Taxes which have become due and payable during any calendar year;
- (b) the Chargee may at its sole option estimate the amount of Taxes chargeable against the Lands and payable in each year, which estimate may include any anticipated increase in Taxes for the year, and the Chargor shall forthwith upon the demand of the Chargee pay to the Chargee one-twelfth (1/12) of the estimated annual amount of such Taxes on each monthly payment date during the term of this Charge. The Chargee shall apply such payments to the Taxes so long as the Chargor is not in default, but nothing herein contained shall obligate the Chargee to apply such payments on account of Taxes more often than yearly; provided, however, that if the Chargor shall pay any sum or sums to the Chargee to apply on account of Taxes, and if before such payments have been so applied by the Chargee there shall be default by the Chargor hereunder, the Chargee may at its option apply such sum or sums in or towards curing the default. In no event shall the Chargee be liable for any interest on any amount paid to it and the monies so received may be held with its own funds pending payment or application thereof;
- (c) in the event that the Taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Chargee as aforesaid, the Chargor shall pay to the Chargee, on demand, the amount required to make up the deficiency;

- (d) the Chargor shall transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of Taxes upon the Lands, together with such receipts or evidence of payment of Taxes as the Chargee may require from time to time;
- (e) the Chargor shall pay to the Chargee, in addition to any other amounts required to be paid hereunder, the amount required by the Chargee in its sole discretion for a reserve on account of future Tax liabilities; and
- (f) the Chargor shall in all instances be responsible for the payment of any and all penalties resulting from any late payment of current Tax instalments or any arrears of Taxes, and at no time shall such penalty be the responsibility of the Chargee.

20. COMPLIANCE WITH LAWS AND REGULATIONS

The Chargor covenants and agrees that it will promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority or agency concerning the Lands and further covenants and agrees at its cost and expense to take any and all steps or make any Improvements or alterations thereto, structural or otherwise, ordinary or extraordinary, which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances or regulations.

21. ENVIRONMENTAL COMPLIANCE

- (a) The Chargor represents and warrants that, to its knowledge and belief, after due enquiry, the Lands and its existing and prior uses comply and have at all times complied with all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance and operation of the Lands (collectively, the "**Environmental Laws**") and, without limiting the generality of the foregoing:
 - (i) the Lands have never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks, pipes, conduits or otherwise;
 - (ii) all Hazardous Substances used in connection with the business conducted at the Lands have at all times been received, handled, used, stored, treated, shipped and disposed of in strict compliance with all Environmental Laws;
 - (iii) other than in compliance with all Environmental Laws, no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, on or under the Lands, nor have migrated from the Lands, as a result of the conduct of business on the Lands or otherwise; and
 - (iv) no notices of any violation of any matters referred to above relating to the Lands or its use have been received by the Chargor and there are no directions, writs, injunctions, orders or judgments outstanding, and no lawsuits, claims, proceedings or investigations pending or threatened, relating to the ownership, use, maintenance or operation of the Lands nor is there any basis for such lawsuits, claims, proceedings or investigations being instituted or filed.
- (b) "**Hazardous Substances**" shall include, without limitation, all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to Environmental Laws and shall include "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to and/or contemplated in Environmental Laws.
- (c) The Chargor shall, at its sole cost and expense, prevent the imposition of any lien against the Lands for the cleanup of any Hazardous Substance, and shall comply and cause all tenants under any lease as well as any other Person to comply with all Environmental Laws.
- (d) The Chargor shall immediately advise the Chargee in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Environmental Laws; (ii) all claims made or threatened by any third party against the Chargor or the Lands relating to damage,

contribution, cost recovery compensation, loss or injury (the matters set forth in (i) and (ii) are collectively referred to as "**Hazardous Substances Claims**"); and (iii) the Chargor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Lands that could cause the Lands, or any part thereof, to be subject to any restriction on the ownership, occupancy, transferability, or use of the Lands under any Environmental Laws.

- (e) The Chargor shall strictly comply with the requirements of applicable Environmental Laws (including, but not limited to obtaining any permits, licenses or similar authorizations to construct, occupy, operate or use the Lands or any fixtures or equipment located thereon by reason of the applicable Environmental Laws) and shall notify the Chargee promptly in the event of any spill or location of Hazardous Substances upon the Lands that would require reporting under applicable Environmental Laws, and shall promptly forward to the Chargee copies of all orders, notices, permits, applications or other communications and reports in connection with any spill or other matters relating to applicable Environmental Laws, as they may affect the Lands.
- (f) The Chargor shall promptly take any and all necessary remedial action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Substance on, under or about the Lands; provided, however, that the Chargor shall not, without the Chargee's prior written consent, take any remedial action in response to the presence of any Hazardous Substance on, under, or about the Lands, nor enter into any settlement agreement, consent or decree, or other compromise with respect to any claims, proceedings, lawsuits or actions, completed or threatened pursuant to any Environmental Laws or in connection with any third party, if such remedial, action, settlement, consent or compromise might, in the Chargee's sole determination, impair the value of the Chargee's security hereunder. The Chargee's prior consent shall not however, be necessary in the event that the presence of Hazardous Substance on, under, or about the Lands either:
- (i) poses an immediate threat to the health, safety or welfare of any individual; or
- (ii) is required to be responded to by any applicable Environmental Laws.
- (g) In the event the Chargor undertakes any remedial action with respect to any Hazardous Substance on, under or about the Lands, the Chargor shall immediately notify the Chargee of any such remedial action, and shall conduct and complete such remedial action:
- (i) in compliance with all applicable Environmental Laws; and
- (ii) in accordance with the orders and directives of all federal, provincial and local governmental authorities.
- (h) If any Hazardous Substance is found in or upon the Lands prior to an advance of funds under the Commitment Letter, the Chargee shall, at its sole option, be relieved of its obligation to make such an advance. If any Hazardous Substance is found in or upon the Lands after funds have been advanced by the Chargee to the Chargor, and the Chargor fails to implement immediate measures satisfactory to the Chargee for the removal/treatment of any Hazardous Substances, then at the Chargee's sole option, acting reasonably, the funds so advanced with all other amounts payable pursuant to the Commitment Letter shall become immediately due and payable by the Chargor to the Chargee.
- (i) The Chargee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Substances Claims and to have its solicitor's fees and costs (at all trial, appellate and bankruptcy levels) in connection therewith paid by the Chargor.
- (j) The Chargor and each Covenantor shall be solely responsible for, and shall fully and promptly pay, perform, discharge, defend and indemnify and hold harmless the Chargee, its directors, officers, employees, agents, successors and assigns, from and against all loss, damage, claims, liabilities, orders, demands, actions, proceedings, or suits, and all losses, costs, fines, penalties, charges, damages or expenses (including, but not limited to, court costs, technical consultant fees and expenses, and solicitor's fees and expenses at all trial, appellate and bankruptcy levels) arising directly or indirectly, in whole or in part, out of: (i) the presence on or under the Lands of any Hazardous Substances; (ii) any activity carried on or undertaken on or off the Lands, whether prior to or during the terms of this Charge, and whether by the Chargor or any predecessor in title, or third Persons at any time occupying or present on the Lands, in connection with the use, generation, treatment, decontamination, handling, removal, storage, clean-up, transport or disposal of

any Hazardous Substances at any time located or present on or under the Lands; and (iii) any act, occurrence, or omission in violation of or contrary to the covenants, representations and warranties made herein.

- (k) The Chargor agrees at all times to comply fully and in a timely manner with, and to cause all tenants, employees, agents, contractors, and subcontractors of the Chargor and any other Persons occupying or present on the Lands to comply with the Environmental Laws applicable to the use, generation, handling, storage, treatment, transport and disposal of any Hazardous Substances now or hereafter located or present on or under the Lands, and the Chargor agrees to indemnify and hold harmless the Chargee from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, solicitor's fees and expenses through all appellate levels), arising directly or indirectly, in whole or in part, from any failure of the Chargor, its employees, agents, tenants, contractors, subcontractors, or other such Persons, to comply with the Environmental Laws.
- (l) The foregoing environmental obligations of the Chargor shall survive the term of this Charge and the repayment of the Indebtedness, any foreclosure of this Charge or any transfer of the Lands, and shall be enforceable against the Chargor in addition to all other obligations of the Chargor hereunder.
- (m) The Chargor hereby agrees that it shall, at its sole cost and expense, remove or take remedial action or cause to be removed or cause remedial action to be taken with regard to any Hazardous Substance released in the environment at, on or near the Lands for which remedial action is required pursuant to Environmental Laws and the Chargor and each Covenantor shall indemnify and hold harmless the Chargee and its officers, directors, employees, agents and shareholders and their respective heirs, executors, administrators, successors and assigns from and against any and all losses, claims, costs, expenses, damages, or liabilities (including, without limitation, all legal fees and disbursements) which at any time may be paid or incurred by or claimed against any of them for or directly or indirectly arising out of, resulting from or attributable to the use, generation, storage, escape, seepage, leakage, spillage, release, disposal or presence, on, from and under the Lands of any Hazardous Substance, and such indemnification shall survive the satisfaction or release of the Indebtedness or extinguishment of the Indebtedness in the event the Chargee or a third party becomes the owner of the Lands upon default of the Chargor. The Chargor and each Covenantor acknowledges that the Chargee shall hold the benefit of this indemnity in trust for those indemnified Persons who are not a party hereto. Amounts payable by the Chargor under this indemnity shall be immediately due and payable to the Chargee by the Chargor, shall be a charge on the Lands, shall be added to the principal sum hereby secured, shall bear interest at the interest rate provided for in this Charge and, in default of payment, at the sole option of the Chargee, the powers of sale and other remedies under this Charge, at law or in equity, may be exercised.
- (n) The Chargor covenants and agrees that, if requested by the Chargee, the Chargor shall forthwith on its own behalf and in its own name commission an inspection, audit, review, assessment or report of the Lands by a qualified environmental consultant acceptable to the Chargee and the Chargor shall be solely responsible for the costs of same and the Chargee shall be entitled to a copy of all such audits, reviews or assessments as and when they are prepared. In the event that the Chargor does not commission such inspection, audit, review, assessment or report within 30 days of being requested to do so by the Chargee, the Chargee shall have the right to commission such inspection, audit, review, assessment or report in the name of the Chargor and add the costs thereof to the Indebtedness.

22. EVENTS OF DEFAULT

Without limiting any of the provisions of this Charge, each of the following events shall be considered a default hereunder (the occurrence of any such event together with the expiry of the applicable cure period, if any, and any other occurrence specifically provided for herein as an event of default being collectively referred to as an "Event of Default") upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall, at the Chargee's option, immediately become due and payable without notice or demand:

- (a) failure of the Chargor or any covenantor or guarantor in respect of the Indebtedness and/or the Chargor's obligations under this Charge (hereafter referred to as a "Covenantor" or "Covenantors") to pay any instalment of principal, interest and/or other

Indebtedness or under any amounts payable under any other charge or encumbrance on the Lands (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance), on the date upon which any of the payments for same become due;

- (b) failure of the Chargor or any Covenantor to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application for this Charge or the Commitment Letter for the loan secured by this Charge, the provisions of this Charge, or any other document giving contractual relationship as between the Chargor and Chargee herein, or if it is found at any time that any representation, covenant and warranty to the Chargee with respect to the loan secured by this Charge or in any way related thereto is incorrect or misleading;
- (c) default by the Chargor in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any charge or other encumbrance affecting the Lands, whether or not it has priority over this Charge (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance);
- (d) the registration of any construction lien against the Lands which is not discharged within a period of 10 days after the date of registration thereof;
- (e) the Lands are abandoned, any act of waste is committed as to all or any part of the Lands (other than in connection with the construction of any project on the Lands the costs of which are financed by the loan secured by this Charge), or any building or other structure now or later being erected on the Lands remains unfinished and without any work being done on it for a period of 21 consecutive days;
- (f) the Chargor sells, transfers, encumbers, leases (save for any permitted leasing activity as provided for in this Charge or any other loan document) or otherwise disposes of all or any part of the Lands or any lease or any interest in any of the foregoing, or agrees to do so, without the Chargee's prior written consent;
- (g) the Chargor ceases to carry on the business ordinarily carried on from the Lands or changes or permits a change in the use or occupation of the Lands in each case without the Chargee's prior written consent;
- (h) there is a change of Control of the Chargor or any Covenantor;
- (i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Chargor or any Covenantor, or there is a change in the membership or a dissolution of the Chargor or any Covenantor, or the Chargor or any Covenantor otherwise ceases to maintain its existence or ceases or threatens to cease to carry on business generally;
- (j) the Chargor or any Covenantor admits its inability or fails to pay its debts generally, makes an assignment or proposal for the benefit of creditors or any proceedings or other action shall be instituted by or against the Chargor or any Covenantor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a monitor, receiver, interim receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its property (excluding proceedings or actions initiated by a third party which are being contested by the Chargor in good faith, which have been outstanding for fewer than 20 days and in respect of which any enforcement proceedings are stayed), or the Chargor or any Covenantor is declared bankrupt or a monitor, receiver, interim receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Lands, or power of sale actions or foreclosure proceedings are commenced against all or any part of the Lands;
- (k) any judgment or order or any process of any court becomes enforceable against the Chargor or any Covenantor or any of its assets or any creditor takes possession of any of their assets;
- (l) another encumbrancer takes possession of all or any part of the Lands or a distress or execution or other similar process is brought against the Lands or any such part (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance);

- (m) all or any part of the Lands is expropriated (including, without limitation, the passing of any legislation or other governmental action that has substantially the same effect as an expropriation);
- (n) the Chargee determines, acting reasonably in all of the circumstances, that the ability of the Chargor or any Covenantor to repay the Indebtedness or otherwise perform its obligations under this Charge or the Commitment Letter has been or will be impaired in a material manner or that the value or the marketability of its security held with respect to the Indebtedness is or will be impaired in a material manner; or
- (o) the Chargor shall have failed to comply with the provisions of any applicable condominium legislation or registered condominium documents relating to the Lands.

23. EXERCISE OF CERTAIN REMEDIES

If an Event of Default has occurred and is continuing, the principal, interest and all other Indebtedness secured by this Charge shall immediately become due and payable at the option of the Chargee and the Chargee may (but shall have no obligation to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any remedy available to it at law, including without limitation, any one or more of the following remedies:

- (a) sue the Chargor and any Covenantor for all or any part of the Indebtedness;
- (b) distrain for arrears of all or any part of the Indebtedness;
- (c) take judicial proceedings to foreclose the Chargor's and/or any other Person's interest in all or any part of the Lands or any lease, to take possession of it and/or to sell, lease or otherwise deal with it;
- (d) enter on and take possession of all or any part of the Lands;
- (e) sell and/or lease all or any part of the Lands or sell the unexpired term of years demised by any lease;
- (f) assign any lease and sell the last day of the term granted by the lease and/or remove the Chargor or any other Person from being a trustee of the last day of the term of any lease and appoint a new trustee or trustees in its place;
- (g) appoint in writing a Receiver (which term as used herein includes a receiver and manager) of all or any part of the Lands and the rents and other income thereof and from time to time remove any Receiver and appoint another in its place, or in the alternative appoint a property manager;
- (h) exercise in respect of each insurance policy, insurance trust agreement, lease, rent and benefit assigned to the Chargee the remedies exercisable by the Chargee in respect of all or any part of the Lands; and
- (i) exercise any other rights or remedies which the Chargee may have, whether pursuant to this Charge, at law, in equity, by contract or otherwise.

24. REMEDIES UPON DEFAULT

- (a) The Chargee may, on default of payment or default in the performance of any covenant in this Charge contained or implied by law or statute for 15 days, on 35 days' notice, enter on and lease the Lands or sell the Lands. Such notice shall be given to such Persons and in such manner and form and within such time as provided under the *Mortgages Act* (Ontario), as amended or replaced from time to time (the "**Mortgages Act**"). In the event that the giving of such notice shall not be required by law, or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with an adult Person on the Lands, if occupied, or by placing it on the Lands, if unoccupied or, at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at its last known address, or by publishing it once in the newspaper published in the county or district in which the Lands are situate; and such notice shall be sufficient although not addressed to any Person or Persons by name or designation; and notwithstanding that any Person who may be affected thereby may be unknown, unascertained, or under disability. If there be legal personal representatives of the Chargor on the death of the Chargor, such notice may, at the option of the Chargee, be given in any of the above modes or by personal service upon such representatives.

- (b) Without prejudice to the statutory powers of the Chargee under the preceding proviso, in case default be made in payment or the performance of any covenant contained in this Charge and such default continues for 2 months, the Chargee may exercise the powers given under the preceding proviso with or without entry on the Lands without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law, then notice shall be given to such Persons and in such manner and form and within such time as so required by law.
- (c) The Chargee may sell the whole or any part of the Lands by public auction or private contract, or partly one or partly the other. The proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Lands by reason of non-payment or procuring payment of monies secured hereby or otherwise. The Chargee may sell the whole or any part of the Lands on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence of commencement of title or otherwise which it shall deem proper; and may buy in or rescind or vary any contract for the sale of the whole or any part of the Lands and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of the said purposes the Chargee may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any Person damnified by an unauthorized, improper or irregular exercise of the power shall have its remedy against the Person exercising the power in damages only.
- (d) The Chargee may pay all premiums of insurance and all Taxes and rates which shall from time to time fall due and be unpaid in respect of the Lands, and such payments together with all costs, charges and legal fees (on a substantial indemnity basis), and expenses which may be incurred in taking, recovering and keeping possession of the Lands, and of negotiating the loan secured by this Charge, investigating title, and registering this Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize the Chargee's security (including legal fees, real estate commissions, appraisal costs and other costs incurred in leasing or selling the Lands or in exercising the power of entering, leasing and selling herein contained) shall be, with interest at the rate aforesaid, a charge upon the Lands in favour of the Chargee and it is hereby agreed that the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the Lands, and that any amount paid by the Chargee shall be added to the monies secured by this Charge and shall be payable forthwith with interest at the rate herein, and in default this Charge shall immediately become due and payable at the option of the Chargee, and all powers in this Charge conferred shall become exercisable. In the event of the Chargee paying the amount of any such encumbrance, lien or charge, Taxes or rates, either out of the money advanced on the security of this Charge or otherwise, the Chargee shall be entitled to all the rights, equities and securities of the Person or Persons, company, corporation or government so paid and is hereby authorized to obtain an assignment or discharge thereof, and to retain same, for whatever period the Chargee shall deem it proper to do so.
- (e) Wherever a power of sale is hereby conferred upon the Chargee, all provisions hereof relating to exercising such power, including, without in any way limiting the generality of the foregoing, the Persons to whom notice of exercising such power shall be given and the manner of giving such notice shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no conflict, the provisions of this Charge shall remain unchanged.
- (f) The Chargee may lease or sell as aforesaid without entering into possession of the Lands.
- (g) If the Chargee defaults in the payment of the Indebtedness, the Chargee may distrain for payment of same upon the Lands any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Lands so much monies as shall

from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Chargee with respect to or in connection therewith as in like cases of distress for rent. The Chargor waives the right to claim exceptions and agrees that the Chargee shall not be limited in the amount for which it may distrain.

- (h) The Chargee may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of the principal secured herein shall be as set out in the proviso for redemption herein. Any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. No waiver shall be effective or binding on the Chargee unless made in writing.
- (i) The Chargee may exercise all remedies provided for in this Charge concurrently or in such order and at such times as it may see fit and shall not be obligated to exhaust any remedy or remedies before exercising its right under any other provisions contained in this Charge.

25. RECEIVER

- (a) Upon the occurrence of an Event of Default, the Chargee may at such time and from time to time and with or without entering into possession of the Lands appoint in writing a receiver, or a receiver and manager, or a receiver-manager, or a trustee (the "Receiver") of the Lands, or any part thereof, and of the rents and profits thereof, if any, and with or without security and may from time to time by similar writing remove any such Receiver and appoint another in its place and stead. The Chargor hereby irrevocably agrees and consents to the appointment of such Receiver of the Chargee's choice and without limitation whether pursuant to this Charge, the Mortgages Act, the *Construction Lien Act* (Ontario) (the "**Construction Lien Act**"), or pursuant to the *Trustees Act* (Ontario), each as amended or replaced from time to time, as the Chargee may at its sole option require. Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Lands or any part thereof and the Chargor hereby consents to a court order for the appointment of such Receiver, if the Chargee in its discretion chooses to obtain such order, and on such terms and for such purposes as the Chargee in its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the said Lands and/or complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the Receiver or the Chargor, and if required by the Chargee, in priority to any existing encumbrances affecting the Lands, including without limitation, charges and construction lien claims.
- (b) Upon the appointment of any such Receiver from time to time, the following provisions shall apply:
 - (i) a statutory declaration of the Chargee or an officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;
 - (ii) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect to the Lands, or any part thereof, whether in respect of any tenancies created in priority to this Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
 - (iii) the Chargee may from time to time fix the remuneration of every such Receiver which shall be a charge on the Lands, and may be paid out of the income therefrom or the proceeds of sale thereof;
 - (iv) the appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Lands or any part thereof;
 - (v) the Receiver shall have the power to rent any portion of the Lands for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any lease of the Lands or any part thereof in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm, and hereby ratifies and confirms, whatever acts such Receiver may do on the Lands;
 - (vi) in all instances, the Receiver shall be acting as the attorney or agent of the Chargor;

- (vii) every such Receiver shall have full power to complete any unfinished construction upon the Lands or to commence any new construction upon the Lands;
- (viii) such Receiver shall have full power to manage, operate, amend, repair, or alter the Lands or any part thereof in the name of the Chargor;
- (ix) the Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the Lands including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges which may be registered against the Lands from time to time, whether or not such charges are prior to the interest of the Chargee in the Lands (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance); selling the Lands; borrowing money on the security of the Lands; applying for and executing all documents in any way related to any re-zoning applications, severance of Lands pursuant to the provisions of the *Planning Act* (Ontario), as amended or replaced from time to time (the "**Planning Act**"), subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the Lands, including grants of Lands or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent governmental authority, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the Lands as a condominium; completing any application for first registration pursuant to the provisions of the *Land Titles Act* (Ontario), as amended or replaced from time to time, or pursuant to the *Certification of Titles Act* (Ontario), as amended or replaced from time to time, or any other relevant legislation and for all of the purposes aforesaid the Chargor does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Lands, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Lands, as fully and effectually to all intents and purposes as the Chargor could do if personally present and acting therein; and
- (x) the Receiver shall not be liable for any loss howsoever arising and the Receiver shall not be liable to the Chargor to account for monies received other than cash received by it in respect to the Lands or any part thereof and out of such cash so received, every such Receiver shall pay any and all of the following, in such order, and at such times as the Receiver may see fit:
 - (1) its remuneration;
 - (2) all payments made or incurred by it in the exercise of its powers hereunder; and
 - (3) any payment of interest, principal and other money which may from time to time be or become charged upon the Lands in priority to the monies owing hereunder and all Taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Lands or any part thereof.

The Chargor hereby irrevocably appoints the Chargee and the Receiver as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Receiver and the Chargee and/or their solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargee and/or the Receiver and/or with respect to the Lands in the same manner as if such documentation was duly executed by the Chargor itself.

26. PROPERTY MANAGER

- (a) As an alternative to the appointment of a Receiver provided in these Standard Charge Terms, the Chargee shall be entitled at any time and from time to time to appoint in writing a property manager (the "**Property Manager**") and representative of the Chargee for the purposes of management, leasing and operation for the Chargee's account of the Lands.
- (b) Upon the appointment of the Property Manager, the following provisions shall apply:
 - (i) a statutory declaration of the Chargee or a representative of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;

- (ii) the Chargee may from time to time fix the remuneration of the Property Manager which shall be a charge on the Lands and may be paid, together with interest thereon, out of the income from the Lands or the proceeds of sale thereof;
 - (iii) the Property Manager shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the Lands; and
 - (iv) the Chargor acknowledges and agrees that the appointment of the Property Manager shall not constitute the Chargee a mortgagee in possession.
- (c) In the event that the Chargee chooses not to appoint a Property Manager as aforesaid and nonetheless attends to the management, leasing and operation of the Lands for its own account, the Chargee shall be entitled to a management fee equal to no less than 4% of the gross receipts for the Lands and shall also be entitled to a commission for all leases entered into at a rate to be established by the Chargee in its discretion and the management fee and commission shall be added to the principal sum secured hereunder and bear interest at the rate provided for herein.

27. CHARGEES RIGHT OF ACCESS AND INSPECTION

The Chargee shall have access to and the right to inspect the Lands at all reasonable times.

28. TAKING OF JUDGEMENT NOT A MERGER

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Chargee's right to interest at the rate and times herein provided; and, further, the said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

29. RENEWAL OR EXTENSION OF TIME

- (a) No renewal or extension of the term of this Charge given by the Chargee to the Chargor, or anyone claiming under it, or any other dealing by the Chargee with the owner of the equity of redemption of the Lands shall in any way affect or prejudice the rights of the Chargee against the Chargor or any Person liable for the payment of the monies hereby secured. This Charge may be renewed by an agreement in writing at maturity for any term with or without an increased rate of interest, or amended from time to time as to any of its terms, including, without limitation, an increase of interest rate or principal sum, notwithstanding that there may be subsequent encumbrancers. It shall not be necessary to register any such agreement in order to retain priority for this Charge so altered over any instrument registered subsequent to this Charge.
- (b) Nothing contained in this Section or elsewhere in this Charge shall confer any right of renewal upon the Chargor.
- (c) The terms of this Charge may be amended or extended from time to time by mutual agreement between the Chargor and the Chargee and the Chargor hereby further covenants and agrees that, notwithstanding that the Chargor may have disposed of its interest in the Lands hereby secured, the Chargor and each Covenantor will remain liable as principal debtor and not as a surety for the observance of all of the terms and provisions herein and will in all matters pertaining to this Charge well and truly do, observe, fulfill and keep all and singular the covenants, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof, notwithstanding the giving of time for the payment of this Charge or the varying of the terms of the payment thereof or the rate of interest thereon or any other indulgence by the Chargee to the Chargor.
- (d) The Chargor covenants and agrees with the Chargee that no agreement for renewal hereof or for extension of the time for payment of any monies payable hereunder shall result from or be implied from any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the original term of this Charge or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no renewal hereof or extension of the time for payment of any monies hereunder shall result from, or be implied from, any other act, matter or thing, save only by express agreement in writing between the Chargor and the Chargee.

30. BUILDING MORTGAGE

- (a) Unless expressly set out in this Charge, the Commitment Letter or any other loan document, the Chargor and Chargee hereby acknowledge, confirm and agree that the funds committed by the Chargee to the Chargor pursuant to the loan secured by this Charge shall be deemed not intended to be utilized for the purposes of securing financing of any Improvements whatsoever with regard to the Lands on the security of which the funds shall be advanced pursuant to this Charge, nor for the purposes of repaying any financing, charge or otherwise, which was utilized or intended for the financing of an Improvement with regard to the Lands, and accordingly, it is not the intention for the security to be taken pursuant to the Commitment Letter to be a Building Mortgage (as defined in the Construction Lien Act) or a charge taken out to repay a Building Mortgage.
- (b) In the event that this Charge, the Commitment Letter or any other loan document expressly states that the funds committed by the Chargee to the Chargor pursuant to the loan secured by this Charge are intended to be utilized for the purpose of securing financing of an Improvement with regard to the Lands, then the Chargee may, at its option, withhold from any advances for which the Chargor may have qualified, such holdbacks as the Chargee, in its sole discretion, considers advisable to protect its position under the provisions of the Construction Lien Act, so as to secure its priority over all liens, until the Chargee is fully satisfied that all lien periods have expired and that there are no preserved or perfected liens outstanding. Nothing in this clause shall be construed to make the Chargee an "owner" or "payer", as defined under the Construction Lien Act, nor shall there be, or be deemed to be, any obligation by the Chargee to retain any holdback which may be required by the said legislation. Any holdback which may be required to be made by the owner or payer shall remain solely the Chargor's obligation. The Chargor hereby covenants and agrees to comply in all respects with the provisions of the Construction Lien Act.

31. EXPROPRIATION

If the Lands or any part thereof shall be expropriated by any government, authority, body or corporation clothed with the powers of expropriation, the principal sum herein remaining unpaid shall, at the option of the Chargee, forthwith become due and payable together with interest thereon at the rate provided for in this Charge to the date of payment together with the Yield Maintenance Fee. All the proceeds of any expropriation shall be paid to the Chargee at its option in priority to the claims of any other party.

32. PRE-AUTHORIZED DEBIT PLAN

All payments made under this Charge by the Chargor shall be made by pre-authorized cheque debit plan as approved by the Chargee or at the Chargee's option by post-dated cheques which shall be provided annually for the next ensuing 12 payments and thereafter on each anniversary date thereon in each year for the duration of the term of this Charge. The Chargee shall not be obligated to accept any payment, excepting payment made by pre-authorized cheque or post-dated cheque. Failure to make all payments in the manner required by the Chargee shall be a default and the Chargee shall be entitled to pursue any and all of its remedies under all loan and security documents (including this Charge) and/or at law as it may deem necessary at its option.

33. PAYMENTS

All payments of principal, interest and other monies payable hereunder to the Chargee shall be payable at par in lawful money of Canada at such place as the Chargee shall designate in writing from time to time. In the event that any of the monies secured by this Charge are forwarded to the Chargee by mail or any other means of delivery (but without in any way implying consent by the Chargee to such method of payment in lieu of the pre-authorized debit or post-dated cheques contemplated by Section 32), payment will not be deemed to have been made until the Chargee has actually received such monies and the Chargor shall assume and be responsible for all risk of loss or delay.

Any payment received after 2:00 PM (Eastern Standard Time) on any date shall be deemed, for the purpose of calculation of interest, to have been made and received on the next business day and the Chargee shall be entitled to interest on the amount due to it and including the date on which the payment is deemed by this provision to have been received.

34. NO DEEMED RE-INVESTMENT

The parties hereto agree that the Chargee shall not be deemed to re-invest any monthly or other payments received by it hereunder.

35. ABANDONMENT

In the event that any buildings now or hereafter in the course of erection on the Lands remain unfinished and without any work being done on them for a period of 30 consecutive days, the Chargee may enter in and upon the Lands and do all work necessary to protect the same from deterioration and to complete the buildings so remaining unfinished in such manner as the Chargee may see fit. It is hereby agreed that any monies expended by the Chargee pursuant to this provision shall be immediately due and payable, shall be added to the principal sum of the loan secured by this Charge and shall be a charge upon the Lands and shall bear interest at the same rate as the other monies secured by this Charge and in default of payment, at the sole option of the Chargee, the power of sale and other remedies under this Charge, at law or in equity, may be exercised.

36. DISCHARGE

The Chargee shall have a reasonable period of time after payment in full of the monies hereby secured within which to prepare and execute a discharge of this Charge. Interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee. All legal and other expenses for the preparation and execution of such discharge shall, together with the Chargee's fee for providing same, be borne by the Chargor. The discharge shall be prepared and executed by such Persons as are specifically authorized by the Chargee and the Chargee shall not be obligated to execute any discharge other than a discharge which has been so authorized.

37. DISHONoured CHEQUES

In the event that any of the Chargor's cheques is not honoured when presented for payment to the drawee, the Chargor shall pay to the Chargee for each such returned cheque a servicing fee to cover the Chargee's administration costs with respect to same. In the event that the said cheque which has not been honoured by the drawee is not forthwith replaced by the Chargor, the Chargee shall be entitled to a further servicing fee for each written request therefor which may be necessitated by the Chargor not forthwith replacing such dishonoured cheque.

38. SERVICING FEES

All servicing fees as herein provided are intended to compensate the Chargee for the Chargee's administrative costs and shall not be deemed a penalty. The amount of such servicing fees, if not paid, shall be added to the principal sum secured hereunder and shall bear interest at the rate provided in this Charge and the Chargee shall have the same rights with respect to the collection of same as it does with respect to the collection of principal and interest hereunder or at law. Servicing fees or charges owing to or collected by any servicer selected by the Chargee shall be treated in the same manner as if paid to the Chargee itself.

39. NON-MERGER

Notwithstanding the registration of this Charge and the advance of funds pursuant hereto the terms and/or conditions of the commitment letter issued by the Chargee pertaining to the loan secured by this Charge (the "**Commitment Letter**") shall remain binding and effective on the parties hereto, and shall not merge in this Charge nor in any document executed and/or delivered on the closing of this transaction, and the terms thereof are incorporated herein by reference. the Chargee

40. CONSENT OF CHARGEe

Wherever the Chargor is required by this Charge to obtain the consent or approval of the Chargee, it is agreed that subject to any other specific provision contained in this Charge to the contrary, the Chargee may give or withhold its consent or approval for any reason that it may see fit in its sole and absolute discretion and the Chargee shall not be liable to the Chargor in damages or otherwise for its failure or refusal to give or withhold such consent or approval, and all costs of obtaining such approval shall be for the account of the Chargor.

41. REMEDIES CUMULATIVE

This Charge is in addition to and not in substitution for any other security held by the Chargee for all or any of the monies secured hereunder. The Chargee may follow its remedies thereunder, hereunder and under any security granted to secure the Indebtedness, concurrently or successively, at its option.

42. NO RELEASE

No sale or other dealing by the Chargor with the Lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the amounts secured by this Charge.

43. NO PREPAYMENT OR PARTIAL DISCHARGE

Unless expressly stipulated otherwise in this Charge or the Commitment Letter and subject to early maturity by reason of acceleration of repayment of the Indebtedness or in accordance with Section 31 of these Standard Charge Terms (the whole at the option of the Chargee), there is no prepayment privilege in respect of the principal sum secured by this Charge. In the event that the Chargee accepts any prepayment of the principal sum, the Chargee shall not be obligated to provide any partial discharge of this Charge or any other security so long as any part of the Indebtedness is outstanding. The Chargor expressly waives any right of prepayment which it may have or may hereafter have pursuant to Section 10 of the *Interest Act* (Canada), as amended or replaced from time to time (the "**Interest Act**"), and/or similar federal or provincial legislation.

44. YIELD MAINTENANCE

- (a) If, by operation of law or by acceleration of the loan secured by this Chargee or for any reason whatsoever, the Chargor becomes entitled or obligated prior to the maturity date of such loan, to prepay and does prepay such loan or any part thereof, the Chargor shall also pay to the Chargee, in addition to all other Indebtedness, the Yield Maintenance Fee.
- (b) The "**Yield Maintenance Fee**" is defined as the compensation for the loss on the return of funds allocated to the principal amount of the Loan being prepaid, and shall be the greater of the two following amounts between (i) and (ii) hereafter:
- (i) an amount equal to the amount by which:
- (1) the sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the maturity date of such loan and the present value of the principal balance which would be payable on the maturity date, these present values shall be calculated using a discount rate equal to the bid-side yield listed in a Bloomberg screen at 11:00 A.M. (Montreal time) on the business day of the Chargee, immediately preceding the date of prepayment, on non-callable Government of Canada bonds having an equivalent term; the "**bid-side yield on non-callable Government of Canada bonds having an equivalent term**" shall mean the bid-side yield to maturity, as determined by the Chargee, expressed as an annual rate of interest calculated semi-annually and not in advance, on a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the maturity date and of a non-callable Government of Canada bond having a maturity closest to but following the maturity date;
- exceeds
- (2) the principal amount of the loan prepaid; and
- (ii) an amount equal to interest under such loan in respect of a 3-month period calculated at the Interest Rate provided for herein on the principal amount prepaid.

45. COSTS OF RENEWAL

The Chargor will pay the costs, charges and expenses of and incidental to the taking, preparation, execution, registration of this Charge and other instruments connected herewith, and of every renewal thereof.

46. COVENANTORS

In consideration of the Chargee advancing to the Chargor the principal sum or any part thereof at the request of the Covenantor, which the Covenantor acknowledges by execution of this Charge and/or by the delivery of separate instruments, the Covenantor as principal debtor and not as surety covenants to pay the principal sum and interest secured by this Charge as and when the same become due and payable and covenants to carry out and observe the provisions

contained in this Charge and agrees to indemnify the Chargee against any breach by the Chargor of any of the covenants or provisions contained in this Charge.

47. RESIDENCY

The Chargor represents and warrants that it is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada), as amended or replaced from time to time (the "**Tax Act**"), and agrees that it shall take all steps necessary to ensure that it retains such status of not a non-resident of Canada within the meaning of Section 116 of the Tax Act, until the Indebtedness is fully paid or otherwise satisfied. The Chargor agrees that the Chargee may rely on this representation, warranty and covenant in order to give assurances to any purchaser under power of sale as to the residency of the Chargor.

48. ASSIGNMENT OF RENTS

- (a) The Chargor hereby assigns and transfers unto the Chargee, its successors and assigns as security for the Indebtedness, all rents and other monies (herein called the "**rents**") which now are or which may at any time hereafter become due or owing under or by virtue of any lease or licence whether written or verbal, or any letting of, or of any agreement for the use and occupancy of the whole or any portion of the Lands or premises which may have been heretofore or may be hereinafter made or agreed to by the Chargor, it being the intention of the parties to establish an absolute assignment of all such rents under such leases, licences and agreements and the Chargor hereby authorizes the Chargee to collect, sue for, recover, receive, and give receipts for the rents and to enforce payment thereof in the name of the Chargor and, where applicable, its heirs, executors, administrators, successors and assigns.
- (b) The Chargor further covenants and agrees that: (a) it has not and will not do any act or omission having the effect of terminating, cancelling, or accepting surrender of any existing or future lease or licence or of waiving, releasing, reducing or abating any rights or remedies of the Chargor or obligations of any other party thereunder or in connection therewith without the written consent of the Chargee; (b) none of such rights, remedies and obligations are or will be affected by any other agreement, document or understanding, or by any reduction, abatement, defence, set-off or counterclaim; (c) none of the leases or licences or the Chargor's rights thereunder, including the right to receive the rents, has been or will be amended, assigned, encumbered, discounted or anticipated; (d) none of the rents has been or will be paid in advance (save for the first and last month's rent due under a lease and save as expressly permitted in this Charge or any other loan document) and none of the remainder of the rents has been or will be paid prior to the due date for payment thereof; (e) there has been no default under any of the leases or licences by any of the parties thereto and there is no outstanding dispute under any of the leases or licences between the Chargor and any other party thereto; (f) the Chargor will observe and perform all of its obligations under each of the leases or licences and the Chargee shall not be liable or accountable for any failure to collect, recover, distraint for, or receive the rents or any part of them or for the performance of any of the obligations or conditions under or in respect of the leases or licences or any of them to be observed and performed by the Chargor and the Chargee shall not by virtue of this assignment be deemed a mortgagee in possession of the Lands and the Chargee shall not be under any obligation to take any action or exercise any remedies in the collection or recovery of the rents or any of them or to see to or enforce the performance of the obligations and liabilities of any Person under or in respect of the leases or licences or any of them, and the Chargee shall be liable to account only for such monies as shall actually come into its hands, less proper collection charges, and such monies may be applied on account of any Indebtedness; (g) all rents collected or received by the Chargor in respect of the Lands shall be received as trustee for the Chargee and shall be paid over to the Chargee; and (h) any waiver by any party hereto of any breach of any of the covenants or provisions contained herein, whether expressed or implied or negative or positive in form or any failure to enforce any of its rights contained herein shall extend only to the particular breach so waived or particular failure and shall not limit or affect the rights of any party hereto with respect to any other or future breach.
- (c) The Chargor further covenants and agrees to execute and deliver at the request of the Chargee, all such further assurances and assignments with respect to such existing or future rents, leases and licences as the Chargee shall from time to time require and shall do all other acts with respect to such rent, leases and licences as requested by the Chargee within 5 days from receipt of request and at no expense to the Chargee.

**STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE**

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- (d) The Chargor covenants and agrees that all leases, licences, offers to lease and agreements to lease shall be bona fide and shall be at rates, on terms and conditions and to tenants which are not less favourable or desirable to the Chargor than those which a prudent landlord would expect to receive for the premises to be leased or licensed and provided further that the Chargor shall obtain the consent of the Chargee prior to the execution of any lease, licence or offer or agreement to lease provided that the Chargor shall not accept any prepaid rents from any tenant with the exception of first and last month's rent (save for any permitted leasing or prepayment of rents provided for in this Charge, the Commitment Letter or any other loan document).

49. COSTS AND EXPENSES

The Chargor covenants and agrees that it will immediately pay to the Chargee all amounts the Chargee is permitted to pay under this Charge or at law and all costs, expenses and damages of, relating to or resulting from inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Lands, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the Indebtedness, the exercise of any of the rights of a Receiver appointed pursuant to this Charge, such Receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a substantial indemnity basis, the use, occupation or operation of the Lands, the breach of any of the Chargor's representations, warranties or agreements herein, and any other costs and expenses of exercising or protecting the Chargee's rights (hereunder or otherwise) or all or any part of the Lands. Without limiting the Chargee's right to interest provided for herein, it is expressly agreed that the Chargor shall pay interest at the interest rate provided for herein on such amounts, costs and expenses (and on all other costs and expenses payable by the Chargor pursuant to the charge) from the date they are paid by the Chargee until they have been repaid by the Chargor, which interest shall be paid, calculated and compounded as provided for herein.

For greater certainty, the word "costs" shall be extended to and include legal costs incurred by the Chargee on a substantial indemnity basis and any costs, expenses and charges incurred by the servicer of this Charge and loan account, if one is appointed by the Chargee.

50. NOTICE

Whenever a party to this Charge desires to give any notice to another, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified mail, postage prepaid, addressed to the intended recipient at the address noted on the Charge document to which these Standard Charge Terms form a part or such other address communicated in writing by the addressee in a written notice to the sender.

51. CHARGEES FEES

- (a) Without limiting the generality of any of the foregoing provisions, it is understood and agreed that the Chargor shall pay to the Chargee the then current fee of the Chargee or its selected servicer for the following matters:
- (i) providing and preparing mortgage statements;
 - (ii) amending its records to reflect the assumption of this Charge;
 - (iii) endeavouring to collect any money overdue under this Charge, including without limiting the generality of the foregoing, an allowance for time and service of any employee of the Chargee or other Person appointed for such purpose;
 - (iv) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Chargor;
 - (v) entering into an agreement to amend the interest rate or any other provision in this Charge;
 - (vi) entering into an agreement to extend the maturity date of this Charge;
 - (vii) handling any dishonoured cheque;
 - (viii) placing insurance on the Lands and on the buildings thereon and administering the proceeds of insurance paid, including supervision of repair or reconstruction as a result of an insurance claim;

- (ix) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
 - (x) such other administrative matters as the Chargee may perform with regard to this Charge or with regard to any collateral security; and
 - (xi) the fee charged by the Chargee's insurance consultant to review the Chargor's policy of insurance for the Lands, including business interruption insurance if required by the Chargee.
- (b) The charges contained in this clause shall be forthwith payable to the Chargee and shall become part of the Indebtedness hereby secured and shall bear interest at the rate of interest expressed in this Charge.

52. CONTINUING SECURITY

This Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Chargee for payment of the Indebtedness and performance of the Chargor's other obligations under this Charge, notwithstanding any change or fluctuation in the amount, nature or form of the Indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Chargee representing all or part of the Indebtedness or in the names of the parties to such bills, notes and/or other obligations or that there is no Indebtedness outstanding at any particular time. This Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

53. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Chargee may release others from any liability to pay all or any part of the Indebtedness without releasing the Chargor or any Covenantor. The Chargee may release its interest under this Charge in all or any part of the Lands or any lease (or any other collateral) whether or not the Chargee receives any value and shall be accountable to the Chargor only for monies which the Chargee actually receives. If the Chargee releases its interest in part of the Lands or any lease, the remainder of the Lands and each other lease shall continue to secure the Indebtedness and the Chargor's obligations under this Charge will continue unchanged. The Chargee may grant extensions of time or other indulgences, take and give up securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Chargor and other Persons (including, without limitation, any Person to whom all or any part of the Lands is transferred) and with any securities as the Chargee may see fit without affecting any of the Chargee's rights or remedies (herein or otherwise) or the Chargor's liability under this Charge (including without limitation, the Chargor's liability to pay the Indebtedness). The Chargee may delay enforcing any of its rights under this Charge or any other document under this Charge or any such document without affecting the Chargee's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Chargee. No sale or other dealing with all or any part of the Lands or any lease, and no amendment of this Charge or any other security, agreement or other instrument relating to the Indebtedness, will in any way affect the obligation of the Chargor or any other Person to pay the Indebtedness. Every part or lot into which the Lands are or may hereafter be divided does and shall stand charged with all of the monies hereby secured and no Person shall have the right to require the principal secured hereunder to be apportioned.

54. FARM LAND

If any part of the Lands is farm land, the Chargor covenants and agrees to in each year notify the Chargee of the use of the Lands as a farm and either put into crop or summer fallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Chargor shall also keep such Lands clean and free from all noxious weeds and generally see that it does not depreciate in any way as farm land.

55. CHARGE NOT MORTGAGEE IN POSSESSION

Any entry which may be made by the Chargee pursuant to any provision of this Charge may be made by any of the Chargee's agents, employees and/or contractors and shall not constitute the Chargee a mortgagee in possession.

56. IMPROVEMENTS

- (a) In these Standard Charge Terms, the term "**Improvement**" has the meaning given to it in the Construction Lien Act and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Lands and the demolition or removal of any building or part of any building on the Lands.
- (b) The Chargor covenants and agrees that no Improvement to or on the Lands will be commenced or made by the Chargor or any other Person unless the Chargor first provides a copy of all proposed plans, blueprints, contracts and specifications to the Chargee and obtains the Chargee's written consent thereto.

57. FURTHER ENCUMBRANCE; DUE ON SALE

- (a) In the event of a further encumbrance or a sale, conveyance or transfer of the Lands or any portion thereof, or a change in Control of the Chargor or Covenantor, or a change in the beneficial ownership of the Lands or any portion thereof, or a lease of the whole of the Lands, or all or any part of the Lands is expropriated, all sums secured hereunder shall, at the Chargee's option, become due and payable forthwith together with the Yield Maintenance Fee, unless the written consent of the Chargee has been first obtained. The rights of the Chargee pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under this Charge from the Chargor or any Person claiming through or under it and the rights of the Chargee hereunder shall continue without diminution for any reason whatsoever until such time as the Chargee has consented in writing as required by this provision.
- (b) No permitted sale or other dealing by the Chargor with the Lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the monies hereby secured.

58. REORGANIZATION PROCEEDINGS

The Chargor represents and warrants that the Lands are of such a unique nature that, in the event the Chargor sought to reorganize its affairs under any of the laws of Canada (or any province) which provides the ability of a debtor to reorganize its affairs with its creditors (including, without limitation, under the *Companies' Creditors Arrangement Act* (Canada), as amended or replaced from time to time (the "**CCAA**"), the *Bankruptcy and Insolvency Act* (Canada), as amended or replaced from time to time (the "**BIA**") or any other statute), the Chargee would not have a sufficient commonality of interests with any other creditor of the Chargor such that the Chargee would be required to vote on any reorganization, arrangement, compromise or other transaction in a class with any other creditors of the Chargor and, in that regard, covenants and agrees that the Chargee will be treated in its own exclusive class of creditors for such purpose.

Without limiting the generality of the foregoing, the Chargor covenants and agrees that:

- (i) it will give the Chargee not less 10 days, written notice prior to the commencement of any proceedings under any of the CCAA, the BIA or any other similar or analogous legislation (such proceedings being referred to as "**Reorganization Proceedings**");
- (ii) in no circumstances will the Chargor seek, suffer or permit the right of the Chargee to be stayed or otherwise affected in any Reorganization Proceedings; and
- (iii) in the event that Reorganization Proceedings are commenced, the Chargor will consent to an order directing that all rents or other revenues generated or received in respect of the Lands will forthwith be deposited into a segregated trust account under the sole control of the Chargee and that same shall not constitute the Chargee to be a mortgagee in possession of or in control or management of the Lands or result in an acceleration of amounts secured hereunder unless so designated by the Chargee.

59. FAMILY LAW ACT

Immediately after any change or happening affecting any of the following, namely: (a) the spousal status of the Chargor; (b) the qualification of the Lands as a matrimonial home within the meaning of Part II of the *Family Law Act* (Ontario), as amended or replaced from time to time (the "**Family Law Act**"); or (c) the ownership of the Lands, the Chargor will advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the

Chargee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the Lands and of any spouse who is not an owner but who has a right of possession in the Lands by virtue of the Family Law Act. In furtherance of such intention, the Chargor shall furnish the Chargee with such evidence in connection with any of (a), (b) and (c) above as the Chargee may from time to time request.

60. INTEREST ACT

It is expressly declared that this Charge is not intended to violate any provisions of the Interest Act (Canada), the *Criminal Code* (Canada), as amended or replaced from time to time (the "**Criminal Code**"), or any other statute dealing with permitted rates of interest in the Province of Ontario or in Canada. Notwithstanding any provisions set out herein, in no event shall the "interest" (as that term is defined in the Criminal Code, exceed the "criminal rate" (as defined therein) of interest on the "credit advanced" (as defined therein) lawfully permitted under the said legislation, and in the event that it is determined at any time, that by virtue of this Charge or any other document given as security for the loan, the payments of interest required to be made by the Chargor exceed the "criminal rate", then the Chargor shall only be required to pay interest at the highest rate permitted by law. Nothing herein shall invalidate any requirements for payment pursuant to this Charge, and any excess interest paid to the Chargee shall be refunded to the Chargor and the provisions of this Charge shall in all respects be deemed to be amended accordingly.

61. SUBDIVISION CONTROL

This Charge has been entered into subject to the express condition that this Charge is to be effective only if the provisions of any applicable subdivision control legislation (including without limitation Section 50 of the Planning Act, or any act substituted therefor) are complied with. The Chargor covenants that it shall commence and diligently prosecute an application for any requisite consent under the applicable legislation, as soon as possible after it becomes aware of any non-compliance. To the extent necessary to comply with the provisions of the Planning Act, any lands adjacent to the Lands owned by the Chargor are hereby charged to the Chargee and the Chargor hereby authorizes the Chargee to register this Charge against all such adjacent lands.

62. INDEPENDENT LEGAL ADVICE

The Chargor and each Covenantor acknowledges that it has full knowledge of the purpose and essence of this transaction and that, if required, it has been appropriately and independently legally advised in that regard or has been advised of its right to independent legal advice and has declined same. Such parties agree to provide to the Chargee a certificate of independent legal advice as and when same may be required regarding their knowledge and understanding of this transaction.

63. FINANCIAL REPORTING

- (a) The Chargor covenants and agrees to maintain proper records and books of account with respect to the revenues of and expenditures arising from or out of the Lands and shall permit the Chargee or any Person appointed by the Chargee for that purpose to examine such books at all reasonable times and to make copies of extracts therefrom and shall give the Chargee all information with regard to the incomings and outgoings of the Lands which the Chargee may request. The Chargor shall, not more often than once each year upon receiving a 7 day notice from the Chargee, sign and transmit to the Chargee a just and true statement of such revenues and expenditures or other information which the Chargee may request with regard to the Lands and, if requested, verify the same by statutory declaration of an officer of the Chargor.
- (b) The Chargor covenants that, within 90 days after the end of each fiscal year of operation of the Lands or of the relevant party, as the case may be, or within such other period of time as may be required by the Chargee, acting reasonably, the Chargor shall deliver or cause to be delivered to the Chargee the following:
 - (i) confirmation of payment of Taxes for the preceding year, evidence of insurance coverage as required by the Chargee and proof of payment of premiums in respect thereof;
 - (ii) a current rent roll in form satisfactory to the Chargee, and an annual operating statement in respect of the Lands setting forth the gross rents and other income derived from the Lands, the cost and expenses of operation and maintenance of the

Lands and such other information and explanations in respect of the same as may be required by the Chargee for the immediately preceding fiscal period;

- (iii) with respect to each Chargor and Covenantor which is a corporation, the annual financial statements of each such corporation including, without limitation, the balance sheet of the corporation as at its immediately preceding completed fiscal year end with comparative figures for prior years, statements of earnings, retained earnings and changes in financial position as at the said fiscal year end with comparative figures for prior fiscal years, any supporting schedules and notes thereto and such other information and explanations as may be required by the Chargee; and
 - (iv) with respect to each Chargor and Covenantor who is an individual, an annual updated net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Chargee.
- (c) All such operating and financial statements shall be prepared at the expense of the Chargor and in accordance with generally accepted accounting principles applied on a consistent basis by a duly qualified chartered accountant or certified public accountant which is acceptable to the Chargee, and shall be submitted in audited form if so required by the Chargee at its option, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Chargor or Covenantor, as the case may be.

64. APPLICATION OF PAYMENTS

The instalments payable under this Charge are to be applied firstly to life or life and disability insurance premiums payable by the Chargor in respect of this Charge, if any, secondly to bring into good standing any amounts paid by the Chargee to any third party pursuant to this Charge, including Tax accounts, if any, thirdly to interest at the rate provided for in this Charge on the outstanding principal sum, and unless this Charge is indicated to be payable with instalments of interest only until the end of the term of the loan secured by this Charge, the balance of the instalments shall be applied on account of the outstanding principal sum. Upon the occurrence of an Event of Default, the Chargee may apply any payments received in whatever order it may elect as between the outstanding principal sum, interest, Taxes, repairs, insurance premiums or any other amounts payable by the Chargor under this Charge.

65. CONDOMINIUM CLAUSES

The Chargor and Chargee covenant and agree that in the event that the security for this Charge shall include a condominium unit, the following provisions shall apply:

- (i) the Chargor hereby assigns to the Chargee all of its rights to vote or consent in the affairs of the condominium corporation having jurisdiction over the Lands and the Chargee may, at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the condominium corporation in the place and stead of the Chargor, without in any way consulting the Chargor as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the Chargor or anyone else because of the manner in which such vote or right to consent in the affairs of the condominium corporation was exercised;
- (ii) the Chargor hereby assigns to the Chargee all of its rights: (i) to demand the condominium corporation to purchase the Chargor's condominium unit and common interest, where provided under the *Condominium Act* (Ontario), as amended or replaced from time to time (the "**Condominium Act**") (including, without limitation, any predecessor legislation); (ii) to elect to have the value of the Chargor's condominium unit and common interest or that of the condominium property determined by arbitration; and (iii) to receive the Chargor's share of the condominium corporation's assets and the proceeds from the sale of the Chargor's unit and common interest or of the condominium property or any part of the common elements;
- (iii) the Chargor hereby authorizes the Chargee to inspect the Chargee's condominium unit at any reasonable time, to do any needed maintenance or repairs after damage, and to inspect the condominium corporation's records;
- (iv) the Chargor shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation;

- (v) the Chargor shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the Condominium Act and any legislation passed in substitution thereof, and the declaration of any by-laws of the condominium corporation and any amendments thereto;
- (vi) where the Chargor defaults in the Chargor's obligation to contribute to the common expenses assessed or levied by the condominium corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the condominium corporation, upon breach of any of the foregoing covenants or provisions in this Section contained and regardless of any other action or proceeding taken, or to be taken by the condominium corporation, the Chargee, at its option and without notice to the Chargor, may deem such default to be an Event of Default and proceed to exercise its rights therein and the Chargee shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the Indebtedness;
- (vii) the Chargor will maintain all Improvements made to the condominium unit and repair them after damage;
- (viii) in addition to the insurance the condominium corporation must obtain, the Chargor must: insure all Improvements which the Chargor or previous owners have made to the condominium unit; obtain insurance for the additional risks required by the Chargee; insure the Chargor's common or other interest in buildings which are part of the condominium property or assets of the condominium corporation if the condominium corporation fails to insure the buildings or asset as required, or upon the Chargee's request; assign to the Chargee all its interest in any policy of insurance relating to the condominium (as permitted by law), as well of the Chargor's interest in the policies held by the condominium corporation; upon the Chargee's request, provide the Chargee with proof that the required insurance is in force; and do all that is necessary to collect insurance proceeds;
- (ix) at the Chargee's option, the loan amount will become payable immediately if: the condominium corporation fails to comply with the Condominium Act fails to meet its obligations with respect to insurance under paragraph (viii) above, fails to manage the condominium corporation's property and assets in a careful way or makes substantial modification to the common elements or the condominium corporation's assets without the Chargee's approval; or if the owners vote for the termination of the condominium as a result of substantial damage to the condominium; or the sale of the condominium property or any part of the common elements is authorized; or a court makes an order that the government of the condominium property by the Condominium Act be terminated; or the condominium property ceases to be governed by the Condominium Act. The Chargee's rights will not be affected by the fact that it voted for or consented to such termination, sale or order, or to the condominium property not being governed by the Condominium Act,
- (x) if the Chargor's property ceases to be governed by the Condominium Act, the terms of this Charge will continue to apply. The Chargor hereby authorizes the Chargee to agree with anyone to a partition of the condominium property, the Chargor shall pay to the Chargee its share of the condominium corporation's assets and the proceeds from the sale of the condominium unit and common interest of the condominium property or any part of the common elements shall be paid to the Chargee, and the Chargee shall do all things necessary to accomplish this, all money received by the Chargor may be applied to reduce any part of the loan amount, and the Chargor will receive any balance after all claims have been satisfied; and
- (xi) the Chargor shall ensure that prudent and reasonable insurance is maintained on the condominium unit and on the common elements both by itself and the condominium corporation. There shall be no amendment to any insurance trust agreement without the consent of the Chargee

66. INTERPRETATION

- (a) The word "Lands" means the lands and premises described in this Charge, or any part thereof, and shall have the meaning assigned to "land" in Section 1 of the Land Registration Reform Act, which, for greater certainty, shall include and be deemed to incorporate by reference everything which is said to be included in a conveyance of land by virtue of Section 15(1) of the *Conveyancing and Law of Property Act* (Ontario), as amended or replaced from time to time, or any similar legislation now or hereafter in force

and shall be deemed to include any collateral security as well as structures or installations included as part of the Lands by virtue of Section 12 of these Standard Charge Terms.

- (b) The words "Charge", "Chargee", "Chargor" and "successor" shall have the meanings respectively assigned to charge, chargee, chargor and successor in Section 1 of the Land Registration Reform Act and the personal pronouns "it" and "its" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees", and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word and pronoun so substituted. Any reference to "this Charge" shall be deemed to include these Standard Charge Terms. All rights, advantages, privileges, immunities, powers and things hereby secured by the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by him, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. All covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several. The headings beside each Section and paragraph herein are for reference purposes only and do not form part of the covenants herein contained. Any reference to "this Charge" shall be deemed to include any security interest created by any collateral security taken with this Charge. Any reference to "including" shall mean "including, without limitation", whether or not expressly provided.

67. BINDING EFFECT

It is hereby agreed that in construing this Charge, everything herein contained shall extend to and bind and may be enforced or applied by the respective heirs, executors, administrators, successors in office, successors and assigns, as the case may be, of each and every one of the parties hereto, and where there is more than one Chargor or Chargee or more than one Covenantor, or there is an individual or a corporation or there is one Covenantor or no Covenantor, the provisions hereof shall be read with all grammatical changes thereby rendered necessary, and all covenants shall be deemed to be joint and several.

68. INVALIDITY

If any of the covenants or conditions in this Charge inclusive of all schedules forming a part hereof shall be void for any reason, it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

69. SHORT FORM OF MORTGAGES ACT

If any of the forms of words contained herein is substantially in the form of words contained in Column One of Schedule B of the *Short Form of Mortgages Act* (Ontario), as amended or replaced from time to time, and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Form of Mortgages Act* (Ontario), as amended or replaced from time to time, was still in force and effect.

70. CONFLICT

In the event of any inconsistency between the terms of the Commitment Letter and this Charge, the Chargee shall determine in its sole discretion which provisions shall prevail.

71. ELECTRONIC REGISTRATION

The delivery of this Charge for registration by direct electronic transfer shall have the same effect for all purposes as if such Charge were in written form, signed by the parties thereto and delivered to the Chargee. Each of the Chargor and, if applicable, the spouse of the Chargor and any other party to this Charge agrees not to raise in any proceeding by the Chargee to enforce this Charge any want or lack of authority on the part of the Person delivering this Charge for registration to do so.

72. SALE BY CHARGE

The Chargee may from time to time assign or otherwise transfer its legal or beneficial interest in this Charge, or any fractional interest therein, all without any consent of or notice to the Chargor, and the Chargor agrees to execute such documentation and do such things as may be requested of it upon any such assignment, to more effectively attorn to any such assignee or successor of the Chargee.

73. CONSENT TO RELEASE AND DISCLOSE

The Chargor and each Covenantor hereby acknowledge and agree that the Chargee may collect, use and maintain the personal information contained in this Charge and any other loan and security document pertaining herewith, and as may be contained in any mortgage application and supporting material provided therewith, and in any credit reports about the Chargor, each Covenantor and the subject Charge (collectively, the "**Credit Material**"), for the purposes of ongoing credit review while monies remain owing under this Charge. The Chargor and each Covenantor further agree that the Chargee may disclose the Credit Material to any transferee of this Charge. This consent shall enure to the benefit of any transferee from time to time of such loan. This consent shall be the Chargee's and any transferee's good and sufficient authority for its collection, use, maintenance and disclosure of the Credit Material as set out above. The Chargor and each Covenantor represent that all personal information provided to the Chargee is accurate and correct in all material respects. Any updates or corrections to the Credit Material and any questions or issues regarding the collection, use, maintenance or disclosure of the Credit Material must be made in writing addressed to the Chargee at the address given for the Chargee or transferee on the registered documents herein, or to such other address and contact as the Chargee or transferee may advise.

The Chargor and each Covenantor further acknowledge and agree that this Charge (or securities or certificates backed by or representing any interest in this Charge, or a pool of charges which includes this Charge) may be sold or securitized into the secondary market without further notice to, or the consent of, the Chargor or the Covenantor. The Chargee, or its servicer, may from time to time release, disclose, exchange, share, transfer and/or assign, at its sole discretion, all information and materials (including Credit Material, financial statements and information concerning the status of this Charge, such as existing or potential defaults or Events of Default or other facts or circumstances which might affect the performance of this Charge) provided to, or obtained by the Chargee, relating to the Chargor, any Covenantor, the Lands or this Charge (both before and after the initial advance of monies under this Charge and/or default) without restriction and without notice to, or the consent of, the Chargor or any Covenantor, to:

- (a) the Chargee's third party advisors and/or agents, such as lawyers, accountants, consultants, appraisers, credit verification sources and services;
- (b) any subsequent or proposed purchaser of this Charge and/or their party advisors;
- (c) the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution;
- (d) the public or other interested Persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of this Charge or loan pools in which this Charge forms part, or any interest therein regardless of format or scope of distribution;
- (e) any governmental authority having jurisdiction over such sale or securitization of this Charge or loan pool in which this Charge forms a part or any trade of interest in this Charge or loan pool in which this Charge forms a part; and
- (f) any other Person, including rating agencies, in connection with the sale, assignment or securitization of the loan secured by this Charge or in connection with any collection or enforcement proceedings taken under or in respect of this Charge and/or any loan and security document entered into with respect thereto.

The Chargor and each Covenantor irrevocably consent to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

74. RELEASE OF INFORMATION

The Chargor hereby irrevocably consents to (i) the Chargee releasing and disclosing to any other parties, or their authorized agents or solicitors requesting the same, any and all information, whether confidential or not, in its possession regarding the Lands or this Charge, including, without limitation, details of the balance outstanding on this Charge, the terms of this Charge, any present or past defaults or Event of Default under this Charge, and like matters, and (ii) the provision by any other parties, their authorized agents or solicitors, of information to the Chargee regarding the status of any encumbrance in favour of such parties, on the Lands, or any other real or personal property either owned by the Chargor, or upon which it has entered into any obligation with any such parties.

The Chargor hereby confirms and agrees that the release and disclosure of any such information by any such parties constitutes the release and disclosure of such information with the full knowledge and consent of the Chargor within the meaning of the *Personal Information Protection and Electronic Documentation Act* (Canada), as amended or replaced from time to time.

75. GOVERNING LAW


This transaction and all agreements between the parties hereto in connection therewith shall be governed by the laws of the Province of Ontario.

DATED the 29th day of August, 2017.

OTÉRA CAPITAL INC.

By its Solicitors
McCarthy Tétrault LLP

Per:



Tzen-Yi Goh

THIS IS **EXHIBIT F** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

ASSIGNMENT OF MATERIAL CONTRACTS

THIS ASSIGNMENT made as of the 20th day of July, 2022.

BETWEEN:

2495065 ONTARIO INC.

(the “**Assignor**”)

- and -

OTÉRA CAPITAL INC.

(the “**Assignee**”)

WHEREAS:

- (a) pursuant to an amended and restated commitment letter dated July 4, 2022 (as it may be further amended, modified, renewed, replaced, extended, supplemented or restated from time to time, the “**Commitment Letter**”) the Assignee agreed to lend to the Assignor the aggregate principal amount of Eighty-Four Million, Three Hundred and Fifty Thousand Dollars (\$84,350,000) (the “**Loan**”);
- (b) the Assignor has granted a first-ranking freehold debenture/charge (the “**Charge**”) to the Assignee charging the lands legally described in Schedule “A” hereto (the “**Lands**”), securing the principal sum of One Hundred and Five Million Dollars (\$105,000,000); and
- (c) pursuant to the Commitment Letter, the Assignor has agreed to assign to the Assignee, as collateral security for the Charge, all of the right, title and interest of the Assignor in, and the benefit to be derived from, all material contracts relating to the Property and the Project (each as defined in the Commitment Letter) as required by the Assignee including, without limitation, all building and construction contracts, fixed price construction contracts, plans, and permits and insurance policies with respect to the Property and the Project, and all other material contracts with respect to the Project designated as material contracts by the Assignee from time to time, provided that the Assignee has notified the Assignor of such designation (collectively, the “**Contracts**”), with all necessary consents of the other parties thereto.

Now, therefore, in consideration of the Assignee making the Loan available to the Assignor, the parties hereto agree as follows:

1. Unless otherwise defined herein or the context otherwise requires, all capitalized terms used herein which are defined in the Commitment Letter shall have the meaning ascribed thereto in the Commitment Letter (and such capitalized terms, to the extent applicable, shall be deemed to be incorporated by reference herein).

2. As additional security for all of the indebtedness and other obligations secured under the Charge and interest thereon and the due performance of the Assignor's obligations under the Commitment Letter and the security given by the Assignor pursuant thereto (the "**Security**"), the Assignor hereby assigns, transfers and sets over to and in favour of the Assignee all of the right, title and interest of the Assignor in and with respect to the Contracts and all of the benefit, power and advantage of the Assignor to be derived therefrom and otherwise to enforce the rights of the Assignor under the Contracts in the name of the Assignor.
3. If any one or more of the Contracts is not assignable or is only assignable upon consent, this Assignment will not have the effect of assigning any right, title and interest that would otherwise have been assigned hereunder and the Assignor will hold such right, title and interest in trust for the Assignee for the purposes hereof. Notwithstanding anything to the contrary, at the request of the Assignee, the Assignor shall, at its sole cost and expense, promptly obtain all necessary consents of the other parties to the Contracts where required to give effect to this Agreement.
4. Except during any period in which the Assignee has exercised its rights under this Agreement: (i) nothing herein contained shall render the Assignee liable to any person for the fulfilment or non-fulfilment of the obligations covered in any of the Contracts, including, but not limited to, the payment of any moneys thereunder or in respect thereto; and (ii) the Assignor hereby indemnifies and agrees to save and hold harmless the Assignee from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever arising directly or indirectly from or out of any of the Contracts.
5. Until an Event of Default shall have occurred by the Assignor under the Commitment Letter or the Security and the Assignee shall become entitled to exercise its rights and remedies pursuant thereto, the Assignor shall be entitled to deal with the Contracts and enforce all the benefits, advantages and powers thereunder as though this Assignment had not been made. Upon the occurrence and during the continuance of an Event of Default, the Assignee may, but shall not be required to, exercise all rights, powers, authorities and discretions of the Assignor in respect of the Contracts in its place and may give notice to the parties under the Contracts of this Assignment (and the Assignor hereby directs any party to any such Contract to deal with the Assignee in the place and stead of the Assignor under such Contract). Any notice given under this section may be withdrawn by the Assignee whereupon the Assignor shall again be entitled to deal with the Contracts unless and until a further written notice by the Assignee to the contrary is given.
6. The Assignor will furnish to the Assignee a copy of any notice of default or any other notice, demand or request of a material nature given or required to be given to any other party to the Contracts or received by it from any such party. The Assignor has delivered to the Assignee true copies of all of the Contracts.
7. Upon payment in full of the indebtedness and performance of the obligations of the Assignor under the Commitment Letter and the Security and the Assignee giving to the Assignor a discharge of the Charge, this assignment shall be terminated and all right, title and interest in and to the Contracts which has been assigned, transferred and set over to the Assignee shall be automatically reassigned to the Assignor.
8. The Assignor represents and warrants to the Assignee that, as of the date hereof:

- (a) the Assignor has not assigned, set over or transferred any of the Contracts or its rights thereunder, other than to the Assignee;
 - (b) the Assignor has not performed any act which might prevent the Assignee from operating any of the terms and conditions of this Assignment or which would limit the Assignee in any such operation;
 - (c) each of the Contracts issued to date is in full force and effect and there is no material default existing thereunder;
 - (d) there is no pending or threatened litigation, action, claim or fact known to it not disclosed to the Assignee in writing which materially adversely affects or could so affect any of the Contracts; and
 - (e) the Assignor has good right, full power and lawful and absolute authority to enter into, execute and perform this Assignment and no consent of any party is required in respect of the assignment of Contracts under this Assignment.
9. The Assignor covenants and agrees with the Assignee that:
- (a) other than in the normal course of business as would a prudent owner or manager of property similar to the Lands, the Assignor shall not terminate, forfeit, cancel nor materially alter, amend or modify any of the Contracts or any of the terms or conditions thereof nor waive any material default by any of the other parties thereto, without the prior written consent of the Assignee;
 - (b) the Assignor shall use reasonable commercial efforts to obtain and deliver to the Assignee an acknowledgement by the relevant counterparty of the assignment of its contract pursuant to this Assignment and all necessary consents of the other parties thereto, failing which the provisions of Section 3 hereof shall apply; and
 - (c) the Assignor shall notify the Assignee immediately upon becoming aware of any material claim or litigation in respect of any of the Contracts.
10. Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Assignee and the Assignor; it being understood and agreed that none of the provisions herein contained or any acts of the Assignee or of the Assignor shall be deemed to create any relationship between the Assignee and the Assignor other than that of Assignee and Assignor.
11. In the event that the term "Assignor" includes more than one Person, all the covenants, agreements, representations, warranties, indemnities and obligations of the Assignor in this Assignment are deemed to be joint and several covenants, agreements, representations, warranties, indemnities and obligations of each of such parties.
12. This Assignment shall be binding upon the successors and the permitted assigns of the Assignor and shall benefit the successors and assigns of the Assignee. This Assignment may not be amended or modified in any respect except by written instrument signed by all parties. The rights and obligations of the Assignee under this Agreement may be assigned by the Assignee in accordance with the provisions of the Commitment Letter. The Assignor


may not assign its obligations under this Assignment without the prior written consent of the Assignee, which can be withheld in its entire discretion.

13. Any notice or other communication to be made in connection with this Assignment shall be made in accordance with the Commitment Letter.
14. This Assignment shall be governed by and construed in accordance with the laws in effect within the Province of Ontario and, by execution and delivery of this Assignment, the Assignor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Assignor hereby waives, and agrees not to assert, by way of motion, as a defence or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in the City of Toronto, that the action or proceedings is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Assignment or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.
15. Time shall be of the essence in this Assignment.
16. This Assignment may be executed in any number of counterparts, each of which counterparts so executed shall constitute and be deemed to be an original, and all of which together shall constitute one and the same instrument. Delivery of an executed signature page to this Assignment by the Assignor by facsimile or other electronic form of transmission shall be as effective as delivery by the Assignor of a manually executed copy of this Assignment by the Assignor.

[Signature page follows]

IN WITNESS WHEREOF the Assignor has duly executed this Assignment as of the date first set out above.

2495065 ONTARIO INC.

By: 
04B6BBFEDEC840B

Name: Richard Ma
Title: Authorized Signing Officer

By: _____
Name:
Title:

I/We have authority to bind the above.

**SCHEDULE "A" TO
ASSIGNMENT OF MATERIAL CONTRACTS**

LEGAL DESCRIPTION

Municipal address: Legal description:	39 Newcastle Street, Toronto, Ontario PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN: Legal description:	07617 - 0047 PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN: Legal description:	07617 - 0270 PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN: The Land Titles Division of the Registry Office No.:	07617 - 0269 Toronto 66

THIS IS **EXHIBIT G** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

GENERAL ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT made as of the 20th day of July, 2022.

BY: 2495065 ONTARIO INC. (the “Assignor”)

IN FAVOUR OF: OTÉRA CAPITAL INC. (the “Assignee”)

WHEREAS the Assignee agreed to lend to the Assignor the aggregate principal amount of Eighty-Four Million, Three Hundred and Fifty Thousand (\$84,350,000) (the “**Loan**”) pursuant to an amended and restated commitment letter issued by the Assignee on July 4, 2022, and accepted by the Assignor on July 4, 2022 (as it may be further amended, modified, renewed, replaced, extended, supplemented or restated from time to time, the “**Commitment Letter**”);

AND WHEREAS by a charge/mortgage (as it may be amended, modified, renewed, replaced, extended, supplemented or restated from time to time, the “**Charge**”), the Assignor granted a mortgage and charge in favour of the Assignee in all of the Assignor’s rights, title and interests in and to the lands described in Schedule “A” attached hereto (the “**Property**”), together with all property relating thereto including, without limitation, all of the Assignor’s rights, title and interests in and to the buildings and appurtenances now or hereafter situated thereon and the rents payable under the leases pertaining thereto, all as security for the Assignor’s obligations pursuant to the Loan;

AND WHEREAS the Assignor agreed to assign and transfer, as general and continuing security for the payment and performance of all its obligations to the Assignee, the Assigned Property (hereinafter defined);

NOW THEREFORE THIS ASSIGNMENT WITNESSETH that in order to further secure the obligations pursuant to the Loan, and in consideration of the advance of the Loan secured by the Charge, and in future consideration of the payment of the sum of ten dollars (\$10.00) by the Assignee to the Assignor (the receipt and sufficiency of all of which is hereby acknowledged) the Assignor covenants and agrees as follows:

1. DEFINITIONS

In this Assignment, unless something in the subject matter or context is inconsistent therewith, the following words and phrases shall have the following respective meanings:

- (a) “**Assignment**” means this assignment and all amendments made thereto by written agreement between the Assignee and the Assignor, and the terms “**this Assignment**”, “**thereof**”, “**hereunder**” and similar expressions refer to this Assignment and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto;
- (b) “**Event of Default**” shall have the meaning ascribed thereto in the Charge;
- (c) “**Gross Receipts**” means the aggregate of all revenues from or in respect of the Property from all sources including, without limitation, basic Rents, additional Rents, percentage Rents, insurance indemnities applicable to Rents, recoveries for taxes, utilities and operating costs, parking revenues, insurance and expropriation proceeds, all Lease terminating payments and the proceeds from the sale, leasing, encumbering or other disposition of the Property;
- (d) “**Landlord**” means the Assignor and its successors and assigns, in their capacity as landlord

pursuant to the Leases;

- (e) “**Person**” means any natural person or artificial body (including, among others, any firm, corporation or government);
- (f) “**Tenants**” means and includes: (i) any Person which is a tenant or lessee (or sub-tenant or sub-lessee) pursuant to a Lease; and (ii) any Person which has guaranteed (whether as a primary obligor, surety or otherwise) the performance and observance of a Tenant’s covenants and other obligations pursuant to a Lease.

Unless otherwise defined herein or the context otherwise requires, all capitalized terms used therein which are defined in the Charge shall have the meanings ascribed thereto in the Charge.

2. ASSIGNMENT

As security for the obligations of the Assignor pursuant to the Charge, the Loan and the Commitment Letter, the Assignor hereby assigns, transfers and sets over unto the Assignee and its successors and assigns, all of its rights, title and interests in and to the following:

- (a) all present and future Gross Receipts, issues, profits and other moneys (including, without limitation, “account” as defined in the *Personal Property Security Act* (Ontario), as amended, insurance proceeds, arbitration awards and proceeds from guarantees) reserved or payable under the Leases (hereinafter defined) the “**Rents**”; and
- (b) all present and future leases, subleases, agreements to lease, offers to lease, licences, rights of occupation and other agreements in respect of each and in every present and future tenancy, right of use, right of occupation and licence granted by the Assignor in respect of the whole or any portion of the Property, as amended, extended, renewed or replaced from time to time (the “**Leases**”), and the full benefit and advantage of the Leases and of the covenants, conditions, provisions, stipulations and agreements contained in the Leases to be observed and performed (including, without limitation, present and future guarantees and indemnities and all security held, from time to time, in respect of Tenants’ obligations pursuant to Leases).

This Assignment and grant shall include all of the Assignor’s right to demand, sue for, collect and receive all Rents and otherwise to enforce (either in the name of the Assignor or the Assignee) the Assignor’s rights under a Lease consequent on any default by a Tenant or other parties thereunder, whether such rights arise under a Lease or statute, at law, in equity or otherwise including, without limitation, the Assignor’s right to distrain. This Assignment and grant shall also include all income earned from the Property.

All of the Rents, Leases, benefits, rights, income, property and assets assigned, transferred and set over by the Assignor pursuant to Section 2 shall herein collectively be called the “**Assigned Property**”.

3. SECURITY BECOMING ENFORCEABLE AND REMEDIES

Upon the occurrence of an Event of Default, the security hereunder shall become enforceable. The Assignee’s remedies in such event shall include, without limitation, at any time and from time to time, one or more of the following (all of which remedies shall be cumulative, not exclusive and enforceable alternatively, successively or concurrently, without notice to or consent from the Assignor, except as otherwise expressly provided herein or under law):

- (a) all of the remedies available under statute, at law, in equity or otherwise; and

- (b) all of the remedies expressly set out in the Charge, the Loan Documents, including, without limitation, the Security Documents and in all other security now or hereafter held by the Assignee in respect of the Loan (the “**Additional Security**”), which other security shall include this Assignment.

4. PRESENT ASSIGNMENT

Although it is the intention of the parties that this Assignment shall be a present assignment, effective immediately upon execution, it is expressly understood that until the Assignee shall exercise any of the rights and powers hereby conferred upon it and provided no Event of Default shall have occurred and be continuing pursuant to the Charge, subject to the provisions of this Assignment, the Assignor shall be entitled to deal with the Leases in the ordinary course of its business and to collect the Rents for its own use and benefit, provided that any such Rents collected by the Assignor together with all proceeds therefrom and the Assignor’s interest therein shall nonetheless continue to be subject to the present assignment to the extent that such Rents or the proceeds therefrom shall remain the property of the Assignor or the Assignor shall maintain an interest therein.

5. ENFORCEMENT OF ASSIGNMENT

Subject to the provisions of Section 4 hereof, the Assignor hereby nominates, constitutes and appoints the Assignee to be the true and lawful attorney of the Assignor, for and in the name of the Assignor, but for the use and benefit of the Assignee, to demand, sue for, collect and receive all Rents and to enforce performance and observance of all Lease obligations, and for the purposes aforesaid, or any of them, the Assignor hereby authorizes the Assignee and its employees and agents, in the Assignee’s sole and absolute discretion:

- (a) to enter upon the Property (either personally or by its receiver or receiver-manager) and to collect, in the name of the Assignor or the Assignee, the Rents accrued but unpaid and in arrears, as well as the Rents thereafter accruing and becoming payable when due; and to this end, the Assignor further agrees that the Assignor shall facilitate in all reasonable ways the Assignee’s collection of the Rents and shall, upon request by the Assignee, execute a written notice addressed to all relevant parties directing that all Rents be paid to the Assignee;
- (b) to institute such actions (at law or in equity) and take such proceedings (by distress or otherwise) as the Assignee shall, from time to time, deem fit and proper, and for the purposes aforesaid, or any of them, to make, sign and execute any and all warrants of distress and other documents and instruments in the name of the Assignor, as the Assignee shall deem fit and proper; the cost of all distraints and other expenses shall be paid in cash by the Assignor or, in the Assignee’s sole and absolute discretion, accrue and bear interest at the same rate as set out in the Charge; and
- (c) in the name and for the account of the Assignor, to perform and observe any of the Assignor’s obligations pursuant to the Leases (without being obligated to do so) and, without limiting the generality of the foregoing, any amount paid by the Assignee in respect thereof as well as any other expense incurred by the Assignee in connection with the Property shall be payable upon demand and shall bear interest at the same rate as set out in the Charge and this power of attorney shall be irrevocable so long as this Assignment remains in force and effect.

6. ACCOUNTING BY ASSIGNEE

The Assignee shall, after payment of all proper charges and expenses, including reasonable compensation to any managing agent as the Assignee shall select and employ, and after the accumulation of a reserve to meet taxes, assessments, water rates, fire and liability insurance and all payments of principal, interest and other charges owing pursuant to the Charge, all in requisite amounts, credit the net amount of income received by the Assignee from the Property by virtue of this Assignment against any amounts due and owing to the Assignee by the Assignor pursuant to the Charge, and the application of such net amount of income shall be determined by the Assignee, in its sole and absolute discretion. The Assignee shall not be accountable for more moneys than it actually receives from the Property.

7. REPRESENTATIONS AND WARRANTIES

The Assignor hereby represents and warrants to the Assignee that:

- (a) each existing Lease is a valid and subsisting Lease or agreement, constituting the entire and only agreement between the Assignor and the other parties thereto pertaining to the leased premises and subject-matter thereof;
- (b) the Tenants, or their valid successors or permitted assigns, are occupying the leased premises described in each Lease (to the extent applicable) and paying the full Rents stipulated therein;
- (c) no notice has been received from any Tenant indicating an intention to assign or sublet or indicating an intention to surrender the term or otherwise part with possession of the premises demised to it, other than as previously disclosed in writing to the Assignee;
- (d) no notice has been received by the Assignor from any Tenant alleging default by the Assignor in the performance of its obligations, as Landlord, pursuant to any Lease, which notice has not been complied with by the Assignor to such Tenant's satisfaction;
- (e) copies of all of the Leases have been delivered to the Assignee and such copies are true and complete copies thereof;
- (f) the Assignor has not executed any prior and subsisting assignment or pledge of the Rents, nor any prior and subsisting assignment or pledge of the Assignor's interest in any of the Leases, except to the Assignee herein;
- (g) there are no outstanding disputes pursuant to any of the Leases, except as previously disclosed, in writing, to the Assignee by the Assignor, and the Assignor is not aware of any default by any of the parties pursuant to the Leases;
- (h) the Assignor has all necessary power and authority to assign the Leases and Rents in the manner provided herein; and
- (i) all Rents and other charges due and payable under all existing Leases have been paid and, except as expressly provided in the Leases or previously disclosed in writing to the Assignee, no such Rents or other charges have been prepaid more than one (1) month in advance.

8. COVENANTS

The Assignor hereby covenants and agrees as follows:

- (a) it shall not execute any assignment or pledge of the Rents, nor any assignment or pledge of the Assignor's interest, as landlord, in any of the Leases, except as requested by the Assignee, in writing;
- (b) it shall cause, subject to all relevant notice and rectification periods, the representations and warranties contained in Subsections 7(a), (e), (f) and (h) hereof to be true and correct throughout the term of the Charge;
- (c) it shall, forthwith following receipt, provide the Assignee with copies of all notices of default issued by either the Assignor or any Major Tenant (as defined in the Commitment Letter) pursuant to the Lease(s) with such Major Tenant; and
- (d) it shall cause any Tenant pursuant to a Lease, upon request, to subordinate its interest under such Lease in favour of the Charge and all agreements and security issued in connection therewith and, if requested, to attorn to the Assignee, provided if such Lease does not require the Tenant thereunder to so subordinate or attorn, the Assignor shall use reasonable commercial efforts to cause such Tenant to subordinate and attorn.

9. LIABILITY OF ASSIGNEE AND INDEMNITY

Nothing herein contained, nor the acceptance hereof by the Assignee, shall cause the Assignee to be responsible for the collection of Rents or other moneys payable pursuant to the Leases, nor for the performance for the Landlord's or other parties' obligations thereunder, nor for the enforcement of the Landlord's or other parties' rights thereunder.

An entry by the Assignee upon the Property pursuant to the terms of this Assignment shall not cause the Assignee to be constituted a trustee or "mortgagee in possession", except as the Assignee shall expressly declare or as otherwise provided under law.

The Assignee shall not be responsible for any act or omission of any agent retained by the Assignee in connection with the Property so long as the Assignee has exercised reasonable care in selecting the said agent.

The Assignor hereby agrees to indemnify and save harmless the Assignee, its affiliates and their respective employees, directors and agents, from and against all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations and liabilities, howsoever arising, in connection with the subject-matter of this Assignment, save and except as otherwise expressly set out herein. This indemnity shall survive the reassignment of this Assignment and satisfaction and discharge of the Charge and the Additional Security.

10. FURTHER ASSURANCES

The Assignor covenants to do all further acts, execute all further documentation and provide all further assurances as shall be requested by the Assignee, acting reasonably, to carry out the purpose and intent of this Assignment, without receiving additional consideration therefore.

11. RELEASE

Upon payment of all the Loan as well as all moneys secured by the Charge and upon registration of

discharge/cessation of the Charge, this Assignment shall be and be deemed to be automatically released, reassigned and discharged, and the Assignee shall provide to the Assignor, forthwith upon request and at the cost of the Assignor, a discharge of this Assignment, in registrable form.

12. PPSA FINANCING STATEMENT

The Assignor hereby waives its right to receive a copy of any financing statement or any verification or confirmation statement issued by any registry that confirms registration of a financing statement relating to this Assignment. The Assignor acknowledges receiving a copy of this Assignment.

13. SECTION HEADINGS

The section headings have been inserted in this Assignment for convenience of reference only and do not form a part of this Assignment.

14. SUCCESSORS AND ASSIGNS AND MODIFICATION AND ASSIGNMENT

This Assignment shall be binding upon the successors and the permitted assigns of the Assignor and shall benefit the successors and assigns of the Assignee. This Assignment may not be amended or modified in any respect except by written instrument signed by all parties. The rights and obligations of the Assignee under this Agreement may be assigned by the Assignee without the consent of the Assignor. The Assignor may not assign its obligations under this Assignment without the prior written consent of the Assignee, which can be withheld in its entire discretion.

15. NOTICES

Any notice or other communication to be made in connection with this Assignment shall be made in accordance with the Commitment Letter.

16. GOVERNING LAW

This Assignment shall be governed by and construed in accordance with the laws in effect within the Province of Ontario and, by execution and delivery of this Assignment, the Assignor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Assignor hereby waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in the City of Toronto, that the action or proceedings is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Assignment or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

17. SEVERABILITY

If any provision contained in this Assignment is, to any extent determined to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect to the extent permitted by applicable law. The parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

18. DIRECTION TO TENANTS

This Assignment shall constitute an irrevocable direction and authorization of the Assignor to the Tenants to pay such amounts to the Assignee or as the Assignee shall otherwise direct, in writing, without proof of an Event of Default until such time as the Assignee shall direct the Tenants in writing to the contrary. Without limiting the generality of the foregoing, the Tenants are hereby irrevocably authorized and directed to rely upon and comply with, and to be fully protected in so doing, any notice or demand by the Assignee for the payment to the Assignee of any Rents or for the performance of any other obligation of the Tenants under the Leases and the Tenants shall not be required or be under any duty to inquire as to whether this Assignment shall have become enforceable.

19. NO WAIVER

No delay or failure by the Assignee in the exercise of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right by the Assignee.

20. INTERPRETATION

In this Assignment, words importing the singular number shall include the plural and vice versa and words importing any gender shall include all genders.

21. NON-MERGER AND INCONSISTENCY

The Assignee's rights hereunder shall in no way merge with or be affected by any proceedings that the Assignee may initiate pursuant to the Charge and/or the Additional Security. The rights, remedies and security given to the Assignee hereunder are cumulative and not in substitution for any rights, remedies or security to which the Assignee may be entitled, either under the Charge or under any other security or at law. The Assignee shall not be required to take any proceedings pursuant to the Charge or pursuant to this Assignment before initiating proceedings pursuant to this Assignment. Conversely, no proceedings hereunder shall affect the rights of the Assignee pursuant to the Charge and/or Additional Security, and the Assignee shall not be required to take any proceedings pursuant to any other security before initiating proceedings pursuant to the Charge and/or any Additional Security. In the event of any inconsistency between the provisions of the Charge and the provisions of this Assignment, the provisions of the Charge shall prevail.

22. INCORPORATION BY REFERENCE

All provisions of the Charge concerning Leases shall be deemed to be incorporated in this Assignment, with full force and effect.

23. JOINT AND SEVERAL

In the event that the term "Assignor" includes more than one Person, each of them shall be jointly and severally liable to the Assignee for all of the Assignor's obligations hereunder.

24. COUNTERPARTS

This Assignment may be executed in any number of counterparts and by facsimile, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

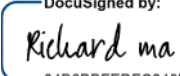
[Signature page follows]

205796/559402

MT MTDOCS 44620829General Assignment of Leases and Rents

The Assignor has executed this Assignment as of the date first set out above.

2495065 ONTARIO INC.

Per: 
Name: Richard Ma
Title: Authorized Signing Officer

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

**SCHEDULE "A" TO
GENERAL ASSIGNMENT OF LEASES AND RENTS**

LEGAL DESCRIPTION

Municipal address:	39 Newcastle Street, Toronto, Ontario
Legal description:	PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN:	07617 - 0047
Legal description:	PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN:	07617 - 0270
Legal description:	PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN:	07617 - 0269
The Land Titles Division of the	Toronto
Registry Office No.:	66

THIS IS **EXHIBIT H** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of the 20th day of July, 2022.

BY: 2495065 ONTARIO INC. (the “Debtor”)

IN FAVOUR OF: OTÉRA CAPITAL INC. (the “Secured Party”)

WHEREAS the Secured Party agreed to lend to the Debtor the aggregate principal amount of Eighty-Four Million, Three Hundred and Fifty Thousand (\$84,350,000) (the “**Loan**”) pursuant to an amended and restated commitment letter issued by the Secured Party on July 4, 2022, and accepted by the Debtor on July 8, 2022 (the commitment letter, as it may be further amended, modified, renewed, replaced, extended, supplemented or restated from time to time, the “**Commitment Letter**”);

AND WHEREAS by a charge/mortgage of land dated as of July 22, 2022, securing the principal sum of One Hundred and Five Million dollars (\$105,000,000) and registered in the Land Titles Division of the Toronto Registry Office (No. 66) on July 22, 2022, as Instrument No. AT6138609 (such charge/mortgage as it may be amended, modified, renewed, replaced, extended, supplemented or restated from time to time, the “**Charge**”), the Debtor granted a mortgage and charge in favour of the Secured Party on all of the Debtor’s rights, title and interests in and to the lands described in Schedule “A” attached hereto (the “**Property**”), together with all property relating thereto including, without limitation, all of the Debtor’s rights, title and interests in and to the buildings and appurtenances situated thereon and the rents payable under the leases pertaining thereto, all as security for the Debtor’s obligations pursuant to the Loan;

AND WHEREAS the Debtor agreed to grant, as general and continuing security for the payment and performance of all its obligations to the Secured Party, the security interest granted herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in order to further secure the obligations pursuant to the Loan, and in consideration of the advance of the Loan secured by the Charge, and in future consideration of the payment of the sum of ten dollars (\$10.00) by the Secured Party to the Debtor (the receipt and sufficiency of all of which is hereby acknowledged) the Debtor covenants and agrees as follows:

1. DEFINITIONS

In this Agreement, unless something in the subject matter or context is inconsistent therewith, the following words and phrases shall have the following respective meanings:

- (a) “**Agreement**” means this agreement and all amendments made thereto by written agreement between the Secured Party and the Debtor, and the terms “**this Agreement**”, “**thereof**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto;
- (b) the terms “**accessions**”, “**Account**”, “**Chattel Paper**”, “**Documents of Title**”, “**Equipment**”,

“Goods”, “Instrument”, “Intangible”, “Inventory”, “Money”, “Proceeds” and “Security” whenever used herein shall have the meanings given to those terms in the PPSA, provided always that the term **“Goods”** when used herein shall not include “consumer goods” of the Debtor as the term is defined in the PPSA;

- (c) **“Books and Records”** means all books, papers, accounts, invoices, documents, electronic data and other records in any form evidencing or relating to any of the Collateral, and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (d) **“Collateral”** means all of the present and future (i) cash deposited with the Lender in accordance with the terms of the Commitment Letter and includes, without limitation, all cash deposited with the Lender and held by the Lender in other financial institutions, and all interest accruing thereto; and (ii) undertaking and property, both real and personal, of the Debtor located at, relating to, or used in connection with, the Property, or which is necessary to the use and operation of the Property including, without limitation, all right, title and interest that the Debtor now has or may hereafter have, be possessed of, be entitled to or which may hereafter be acquired by the Debtor in Accounts, Goods, Inventory, Equipment, Chattel Paper, Documents of Title, Securities, Intangibles, Money, Books and Records, Insurance Policies and licenses and permits and all replacements of, substitutions for and increases, additions and accessions to the foregoing, together with all Proceeds thereof, and any reference to **“Collateral”** shall be deemed a reference to Collateral or any part thereof;
- (e) **“Contracts”** means all present and future contracts, professional contracts, management contracts and sub-contracts entered into on behalf of the Debtor for the supply of services or material for the Property and the operation of any business thereon;
- (f) **“Event of Default”** shall have the meaning ascribed thereto in the Charge;
- (g) **“Insurance Policies”** means all present and future policies of insurance now or hereafter insuring the Property and the building, improvements, fixtures and other property situate in, on or under the Property or arising out of or from the Debtor’s interest in the Property pursuant to which the Debtor is named as an insured or beneficiary as the case may be, and all present and future insurance policies maintained pursuant to the Commitment Letter and/or the Charge in connection with the Collateral;
- (h) **“Obligations”** means all obligations of the Debtor to the Secured Party in respect of the Property, the Loan or pursuant to the Charge or any additional security now or hereafter held by the Secured Party in respect of the obligations secured by the Charge including, without limitation, all debts and liabilities, present and future, direct and indirect, absolute and contingent, matured or not, whenever and howsoever incurred, in any currency at any time owing by the Debtor to the Secured Party pursuant to the Charge or any additional security now or hereafter held by the Secured Party in respect of the obligations secured by the Charge or remaining unpaid by the Debtor to the Secured Party and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred by the Debtor alone or with another or others and whether as principal or surety, including all interest, commissions, legal and other costs, charges and expenses;
- (i) **“Person”** means any natural person or artificial body (including, among others, any firm, corporation or government);
- (j) **“PPSA”** means the Personal Property Security Act (Ontario) as now enacted and as the

same may be amended, re-enacted or replaced from time to time, and all regulations thereunder;

- (k) “**Receiver**” means a receiver, receiver and manager or any similar Person appointed in accordance with Section 5(b)(ii) hereof.

Unless otherwise defined herein or the context otherwise requires, all capitalized terms used therein which are defined in the Charge shall have the meanings ascribed thereto in the Charge.

2. SECURITY INTEREST

As general and continuing security for the payment and performance of the Obligations, the Debtor hereby grants to the Secured Party a security interest in the Collateral and assigns, transfers, mortgages and charges to and in favour of the Secured Party all of the Debtor’s rights, title and interest in the Collateral. For greater certainty, the security interest created hereby shall be operative as a present attached mortgage and charge of and security interest in any and all of the Collateral now owned by the Debtor and with respect to any and all of the Collateral acquired by the Debtor after the date hereof, shall be operative as a present mortgage and charge of and security interest in such Collateral which shall attach as a first fixed and specific mortgage and charge of and security interest in such Collateral as of the moment the Debtor acquires any rights or interest therein. The security interest granted hereby shall not extend or apply to and Collateral shall not include the last day of the term of any lease or agreement therefore, but upon the enforcement of the security interest created hereby, the Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OR DEBTOR

The Debtor hereby represents, warrants and covenants to and with the Secured Party as follows:

- (a) that it is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario, with the corporate power to enter into this Agreement;
- (b) that this Agreement has been duly authorized by all necessary corporate action on the part of the Debtor and constitutes a legal and valid agreement binding upon the Debtor enforceable in accordance with its terms, and that the making and performance of this Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of, any lien, charge, security interest, encumbrance or any other right of others upon any property of the Debtor pursuant to any agreement, indenture or other instrument to which the Debtor is a party or by which the Debtor or any of its property may be bound or affected;
- (c) the Debtor represents and warrants that, except as otherwise provided in the Charge or disclosed herein, all of the Collateral is the sole property of the Debtor, free from all liens, charges, security interests, leases, encumbrances and any rights of others which rank prior to *or pari passu* or subsequent with the security interest granted hereby, save for those excepted pursuant to the terms of the Commitment Letter or otherwise consented to by the Secured Party in writing;

- (d) the Debtor represents and warrants that the Debtor's principal place of business and the location of the office where it keeps the Books and Records respecting the Accounts is 1944 Fowler Drive, Mississauga, ON L5K 0A1 and all of the Collateral is located either at that address or at the Property;
- (e) the Debtor covenants that it shall not, without prior written notice to the Secured Party, change its principal place of business or the location of the office where it keeps its Books and Records;
- (f) the Debtor covenants that it shall maintain, use and operate the Collateral and carry on and conduct its business in a lawful, prudent and business-like manner;
- (g) the Debtor covenants that it shall defend the Collateral against all claims and demands respecting the Collateral made by all Persons at any time and, except as otherwise provided herein, shall keep the Collateral free and clear of all security interests, mortgages, charges and liens, save for those excepted pursuant to the terms of the Commitment Letter and those hereafter approved in writing by the Secured Party prior to their creation or assumption;
- (h) the Debtor covenants that it shall pay all rents, taxes, levies, assessments and government fees or dues lawfully levied, assessed or imposed in respect of the Collateral or any part thereof as and when the same shall become due and payable, and shall exhibit to the Secured Party, when required, the receipts and vouchers establishing such payment;
- (i) the Debtor covenants that it shall from time to time forthwith at the reasonable request of the Secured Party furnish to the Secured Party in writing all documents and information relating to the Collateral, and the Secured party shall be entitled from time to time, at any reasonable time, to inspect the Collateral and make copies of all information relating to the Collateral and subject to the provisions of the leases in respect of the Property, for such purposes the Secured Party shall, subject to the rights of all Property tenants, have access to all premises occupied by the Debtor or where the Collateral may be found;
- (j) the Debtor covenants to keep the Collateral in good order, condition and repair and not to use the Collateral in violation of the provisions of this Agreement, the Charge, the Commitment Letter or any other agreement now or hereafter in effect between the Debtor and the Secured Party with respect to the Loan and any agreement relating to the Collateral or any Insurance Policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (k) the Debtor covenants to insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Secured Party may determine in conformity with the insurance requirements contained in the Charge and/or in the Commitment Letter, with loss payable in the manner specified in the Charge and/or in the Commitment Letter, and to pay all premiums therefore;
- (l) the Debtor covenants that it shall from time to time forthwith at the reasonable request of the Secured Party execute and deliver all such financing statements, schedules, assignments and documents, and do all such further acts and things as may be reasonably required by the Secured Party to effectively carry out the full intent and meaning of this Agreement and/or to better evidence and perfect the security interest granted hereby and the Debtor hereby irrevocably constitutes and appoints the Secured Party, or any Receiver appointed

by the court or the Secured Party, following the occurrence of an Event of Default and only for so long as such Event of Default shall be continuing, the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever the Secured Party or any such Receiver may consider it to be necessary or expedient;

- (m) the Debtor's name, set out above, is and always has been the Debtor's full and exact name, and in the event there is now and or has been a French version of the Debtor's name the Debtor has disclosed same to the Secured Party; the Debtor covenants that it shall not change its name unless it provides the Secured Party with not less than ten (10) days prior written notice thereof and, if the Debtor is a corporation, shall not amalgamate with any other corporation without obtaining the Secured Party's prior written consent thereto (such consent may be arbitrarily withheld);
- (n) the Debtor covenants that it shall pay to the Secured Party forthwith upon demand all reasonable costs and expenses (including, without limitation, all costs and expenses incurred by and in connection with a Receiver, all accounting fees and expenses and all legal costs (on a solicitor and own client basis)) incurred by or on behalf of the Secured Party in connection with the preparation, execution and perfection of this Agreement and the carrying out of any of the provisions of this Agreement including, without limitation, protecting and preserving the security interest granted hereby and enforcing by legal process or otherwise the remedies provided herein, and agrees that all such costs and expenses shall be added to and form part of the Obligations secured hereunder; and
- (o) the Debtor covenants that it shall ensure that the representation and warranties set forth in this Section 3 shall be true and correct in all material respects at all times while the charge is in force.

4. DEALING WITH COLLATERAL

- (a) **Dealing with Collateral by the Debtor.** The Debtor shall not sell, lease or otherwise dispose of any of the Collateral: (i) without the prior written consent of the Secured Party except as expressly permitted under the Charge or the Commitment Letter; or (ii) except in the ordinary course of its business and subject to the terms of the Charge and the Commitment Letter; and all proceeds of any such sale, lease or disposition shall form part of the Collateral and shall continue to be subject to the security interest granted hereby.
- (b) **Notification of Account Debtor.** Either after or before an Event of Default occurs, the Secured Party may give notice of this Agreement and the security interest granted hereby to any account debtors of the Debtor or to any other Person liable to the Debtor and further the Secured Party may, in its sole discretion, give notice at any time after the occurrence of any Event of Default which is continuing to any such account debtors or other Person to make all further payments to the Secured Party, and any payment or other proceeds of Collateral received by the Debtor from account debtors or from any other person liable to the Debtor, whether before or after any notice is given by the Secured Party, shall be held by the Debtor in trust for the Secured Party and paid over to the Secured Party on request provided an Event of Default shall have occurred and be continuing. In addition to and notwithstanding the foregoing the Secured Party shall have the rights referred to in the Charge.
- (c) **Purchase-Money Security Interest.** The Debtor shall not, except as specifically permitted

by and subject to the terms of the Charge, or except in the ordinary course of its business in connection with the purchase or lease of Inventory or Equipment, be permitted to grant purchase money security interest.

- (d) **Application of Funds.** All money collected or received by the Secured Party in respect of the Collateral may be applied on account of such parts of the Obligations as the Secured Party in its sole discretion sees fit, or may be held unappropriated in a collateral account as ongoing security for the Obligations, or in the discretion of the secured Party may be released to the Debtor, all without prejudice to the Secured Party's rights against the Debtor.

5. DEFAULT AND REMEDIES

- (a) **Events of Default.** The Debtor shall be in default under this Agreement upon the occurrence of any Event of Default, subject to all curative rights of the Debtor under the Charge.
- (b) **Remedies.** Upon the occurrence of any Event of Default that is continuing and at any time thereafter, any or all of the Obligations shall, at the option of the Secured Party, become immediately due and payable or be subject to immediate performance, as the case may be, without further demand or notice, both of which are expressly waived; any or all security granted hereby shall immediately become enforceable at the option of the Secured Party, and the Secured Party shall have the rights and remedies set out below, all of which rights and remedies shall be enforceable successively, concurrently and/or cumulatively at the option of the Secured Party, subject to the provisions of the Charge or the Commitment Letter relating to any of such rights and remedies of the Secured Party:
- (i) the Secured Party may cease to make any further advances or disbursements of money or other credit, including, without limitation, letters of credit, letters of guarantee or indemnities, available to the Debtor; further, the Secured Party shall not be under any obligation to recommence advancing money or make available other credit until the Secured party shall have received such assurances as, in its sole discretion, it may require;
- (ii) the Secured Party may appoint, by an instrument in writing delivered to the Debtor, a Receiver of the Collateral, and remove any Receiver so appointed and appoint another or others in his stead, or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver, it being understood and agreed that:
- a. the Secured Party may appoint any Person as receiver, including an officer or employee of the Secured Party;
 - b. such appointment may be made at any time either before or after the Secured Party has taken possession of the Collateral;
 - c. the Secured Party may from time to time fix the remuneration of the Receiver and direct the payment thereof out of the Collateral; and
 - d. the Receiver shall be deemed to be the agent of the Debtor for all purposes and, for greater certainty, the Secured Party shall not be, in any way, responsible for any actions, whether willful, negligent or otherwise, of any Receiver, and the Debtor hereby agrees to indemnify and save harmless the Secured Party from and against any and all claims, demands, actions, costs, damages, expenses or

payments which the Secured Party may hereafter suffer, incur or be required to pay as a result of, in whole or in part, any action taken by the Receiver or any failure of the Receiver to do any act or thing;

- (iii) the Secured Party may, in accordance with its rights under the Charge, take possession of the Collateral and retain it for so long as the Secured Party or a Receiver considers appropriate, receive any rents or profits from the Collateral, and require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such place or places as may be specified by the Secured Party;
- (iv) the Secured Party may require the Debtor, by notice in writing given by the Secured Party to the Debtor, to disclose to the Secured Party the location or locations of the Collateral and the Debtor agrees to make such disclosure when so required by the Secured Party;
- (v) the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor, in accordance with its rights under the Charge;
- (vi) the Secured Party may enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law;
- (vii) the Secured Party may repair the Collateral, process the Collateral and prepare the Collateral for sale, lease or other disposition, whether on the premises of the Debtor or otherwise;
- (viii) the Secured Party may sell, lease or otherwise dispose of or realize upon the Collateral at public auction, by public or private tender, by private sale or otherwise, either for cash or upon credit, upon such terms and conditions as the Secured Party may determine, and whether or not the Secured Party has taken possession of the Collateral, and without notice, advertisement or other formality, all of which are hereby waived by the Debtor; any such sale may be made with or without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and from time to time as the Secured Party in its sole discretion thinks fit, with power to vary or rescind any such sale or buy in at any public sale and resell without being answerable for any loss; the Secured Party may sell the Collateral for a consideration either with or without taking security for the payment of such installments and may make and deliver to any purchaser thereof good and sufficient deeds, assurances and conveyances of the Collateral and give receipts for the purchase money, and any such sale shall be a perpetual bar, both at law and in equity, against the Debtor and all those claiming an interest in Collateral by, from, through or under the Debtor;
- (ix) the Secured Party or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on behalf of the Debtor or otherwise;
- (x) the Secured Party may retain the Collateral or any part thereof irrevocably by giving notice thereof to the Debtor, it being agreed that to the extent permitted by law such retention shall reduce the amount of the Obligations by an amount equal to the fair market value, as reasonably determined by the Secured Party, of the Collateral so retained;
- (xi) the Secured Party may borrow money on the security of the Collateral for the purpose

of the carrying on of the business of the Debtor or for the maintenance, preservation, protection or realization of the Collateral, which security may rank either prior or subsequent in priority to the security interest granted by this Agreement;

- (xii) the Secured Party may file such proofs of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Debtor; and
 - (xiii) the Secured Party may take any other action, suit, remedy or proceeding authorized or permitted by this Agreement, the PPSA or by law or equity.
- (c) **Additional Provisions on Realization.** The Debtor further agrees with the Secured Party that:
- (i) for the purposes of Section 5 of this Agreement, a reference to the “Secured Party” shall, where the context permits, include any Receiver appointed in accordance with Subsection 5(b) hereof and the agents, officers and employees of such Receiver;
 - (ii) the Secured Party shall not be liable or responsible for any failure to seize, collect, realize, sell or obtain payment of the Collateral and shall not be bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment of the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other Person in respect of the Collateral;
 - (iii) the Secured Party may grant extensions of time, take, abstain from taking and perfecting and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other securities as the Secured Party may see fit without prejudice to the liability of the Debtor to the Secured Party or the Secured Party’s rights hereunder;
 - (iv) to facilitate the realization of the Collateral, the Secured Party may, to the exclusion of all others but subject to the prior rights of the space tenants of the Property under their leases, including the Debtor, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied by the Debtor and use all or any of the Equipment and other property of the Debtor for such time as the Secured Party requires, free of charge, and the Secured Party shall not be liable to the Debtor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;
 - (v) the Secured Party may charge on its own behalf and pay to others all reasonable amount for expenses incurred and for services rendered in connection with the retaking, holding, operation, repairing, processing, preparing for disposition and disposing of the Collateral including, without limitation, legal costs on a solicitor and own client basis, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith shall be payable by the Debtor to the Secured Party and be added to and form part of the Obligations hereby secured as of the date incurred and shall bear interest at the highest rate of interest charged by the Secured Party at that time in respect of any part of the Obligations until payment thereof;

- (vi) the Secured Party may discharge any claim, lien, mortgage, charge, security interest, encumbrance or any rights of others that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Obligations hereby secured; and
- (vii) any proceeds of realization of the Collateral may be applied by the Secured Party to the payment of expenses in connection with the preservation and realization of the Collateral as above described and any balance of such proceeds shall be applied by the Secured Party in the manner provided for in the Charge.

6. GENERAL PROVISIONS

- (a) **Benefit of the Agreement.** This Agreement shall be binding upon the successors and the permitted assigns of the Debtor and shall benefit the successors and assigns of the Secured Party.
- (b) **No Waiver.** No delay or failure by the Secured Party in the exercise of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right.
- (c) **Severability.** If any provision contained in this Agreement is, to any extent determined to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect to the extent permitted by applicable law. The parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.
- (d) **Notices.** Any notice or other communication to be made in connection with this Agreement shall be made in accordance with the Commitment Letter.
- (e) **Modification and Assignment.** This Agreement may not be amended or modified in any respect except by written instrument signed by all parties. The rights and obligations of the Secured Party under this Agreement may be assigned by the Secured Party without the consent of the Debtor. The Debtor may not assign its obligations under this Agreement without the prior written consent of the Secured Party, which can be withheld in its entire discretion.
- (f) **Additional Continuing Security.** The Agreement and the security interest granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Secured Party, and this Agreement is a continuing agreement and security that shall remain in full force and effect until discharged by the Secured Party.
- (g) **Headings.** The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (h) **Gender.** In this Agreement, words importing the singular number shall include the plural and vice versa and words importing any gender shall include all genders.
- (i) **Release.** Upon payment of all Obligations secured by the Charge and registration of the

discharge/cessation of the Charge, this Agreement shall be deemed to be released, provided further that the Assignee shall provide to the Assignor, forthwith upon request and at the cost of the Assignor, a release of this Agreement and all related PPSA financing statements.

- (j) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws in effect within the Province of Ontario and the laws of Canada applicable therein and, by execution and delivery of this Agreement, the Debtor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Debtor hereby waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in the City of Toronto, that the action or proceedings is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Agreement or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.
- (k) **Executed Copy.** The Debtor acknowledges receipt of a fully executed copy of this Agreement.
- (l) **Non-Merger and Inconsistency.** The Secured Party's rights hereunder shall in no way merge with or be affected by any proceedings that the Secured Party may initiate pursuant to the Charge and/or the Additional Security. The rights, remedies and security given to the Secured Party hereunder are cumulative and not in substitution for any rights, remedies or security to which the Secured Party may be entitled, either under the Charge or under any other security or at law. The Secured Party shall not be required to take any proceedings pursuant to the Charge or pursuant to this Agreement before initiating proceedings pursuant to this Agreement. Conversely, no proceedings hereunder shall affect the rights of the Secured Party pursuant to the Charge and/or Additional Security, and the Secured Party shall not be required to take any proceedings pursuant to any other security before initiating proceedings pursuant to the Charge and/or any Security Documents. In the event of any inconsistency between the provisions of the Commitment Letter and the provisions of this Agreement, the provisions of the Commitment Letter shall prevail.
- (m) **Joint and Several Liability.** In the event that the term "Debtor" includes more than one Person, each of them shall be jointly and severally liable to the Secured Party for all of the Debtor's obligations hereunder.
- (n) **Counterparts.** This Agreement may be executed in any number of counterparts and by facsimile, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

[Signature page follows]

The Debtor has executed this Agreement as of the date first set out above.

2495065 ONTARIO INC.

Per: 
Name: Richard Ma
Title: Authorized Signing Officer

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

SCHEDULE "A"
TO GENERAL SECURITY AGREEMENT

LEGAL DESCRIPTION

Municipal address:	39 Newcastle Street, Toronto, Ontario
Legal description:	PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN:	07617 - 0047
Legal description:	PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN:	07617 - 0270
Legal description:	PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO
PIN:	07617 - 0269
The Land Titles Division of the	Toronto
Registry Office No.:	66

THIS IS **EXHIBIT I** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

LAND
REGISTRY
OFFICE #66

07617-0047 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:35:41

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 256, 257, 258 AND 259, PLAN M68, DESIGNATED AS PART 8 ON PLAN 66R-30185 AS IN AT6150665; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 260 AND 261, PLAN M68, PARTS 12 AND 13 ON PLAN 66R30185 AS IN AT6150665; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK 140

PIN CREATION DATE:
1996/03/25

OWNERS' NAMES
2495065 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/03/25 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/03/25						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1996/03/22 **						
B361671	1973/03/19	NOTICE AGREEMENT			THE CORPORATION OF THE BOROUGH OF ETOBICOKE	C
A879900	1980/10/01	TRANSFER		*** COMPLETELY DELETED ***	CHAIRTEX MANUFACTURING LIMITED	
CORRECTIONS: 'TRANSFeree' CHANGED FROM 'CHAIRTEX MANUFACTURING LIMITED' TO 'THE CORPORATION OF THE CITY OF TORONTO' ON 2001/10/04 BY CHARLOTTE MCALMONT. 'TRANSFeree' CHANGED FROM 'THE CORPORATION OF THE CITY OF TORONTO' TO 'THE CORPORATION OF THE CITY OF ETOBICOKE' ON 2001/10/04 BY CHARLOTTE MCALMONT. 'TRANSFeree: THE CORPORATION OF THE CITY OF ETOBICOKE' DELETED ON 2002/10/09 BY ABDOL KHODABOCUS. 'TRANSFeree: CHAIRTEX MANUFACTURING LIMITED' ADDED ON 2002/10/09 BY ABDOL KHODABOCUS.						
A879901	1980/10/01	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
A879902	1980/10/01	NOTICE OF LEASE		*** COMPLETELY DELETED ***		
C436802	1987/12/16	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
C961498	1995/08/17	CERT TAX ARREARS		*** COMPLETELY DELETED ***		
REMARKS: DELETED 2019/04/01 BY R.LANE						
C968369	1995/09/28	APL (GENERAL)		*** COMPLETELY DELETED ***		
REMARKS: DECLARATION, C961498; DELETED 2019/04/01 BY R.LANE						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND
REGISTRY
OFFICE #66

07617-0047 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:35:41

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
E34517	1996/10/03	NOTICE		*** COMPLETELY DELETED *** CHAIRTEX MANUFACTURING LIMITED	THE CORPORATION OF THE CITY OF ETOBICOKE	
		REMARKS: C961498, C968369, HEREBY AUTHORIZE THE LAND REGISTRAR TO DELETE THE ENTRY OF THIS NOTICE WITHOUT NOTICE OR APPLICATION 5 MONTHS FROM 96/10/03 OR EARLIER, WITH THE CONSENT OF THE CORPORATION OF THE CITY OF ETOBICOKE.; DELETED 2019/04/01 BY R.LANE				
E120422	1997/10/14	NOTICE		*** COMPLETELY DELETED *** THE CORPORATION OF THE CITY OF ETOBICOKE		
		REMARKS: C961498; C968369; E34517; DELETED 2019/04/01 BY R.LANE				
AT46674	2002/11/27	TRANSFER		*** COMPLETELY DELETED *** CITY OF TORONTO	CIC MILLWORK LIMITED	
AT46675	2002/11/27	REST COV APL ANNEX		*** COMPLETELY DELETED *** CITY OF TORONTO		
AT4861469	2018/05/11	APL CH NAME OWNER		*** COMPLETELY DELETED *** CIC MILLWORK LIMITED	CIC MANAGEMENT SERVICES INC.	
AT4866297	2018/05/17	APL DELETE REST		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.		
		REMARKS: AT46675.				
AT4868552	2018/05/22	CHARGE		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
AT4868553	2018/05/22	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
		REMARKS: AT4868552.				
AT5114533	2019/04/15	TRANSFER	\$89,938,727	CIC MANAGEMENT SERVICES INC.	2495065 ONTARIO INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
AT5114534	2019/04/15	CHARGE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	CIC MANAGEMENT SERVICES INC.	
AT5114535	2019/04/15	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
		REMARKS: AT5114534.				
AT5114536	2019/04/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA		
		REMARKS: AT4868552.				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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LAND
REGISTRY
OFFICE #66

07617-0047 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:35:41

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5114537	2019/04/15	CHARGE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
AT5114538	2019/04/15	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
		REMARKS: AT5114537				
AT5114539	2019/04/15	CHARGE	\$25,000,000	2495065 ONTARIO INC.	CIC MANAGEMENT SERVICES INC.	C
AT5470499	2020/07/10	NOTICE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
		REMARKS: AT5114537				
AT5470500	2020/07/10	POSTPONEMENT		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
		REMARKS: AT5114539 TO AT5114537				
AT5581543	2020/11/26	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA	BCIMC SPECIALTY FUND CORPORATION	
		REMARKS: AT5114534				
AT5581601	2020/11/26	NOTICE		*** COMPLETELY DELETED *** BCIMC SPECIALTY FUND CORPORATION		
AT5606752	2020/12/22	NOTICE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
		REMARKS: AT5114537				
AT5606753	2020/12/22	POSTPONEMENT		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
		REMARKS: AT5114539 TO AT5114537				
AT6043225	2022/04/11	APL ANNEX REST COV		2495065 ONTARIO INC.		C
		REMARKS: NO EXPIRY				
AT6123273	2022/07/05	POSTPONEMENT		*** COMPLETELY DELETED *** FIERA FP REAL ESTATE FINANCING FUND, L.P.	2495065 ONTARIO INC.	
		REMARKS: AT5114537 TO AT6043225				
AT6138607	2022/07/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** BCIMC SPECIALTY FUND CORPORATION		
		REMARKS: AT5114534.				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND
REGISTRY
OFFICE #66

07617-0047 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:35:41

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT6138608	2022/07/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** FIERA FP REAL ESTATE FINANCING FUND, L.P.		
		REMARKS: AT5114537.				
AT6138609	2022/07/22	CHARGE	\$105,000,000	2495065 ONTARIO INC.	OTÉRA CAPITAL INC.	C
AT6138610	2022/07/22	NO ASSGN RENT GEN		2495065 ONTARIO INC.	OTÉRA CAPITAL INC.	C
		REMARKS: AT6138609				
AT6138611	2022/07/22	POSTPONEMENT		CIC MANAGEMENT SERVICES INC.	OTÉRA CAPITAL INC.	C
		REMARKS: AT5114539 TO AT6138609				
AT6199775	2022/10/11	POSTPONEMENT		CIC MANAGEMENT SERVICES INC.	2495065 ONTARIO INC.	C
		REMARKS: AT5114539 TO AT6043225				
AT6422890	2023/09/19	CONSTRUCTION LIEN	\$700,465	KOHN PARTNERSHIP ARCHITECTS INC.		C

LAND
REGISTRY
OFFICE #66

07617-0269 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:36:07

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 256, 257, 258 AND 259, PLAN M68, DESIGNATED AS PART 8 ON PLAN 66R-30185 AS IN AT6150665; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 260 AND 261, PLAN M68, PARTS 12 AND 13 ON PLAN 66R30185 AS IN AT6150665; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK 140

PIN CREATION DATE:
1996/03/25

OWNERS' NAMES
2495065 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p><i>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/03/25 ON THIS PIN**</i></p> <p><i>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/03/25**</i></p> <p><i>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1996/03/22 **</i></p>						
B35527	1959/07/15	TRANSFER		*** COMPLETELY DELETED ***	CARRINGTON DISTILLERS (ONTARIO) LIMITED	
E426145	2001/06/26	APL CH NAME OWNER		*** COMPLETELY DELETED *** CARRINGTON DISTILLERS (ONTARIO) LIMITED	CARRINGTON DISTILLERS LIMITED	
E426146	2001/06/26	TRANSFER		*** COMPLETELY DELETED *** CARRINGTON DISTILLERS LIMITED	CITY OF TORONTO	
AT46674	2002/11/27	TRANSFER		*** COMPLETELY DELETED *** CITY OF TORONTO	CIC MILLWORK LIMITED	
AT46675	2002/11/27	REST COV APL ANNEX		*** COMPLETELY DELETED *** CITY OF TORONTO		
AT4861469	2018/05/11	APL CH NAME OWNER		*** COMPLETELY DELETED *** CIC MILLWORK LIMITED	CIC MANAGEMENT SERVICES INC.	
AT4866297	2018/05/17	APL DELETE REST		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.		
REMARKS: AT46675.						
AT4868552	2018/05/22	CHARGE		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
AT4868553	2018/05/22	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	

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LAND
REGISTRY
OFFICE #66

07617-0269 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:36:07

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD	
		REMARKS: AT4868552.					
AT5114533	2019/04/15	TRANSFER	\$89,938,727	CIC MANAGEMENT SERVICES INC.	2495065 ONTARIO INC.	C	
		REMARKS: PLANNING ACT STATEMENTS.					
AT5114534	2019/04/15	CHARGE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	CIC MANAGEMENT SERVICES INC.		
AT5114535	2019/04/15	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA		
		REMARKS: AT5114534.					
AT5114536	2019/04/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA			
		REMARKS: AT4868552.					
AT5114537	2019/04/15	CHARGE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.		
AT5114538	2019/04/15	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.		
		REMARKS: AT5114537					
AT5114539	2019/04/15	CHARGE	\$25,000,000	2495065 ONTARIO INC.	CIC MANAGEMENT SERVICES INC.	C	
AT5470499	2020/07/10	NOTICE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.		
		REMARKS: AT5114537					
AT5470500	2020/07/10	POSTPONEMENT		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.		
		REMARKS: AT5114539 TO AT5114537					
AT5581543	2020/11/26	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA	BCIMC SPECIALTY FUND CORPORATION		
		REMARKS: AT5114534					
AT5581601	2020/11/26	NOTICE		*** COMPLETELY DELETED *** BCIMC SPECIALTY FUND CORPORATION			
AT5606752	2020/12/22	NOTICE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.		
		REMARKS: AT5114537					

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REGISTRY
OFFICE #66

07617-0269 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:36:07

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5606753	2020/12/22	POSTPONEMENT <i>REMARKS: AT5114539 TO AT5114537</i>		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
AT6043225	2022/04/11	APL ANNEX REST COV <i>REMARKS: NO EXPIRY</i>		2495065 ONTARIO INC.		C
AT6123273	2022/07/05	POSTPONEMENT <i>REMARKS: AT5114537 TO AT6043225</i>		*** COMPLETELY DELETED *** FIERA FP REAL ESTATE FINANCING FUND, L.P.	2495065 ONTARIO INC.	
AT6138607	2022/07/22	DISCH OF CHARGE <i>REMARKS: AT5114534.</i>		*** COMPLETELY DELETED *** BCIMC SPECIALTY FUND CORPORATION		
AT6138608	2022/07/22	DISCH OF CHARGE <i>REMARKS: AT5114537.</i>		*** COMPLETELY DELETED *** FIERA FP REAL ESTATE FINANCING FUND, L.P.		
AT6138609	2022/07/22	CHARGE	\$105,000,000	2495065 ONTARIO INC.	OTÉRA CAPITAL INC.	C
AT6138610	2022/07/22	NO ASSGN RENT GEN <i>REMARKS: AT6138609</i>		2495065 ONTARIO INC.	OTÉRA CAPITAL INC.	C
AT6138611	2022/07/22	POSTPONEMENT <i>REMARKS: AT5114539 TO AT6138609</i>		CIC MANAGEMENT SERVICES INC.	OTÉRA CAPITAL INC.	C
AT6199775	2022/10/11	POSTPONEMENT <i>REMARKS: AT5114539 TO AT6043225</i>		CIC MANAGEMENT SERVICES INC.	2495065 ONTARIO INC.	C
AT6422890	2023/09/19	CONSTRUCTION LIEN	\$700,465	KOHN PARTNERSHIP ARCHITECTS INC.		C

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LAND
REGISTRY
OFFICE #66

07617-0270 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:34:49

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 256, 257, 258 AND 259, PLAN M68, DESIGNATED AS PART 8 ON PLAN 66R-30185 AS IN AT6150665; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 260 AND 261, PLAN M68, PARTS 12 AND 13 ON PLAN 66R30185 AS IN AT6150665; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK 140

PIN CREATION DATE:
1996/03/25

OWNERS' NAMES
2495065 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/03/25 ON THIS PIN**</p> <p>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/03/25**</p> <p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1996/03/22 **</p>						
B361671	1973/03/19	NOTICE AGREEMENT			THE CORPORATION OF THE BOROUGH OF ETOBICOKE	C
A879900	1980/10/01	TRANSFER		*** COMPLETELY DELETED ***	CHAIRTEX MANUFACTURING LIMITED	
<p>CORRECTIONS: 'TRANSFEE' CHANGED FROM 'CHAIRTEX MANUFACTURING LIMITED' TO 'THE CORPORATION OF THE CITY OF TORONTO' ON 2001/10/04 BY CHARLOTTE MCALMONT. 'TRANSFEE' CHANGED FROM 'THE CORPORATION OF THE CITY OF TORONTO' TO 'THE CORPORATION OF THE CITY OF ETOBICOKE' ON 2001/10/04 BY CHARLOTTE MCALMONT. 'TRANSFEE: THE CORPORATION OF THE CITY OF ETOBICOKE' DELETED ON 2002/10/09 BY ABDOOL KHODABOCUS. 'TRANSFEE: CHAIRTEX MANUFACTURING LIMITED' ADDED ON 2002/10/09 BY ABDOOL KHODABOCUS.</p>						
A879901	1980/10/01	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
A879902	1980/10/01	NOTICE OF LEASE		*** COMPLETELY DELETED ***		
C436802	1987/12/16	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
C961498	1995/08/17	CERT TAX ARREARS		*** COMPLETELY DELETED ***		
<p>REMARKS: DELETED 2019/04/01 BY R.LANE</p>						
C968369	1995/09/28	APL (GENERAL)		*** COMPLETELY DELETED ***		
<p>REMARKS: DECLARATION, C961498; DELETED 2019/04/01 BY R.LANE</p>						
E34517	1996/10/03	NOTICE		*** COMPLETELY DELETED ***		

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LAND
REGISTRY
OFFICE #66

07617-0270 (LT)

PREPARED FOR Qiuling1
ON 2023/10/24 AT 09:34:49

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
E120422	1997/10/14	NOTICE		CHAIRTEX MANUFACTURING LIMITED REGISTRAR TO DELETE THE ENTRY OF THIS NOTICE WITHOUT NOTICE OR APPLICATION 5 MONTHS FROM 96/10/03 OR EARLIER, WITH THE CONSENT OF THE CORPORATION OF THE CITY OF ETOBICOKE.; DELETED 2019/04/01 BY R.LANE *** COMPLETELY DELETED *** THE CORPORATION OF THE CITY OF ETOBICOKE	THE CORPORATION OF THE CITY OF ETOBICOKE	
				REMARKS: C961498; C968369; E34517; DELETED 2019/04/01 BY R.LANE		
AT46674	2002/11/27	TRANSFER		*** COMPLETELY DELETED *** CITY OF TORONTO	CIC MILLWORK LIMITED	
AT46675	2002/11/27	REST COV APL ANNEX		*** COMPLETELY DELETED *** CITY OF TORONTO		
AT4861469	2018/05/11	APL CH NAME OWNER		*** COMPLETELY DELETED *** CIC MILLWORK LIMITED	CIC MANAGEMENT SERVICES INC.	
AT4866297	2018/05/17	APL DELETE REST		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.		
				REMARKS: AT46675.		
AT4868552	2018/05/22	CHARGE		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
AT4868553	2018/05/22	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
				REMARKS: AT4868552.		
AT5114533	2019/04/15	TRANSFER	\$89,938,727	CIC MANAGEMENT SERVICES INC.	2495065 ONTARIO INC.	C
				REMARKS: PLANNING ACT STATEMENTS.		
AT5114534	2019/04/15	CHARGE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	CIC MANAGEMENT SERVICES INC.	
AT5114535	2019/04/15	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	HSBC BANK CANADA	
				REMARKS: AT5114534.		
AT5114536	2019/04/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA		
				REMARKS: AT4868552.		
AT5114537	2019/04/15	CHARGE		*** COMPLETELY DELETED ***		

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ON 2023/10/24 AT 09:34:49

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5114538	2019/04/15	NO ASSGN RENT GEN		2495065 ONTARIO INC. *** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P. FIERA FP REAL ESTATE FINANCING FUND, L.P.	
	REMARKS: AT5114537					
AT5114539	2019/04/15	CHARGE	\$25,000,000	2495065 ONTARIO INC.	CIC MANAGEMENT SERVICES INC.	C
AT5470499	2020/07/10	NOTICE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
	REMARKS: AT5114537					
AT5470500	2020/07/10	POSTPONEMENT		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
	REMARKS: AT5114539 TO AT5114537					
AT5581543	2020/11/26	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HSBC BANK CANADA	BCIMC SPECIALTY FUND CORPORATION	
	REMARKS: AT5114534					
AT5581601	2020/11/26	NOTICE		*** COMPLETELY DELETED *** BCIMC SPECIALTY FUND CORPORATION		
AT5606752	2020/12/22	NOTICE		*** COMPLETELY DELETED *** 2495065 ONTARIO INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
	REMARKS: AT5114537					
AT5606753	2020/12/22	POSTPONEMENT		*** COMPLETELY DELETED *** CIC MANAGEMENT SERVICES INC.	FIERA FP REAL ESTATE FINANCING FUND, L.P.	
	REMARKS: AT5114539 TO AT5114537					
AT6043225	2022/04/11	APL ANNEX REST COV		2495065 ONTARIO INC.		C
	REMARKS: NO EXPIRY					
AT6123695	2022/07/05	POSTPONEMENT		*** COMPLETELY DELETED *** FIERA FP REAL ESTATE FINANCING FUND, L.P.	2495065 ONTARIO INC.	
	REMARKS: AT5114537, AT5114538 TO AT6043225					
AT6138607	2022/07/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** BCIMC SPECIALTY FUND CORPORATION		
	REMARKS: AT5114534.					
AT6138608	2022/07/22	DISCH OF CHARGE		*** COMPLETELY DELETED ***		

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REGISTRY
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07617-0270 (LT)

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ON 2023/10/24 AT 09:34:49

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				FIERA FP REAL ESTATE FINANCING FUND, L.P.		
AT6138609	2022/07/22	CHARGE	\$105,000,000	2495065 ONTARIO INC.	OTÉRA CAPITAL INC.	C
AT6138610	2022/07/22	NO ASSGN RENT GEN		2495065 ONTARIO INC.	OTÉRA CAPITAL INC.	C
		REMARKS: AT6138609				
AT6138611	2022/07/22	POSTPONEMENT		CIC MANAGEMENT SERVICES INC.	OTÉRA CAPITAL INC.	C
		REMARKS: AT5114539 TO AT6138609				
AT6199775	2022/10/11	POSTPONEMENT		CIC MANAGEMENT SERVICES INC.	2495065 ONTARIO INC.	C
		REMARKS: AT5114539 TO AT6043225				
AT6422890	2023/09/19	CONSTRUCTION LIEN	\$700,465	KOHN PARTNERSHIP ARCHITECTS INC.		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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THIS IS **EXHIBIT J** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING*
OATH OR DECLARATION REMOTELY, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

THIS PRIORITY AND STANDSTILL AGREEMENT is dated the 20th day of July, 2022.

BETWEEN:

CIC MANAGEMENT SERVICES INC. (the "**Subordinate Lender**")

AND:

OTÉRA CAPITAL INC.

(the "**Senior Lender**")

AND:

2495065 ONTARIO INC.

(the "**Borrower**")

WHEREAS:

- A. The Borrower is the legal owner (registered owner) and beneficial owner of the lands described in Schedule "A" of this Agreement (the "**Lands**").
- B. To secure payment, performance and satisfaction by the Borrower of additional consideration payable to the Subordinate Lender if the Borrower achieves Bonus Density (as defined in the Purchase Agreement) (the "**Subordinate Loan**") under the purchase agreement dated December 10, 2018, as amended from time to time, pursuant to which the Subordinate Lender sold its interest in the Lands to the Borrower (the "**Purchase Agreement**"), the Subordinate Lender holds or may in the future hold security from the Borrower (as amended, restated or supplemented from time to time and collectively with the Subordinate Loan Agreement, the "**Subordinate Loan Documents**"), including, among others:
 - (i) a mortgage inclusive of an assignment of rents against the Lands in the amount of \$25,000,000 granted by the Borrower and registered against the Lands as instrument number AT5114539; and
 - (ii) any additional collateral security in connection with the Subordinate Loan in favour of the Subordinate Lender.
- C. The Senior Lender has entered into an amended and restated commitment letter (as further amended, restated or supplemented from time to time collectively, the "**Senior Loan Agreement**") with the Borrower for a loan in the principal sum of \$84,350,000 (such loan and all other indebtedness and obligations evidenced or secured by the Senior Loan Documents (collectively, the "**Senior Loan**").
- D. As security for the Senior Loan, the Senior Lender holds or may in the future hold security from the Borrower and John Vandyk and Vandyk Properties Incorporated (collectively, the "**Guarantor**") (as amended, restated or supplemented from time to time and collectively with the Senior Loan Agreement, the "**Senior Loan Documents**"), including, among others:

- (i) a mortgage against the Lands in the amount of \$105,000,000 granted by the Borrower and registered against the Lands as instrument number AT6138609;
 - (ii) a general assignment of leases rents in respect of the Lands granted by the Borrower;
 - (iii) a general security agreement creating a security interest over any present and after acquired personal property, assets, choses in action and undertaking of the Borrower located on the Lands or used or which relate exclusively or primarily to or in connection with the Lands (the "**Personal Property**"), registered at the PPR under number 20220720 1239 9234 3846 against the Borrower (as debtor) by the Senior Lender (as secured party);
 - (iv) a guarantee from the Guarantor with respect to the obligations of the Borrower under the Senior Loan Agreement;
 - (v) an assignment of material contracts granted by the Borrower;
 - (vi) a misconduct events indemnity granted by the Borrower and Guarantor;
 - (vii) an assignment of all present and future agreements of purchase and sale of units;
 - (viii) an assignment of insurance; and
 - (ix) any additional collateral security in connection with the Senior Loan in favour of the Senior Lender.
- E. It is a condition, among others, of the Senior Lender making any advance to the Borrower that the Subordinate Lender executes and delivers this Agreement.

Now therefore, this Agreement witnesses that, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which is acknowledged by the Subordinate Lender, the Subordinate Lender agrees with the Senior Lender as follows:

1. GENERAL

Notwithstanding the terms of the agreements, instruments or other documents giving rise to the Senior Loan, the Subordinate Loan, the Senior Loan Documents or the Subordinate Loan Documents, the times of defaults under or the dates of any advances of or commitments with respect to the Senior Loan or the Subordinate Loan, nor the dates of creation or perfection of the Senior Loan Documents or the Subordinate Loan Documents, the parties agree that all and any of their rights in respect of the Senior Loan, the Subordinate Loan, the Senior Loan Documents and the Subordinate Loan Documents shall be subject to the terms of this Agreement.

2. GRANT OF PRIORITY AND POSTPONEMENT

- (a) The Subordinate Lender hereby grants to the Senior Lender priority over the interests that it has in the Lands, the rents derived therefrom and the Personal Property by virtue of the Subordinate Loan Documents, including all proceeds of insurance and proceeds of expropriation relative to the Lands (collectively, the "**Charged Property**"), to the extent of a maximum principal amount (excluding any interest and fees pursuant to the terms of the

Senior Loan Documents and other protective disbursements) of \$71,542,000, and does hereby postpone and subordinate all its rights under the Subordinate Loan Documents and all its rights, title and interest in and to the Charged Property, with the intent that the interests of the Subordinate Lender therein will be subject to the rights of the Senior Lender under the Senior Loan Documents as though the Senior Loan Documents had been executed and delivered, registered or otherwise processed and the Senior Loan advanced thereunder in point of time prior to the execution, delivery, registration or processing of the Subordinate Loan Documents and the date of advance of the Subordinate Loan thereunder.

- (b) For greater certainty, the grant of priority provided for herein will apply in all events and circumstances:
- (i) to the full amount of the Senior Loan subject to Section 2(a) of this Agreement, until the Senior Loan has been repaid in full and the Senior Loan Documents have been completely released and discharged; and
 - (ii) regardless of:
 - A. the dates of execution, delivery and registration of the Subordinate Loan Documents and the Senior Loan Documents;
 - B. the dates of all past, present and future advances or re-advances of the Senior Loan to, for, on behalf of or for the benefit of the Borrower;
 - C. the dates of issue of any letters of guarantee or letters of credit issued by the Senior Lender or on its behalf to the Borrower or on its request and the dates of any payments made by the Senior Lender under such letters of guarantee or letters of credit;
 - D. the dates of any past, present or future defaults by the Borrower under any of the terms and conditions of the Senior Loan or the Senior Loan Documents;
 - E. the dates any demands for payment are made, the dates any notices are given, and any failure to make or give any such demands or notices;
 - F. any contrary intention expressed in the Senior Loan Documents, the Subordinate Loan Documents or any other documents; and
 - G. any priority granted by any principle of law or equity or any statute, including the *Personal Property Security Act* (Ontario) and the *Land Titles Act* (Ontario).

3. CONSENT TO SECURITY

The Senior Lender hereby consents to the Subordinate Loan Documents and the Subordinate Lender hereby consents to the Senior Loan Documents.

4. REALIZATION PROCEEDINGS AND AMENDMENTS

- (a) The Subordinate Lender covenants and agrees with the Senior Lender that, until the Senior Loan has been paid in full and the Senior Loan Documents have been released and discharged, unless it obtains the prior written consent of the Senior Lender, which the Senior

Lender in its sole, absolute and unfettered discretion may provide or withhold as it sees fit, it will not:

- (i) take any steps to enforce or exercise, or seek to enforce or exercise, any remedies under the Subordinate Loan Documents or any part thereof with respect to the Charged Property, the Borrower, or the Guarantor, provided, however, that the Subordinate Lender shall have the right to issue a notice of default, a demand letter, a loan acceleration notice and a notice under the *Bankruptcy and Insolvency Act* (Canada) of its intent to enforce security;
- (ii) institute or commence, or join with any other person in instituting or commencing, any Creditor Proceedings or take any steps or proceedings in connection therewith; or
- (iii) institute or commence any action or proceeding to enforce, collect or receive payment of any part of the Subordinate Loan or exercise any rights to enforce payment of the Subordinate Loan, including any action of enforcement, realization, foreclosure, sale, collection, seizure or execution (in any case in respect of the Charged Property, and, for certainty, whether as a secured or unsecured creditor);

(each of the above being referred to as an “**Enforcement Action**”).

(b) In this Agreement, unless something in the subject matter or context is inconsistent herewith:

- (i) “**Creditor Proceedings**” means:
 - A. any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement, proposal or similar proceedings under Insolvency Laws of or with respect to the Borrower or the Guarantor or their property or liabilities, in each case under Insolvency Laws;
 - B. any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations of any or all creditors) of or with respect to the Borrower or the Guarantor or their property or liabilities;
 - C. any bankruptcy, insolvency, receivership, petition or assignment in bankruptcy, or assignment for the benefit of creditors under any Insolvency Laws of or with respect to the Borrower or the Guarantor;
 - D. any appointment of any receiver or receiver manager, whether pursuant to the power contained in the Subordinate Loan Documents or pursuant to a court order;
 - E. any marshaling of assets and liabilities of the Borrower or the Guarantor under any Insolvency Laws; or
 - F. any proceedings in relation to any of the foregoing;

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the Borrower or the Guarantor; and

- (ii) **"Insolvency Laws"** means the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws applicable to the Borrower or the Guarantor or any of their properties or liabilities.
- (c) The Subordinate Lender will not make or permit any amendment to the Subordinate Loan or the Subordinate Loan Documents or any part thereof, without the approval of the Senior Lender.
- (d) The Subordinate Lender will promptly deliver to the Senior Lender copies of any changes made to the Subordinate Loan and the Subordinate Loan Documents.

5. FURTHER SUBORDINATE LENDER AGREEMENTS

The Subordinate Lender acknowledges, agrees, covenants and confirms to and with the Senior Lender that:

- (a) the right of the Senior Lender to arbitrarily withhold its consent pursuant to Section 4 hereof is reasonable and consistent with the protection of the legitimate business interests of the Senior Lender;
- (b) any action taken by the Subordinate Lender in breach of the provisions of Section 4 hereof could have a material adverse effect on the continuing operation, viability and financial stability of the Borrower and/or the Guarantor and will not be binding on or of any force or effect against the Senior Lender, and the Senior Lender may bring any proceedings in the nature of specific performance, injunction or other equitable remedy to enforce its rights under this Agreement, it being acknowledged by the Subordinate Lender that damages at law may be an inadequate remedy for a default, breach or threatened breach of this Agreement;
- (c) if the Senior Lender seeks to appoint a receiver or a receiver manager, whether pursuant to the powers contained in the Senior Loan Documents or pursuant to a court order, the Subordinate Lender will not take any steps to oppose such appointment and will consent thereto; and
- (d) the Subordinate Lender will deliver to the Senior Lender copies of any notices of default which it gives to the Borrower at the same time as it delivers such notices to the Borrower.

6. PARTIAL DISCHARGES OF SECURITY

In order to facilitate the sale of units, lots, strata lots or condominium units comprising the Lands to third parties, or any surplus lands or lands required to be transferred to the municipality or city, the Subordinate Lender agrees to execute and deliver (without charge to the Senior Lender or repayment of the Subordinate Loan or any part thereof and regardless of any default by the Borrower) partial discharges of the Subordinate Loan Documents to the Borrower's solicitors for registration upon the Borrower becoming entitled to similar partial discharges from the Senior Lender pursuant to the terms of the Senior Loan Agreement. The partial discharges from the

Senior Lender and the Subordinate Lender shall be registered simultaneously by the Borrower's solicitors.

Without limiting the foregoing in any manner whatsoever, the Subordinate Lender agrees that upon registration of any condominium with respect to the Lands, the Subordinate Loan Documents shall be discharged from all units in such condominium (unless any amounts are then due under the Subordinate Loan Documents) without payment of any kind in accordance with the provisions of the Purchase Agreement.

7. FACILITATION OF PROJECT

The Subordinate Lender covenants and agrees with the Senior Lender to execute and deliver, promptly on request, all such subdivision plans, air space plans, strata plans, condominium plans, consents, building schemes, rights of way, easements, land use contracts and other similar instruments and amendments thereto and priority agreements in connection therewith with respect to the development of the project on the Lands as the Senior Lender and the Borrower may execute and as the Senior Lender may reasonably require the Subordinate Lender to execute.

8. POWER OF ATTORNEY

If the Subordinate Lender fails to execute and deliver (or to cause to be executed and delivered) any documents that the Senior Lender may reasonably require pursuant to Section 6 or Section 7 within a period of ten (10) days after written request therefor has been made by the Senior Lender, then the Senior Lender will be entitled to execute and deliver (or to cause to be executed and delivered) such documents as the attorney of the Subordinate Lender and for such purpose the Subordinate Lender hereby appoints the Senior Lender, as its attorney, with full power of substitution, in its name but on behalf of and for the benefit of the Senior Lender, its successors and assigns, and at the expense of the Borrower, its successors and assigns, to execute and deliver (or to cause to be executed and delivered) any consents, discharges, subdivision plans, air space plans, strata plans, condominium plans, consents, building schemes, rights of way, easements, land use contracts and other similar instruments and amendments thereto and priority agreements in connection therewith with respect to the development of the project on the Lands which the Subordinate Lender ought to do pursuant to the provisions of Section 6 and Section 7 hereof. This appointment, is coupled with an interest, irrevocable and shall not be revoked by the insolvency or bankruptcy of the Subordinate Lender or by the dissolution, liquidation or other termination of the existence of the Subordinate Lender or for any other reason.

9. PAYMENTS

The Subordinate Lender shall not, until the Senior Loan has been repaid in full and the Senior Loan Documents have been released and discharged, receive or accept, and the Borrower and the Guarantor agree not to make, any payment, prepayment, set off or otherwise (including in respect of a distribution in any insolvency proceeding) of all or any portion of the principal and interest of the Subordinate Loan as well as any other sum secured by the Subordinate Loan Documents provided, however, that the Subordinate Lender shall be entitled to receive, and the Borrower and the Guarantor shall be entitled to make, any such payment, prepayment or set off in accordance with the terms of the Subordinate Loan Documents so long as prior to receipt of such payment the Subordinate Lender has received written confirmation from the Senior Lender that no default or event of default has occurred and is continuing under the Senior Loan Documents.

10. PAYMENTS IN TRUST

Any payments received by the Subordinate Lender in contravention of the terms of this Agreement shall be held in trust for the Senior Lender and the Subordinate Lender will immediately turn over any such payments to the Senior Lender, without further notice or demand, which payment will be applied towards the Senior Loan.

11. CLAIMS

The Subordinate Lender will not make any assertion, claim or argument in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the Senior Loan Documents or the charges, liens and security interests granted thereby or any Enforcement Action taken by the Senior Lender thereunder. The accounts and records of the Senior Lender shall constitute, in the absence of manifest error, prima facie evidence of the Senior Loan.

12. SENIOR LENDER'S RIGHTS

The Senior Lender may at any time and from time to time, without the consent of the Subordinate Lender and without incurring responsibility to the Subordinate Lender and without impairing or releasing any of the rights or the obligations of the Senior Lender hereunder:

- (a) change the amount, manner, place or terms of payment or change or extend the time of payment of or increase, renew or alter its lending arrangements with the Borrower and/or the Senior Loan Documents, or any part thereof, waive non-performance by the Borrower or the Guarantor of or amend, alter, extend, supplement or replace the Senior Loan Documents and/or the agreements related thereto in any manner, or enter into or amend, supplement or replace in any manner any other agreement with the Borrower or the Guarantor;
- (b) sell, exchange, release or otherwise enforce its rights against or deal with all or any part of any property at any time pledged or mortgaged by any party to secure the Senior Loan or any part thereof;
- (c) release the Borrower, any covenantor or guarantor of the Senior Loan or any other party liable in any manner for the payment or collection of the Senior Loan;
- (d) exercise or refrain from exercising any rights against the Borrower, the Guarantor, or others (including the Subordinate Lender) or exercise rights against the Borrower or the Guarantor, their property or any other party at any time and in any order; and
- (e) apply any sums paid by any party to the Senior Loan in any manner or order as determined by the Senior Lender.

13. ACCELERATION

Nothing herein contained shall compel the Senior Lender at any time to accelerate the Senior Loan or commence any action or enforcement proceeding under the Senior Loan Documents. The Subordinate Lender acknowledges that all rights and remedies which the Senior Lender may have

under the Senior Loan Documents and related agreements and hereunder are cumulative and not alternative rights and remedies.

14. SUBORDINATE LENDER REPRESENTATIONS AND WARRANTIES

The Subordinate Lender represents and warrants that:

- (a) it has not assigned its interest in the Subordinate Loan or the Subordinate Loan Documents;
- (b) the Subordinate Loan and the Subordinate Loan Documents are not in default;
- (c) the security referred to in Recital B constitutes all of the Subordinate Loan Documents in respect of the Subordinate Loan;
- (d) it will disclose and provide copies for approval to the Senior Lender of all the Subordinate Loan Documents in accordance with the terms of this Agreement; and
- (e) it is entitled to all of the moneys secured by the Subordinate Loan Documents.

15. ASSIGNMENT OF SUBORDINATE LOAN DOCUMENTS

The Subordinate Lender shall not assign the Subordinate Loan Documents or any portion thereof without the prior written consent of the Senior Lender (which consent may be withheld at the sole discretion of the Senior Lender) and without first obtaining from the assignee and delivering to the Senior Lender a written acknowledgement that the assignment is subject to the terms of this Agreement. The Senior Lender will not assign the Senior Loan Documents or any portion thereof without first obtaining from the assignee a written acknowledgement that the assignment is subject to the terms of this Agreement.

16. BANKRUPTCY OR INSOLVENCY

In the event of the bankruptcy or winding up of any of the Borrower or the Guarantor, or any composition with creditors or scheme of arrangement, any and all dividends or other monies which may be due or payable to the Subordinate Lender in respect of debts or claims of the Subordinate Lender against the Borrower and/or the Guarantor are hereby assigned and transferred to and shall be due and paid to the Senior Lender to be applied to the Senior Loan.

The Senior Lender is hereby irrevocably authorized and empowered (in its own name or in the name of the Subordinate Lender), but shall have no obligation, to demand, sue for, collect and receive every payment or distribution referred to above and give releases in respect thereof and to file claims and proof of claim.

17. CREDITOR PROCEEDINGS

The parties hereto acknowledge and agree that the Senior Lender and the Subordinate Lender have no commonality of interests between them such that (i) they ought not be classified in the same class in any restructuring proceeding; and (ii) the parties will take all reasonable steps to ensure they are not classified in the same class in any restructuring proceeding. If they are classified in the same class, the Subordinate Lender covenants and agrees to vote in such class in a manner consistent with the provisions of this Agreement.

Upon the commencement of a Creditor Proceeding, the Subordinate Lender agrees not to take

Priority and Standstill Agreement (Construction and Term Loans/Common Law)

any action or vote in any way inconsistent with this Agreement so as to contest (i) the validity or enforcement of any of the Senior Loan Documents, (ii) the priority of the Senior Loan Documents, and (iii) the rights of the Senior Lender and duties of the Subordinate Lender.

Unless the Senior Lender is paid in full, the Subordinate Lender may not oppose, object to or vote against any plan of reorganization, plan of arrangement or any similar scheme of arrangement the terms of which are consistent with the rights of the Senior Lender under this Agreement.

18. RESTRICTION ON SUBROGATION

The Subordinate Lender shall not exercise any rights which it may acquire by way of subrogation or contribution under this Agreement until such time as the Senior Loan has been paid, performed, indefeasibly satisfied in full and cancelled. If any amount is paid to the Subordinate Lender on account of such subrogation or contribution rights prior to such time, such amount shall be held in trust by the Subordinate Lender for the benefit of the Senior Lender and shall be promptly paid to the Senior Lender.

19. SENIOR LENDER NOTICES

The Senior Lender will endeavor to deliver to the Subordinate Lender copies of any notices of default which it gives to the Borrower at the same time as it delivers such notices to the Borrower. The Senior Lender will incur no liability whatsoever, nor will any of its rights be affected by the failure to deliver notice of default to the Subordinate Lender.

20. AGREEMENT BY BORROWER AND GUARANTOR

The Borrower and the Guarantor consent to the exchange between the Senior Lender and the Subordinate Lender of any information relating to the Borrower, the Guarantor, the Charged Property, the Senior Loan, the Senior Loan Documents, the Subordinate Loan and the Subordinate Loan Documents, accept and agree to be bound by this Agreement and agree not to make to the Subordinate Lender payments not authorized in this Agreement.

21. ENUREMENT

This Agreement will be binding on and enure to the benefit of the parties hereto and their respective successors and assigns.

22. NOTICE

(a) Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, or transmitted by facsimile transmission, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail, and in the case of:

(i) If to the Subordinate Lender, addressed as follows:

CIC Management Services Inc.
105 Six Point Road
Toronto, Ontario M8Z 2X3

Attention:
Facsimile Number:

- (ii) If to the Senior Lender, addressed as follows:

Otéra Capital Inc.
3610-81 Bay Street
Toronto, Ontario M5J 0E7

Attention: Vice President, Real Estate Lending
Facsimile Number: 416-360-8709

with a copy to:

Otéra Capital Inc.
413 St-Jacques Street, Suite 700
Montréal, Québec H2Y 1N9

Attention: Legal Affairs
Facsimile Number: 514-847-2397

or to such other address or number as a party may from time to time direct in writing.

- (b) Any such notice, (i) if delivered personally, shall be deemed to be delivered on the date of delivery thereof, (ii) if transmitted by facsimile transmission prior to 4:00 p.m. on any Business Day shall be deemed to have been delivered on the date of transmission and if delivered by facsimile transmission after 4:00 p.m. on any Business Day shall be deemed to have been delivered on the next following Business Day or (iii) if mailed as aforesaid, the 4th Business Day following the date of mailing. For the purposes hereof, personal delivery, including delivery by way of a courier service, shall be made by delivery to an officer, director or responsible employee of the party for whom it is intended at its address set out above. If on the date of mailing or on or before such 4th Business Day thereafter there is a general interruption in the operation of postal service in Canada, notices shall be delivered personally or by facsimile transmission.

A "**Business Day**" is a day, excluding Saturdays, Sundays and statutory holidays on which the offices of the Senior Lender and Subordinate Lender are open for commercial business in Montréal, Québec, and Toronto, Ontario.

- (c) Each party may, from time to time, change its address or stipulate an address different from the address set out above by giving notice thereof to each other party in the manner provided in this Section.

23. HEADINGS

All headings in this Agreement are inserted only for convenience of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

24. REGISTRATION

This Agreement shall not be registered on title to the Lands.

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties with respect to the matters herein contained and there are no other representations, warranties, covenants or collateral agreements between the parties in connection therewith other than as expressly herein provided.

26. GOVERNING LAW AND ATTORNMENT

This Agreement and all matters arising under it will be construed in accordance with the laws of Ontario and the laws of Canada applicable therein. The parties to this Agreement each hereby attorns and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario. For the purpose of all legal proceedings, this Agreement shall be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario shall have jurisdiction to entertain any action or proceeding arising under this Agreement. Notwithstanding the foregoing, nothing herein shall be construed nor operate to limit the right of the parties to commence any action or proceeding relating hereto in any other jurisdiction, nor to limit the right of the courts of any other jurisdiction to take jurisdiction over any action, proceeding or matter relating hereto.

27. COUNTERPART

This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear the same date as this Agreement. This Agreement shall be considered properly executed by any party if executed and transmitted by facsimile to the other parties.

[Signature pages follow]

IN WITNESS WHEREOF the parties have executed this Agreement.

CIC MANAGEMENT SERVICES INC.

By: 
Name: John Zamini
Title: President

By: _____
Name:
Title:

I/we have the authority to bind the corporation.

OTÉRA CAPITAL INC.

By: 
Name: Michael DiCesare
Title: Authorized Signatory

By: 
Name: Roy Lall
Title: Authorized Signatory

We have the authority to bind the corporation.

2495065 ONTARIO INC.

By: 
Name: Richard Ma
Title: Authorized Signing Officer

By: _____
Name:
Title:

I/we have the authority to bind the corporation.

Acknowledged by the undersigned this 20th day of July, 2022.

VANDYK PROPERTIES INCORPORATED

By: DocuSigned by:
Richard ma
04B6BBFEDEC840B
Name: Richard Ma
Title: Authorized Signing Officer

By: _____
Name:
Title:

I/we have the authority to bind the corporation.

DocuSigned by:
Natalie Chan
9CA39534DD77405
Witness Natalie Chan

DocuSigned by:
John Vandyk
81ED1B7C5369445
JOHN VANDYK

SCHEDULE "A"**LANDS**

Municipal address: 39 Newcastle Street, Toronto, Ontario

Legal description: PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO

PIN: 07617 - 0047

Legal description: PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE, CITY OF TORONTO

PIN: 07617 - 0270

Legal description: PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO

PIN: 07617 - 0269

The Land Titles Division of the Toronto

Registry Office No.: 66

THIS IS **EXHIBIT K** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

RUN NUMBER : 285
RUN DATE : 2023/10/12
ID : 20231012100830.38

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(7494)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : 2495065 ONTARIO INC.

FILE CURRENCY : 11OCT 2023

ENQUIRY NUMBER 20231012100830.38 CONTAINS 4 PAGE(S), 1 FAMILY(IES).

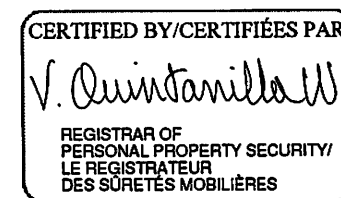
THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

GOWLING WLG (CANADA) LLP - TORONTO - MARK EMMANUEL

1 FIRST CANADIAN PLACE
TORONTO ON M5X 1G5

CONTINUED...

2



(crj6 05/2022)

RUN NUMBER : 285
 RUN DATE : 2023/10/12
 ID : 20231012100830.38

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
 (7495)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : 2495065 ONTARIO INC.
 FILE CURRENCY : 11OCT 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
 785067588

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	2		20220720 1239 9234 3846	P PPSA	4

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
02 03		2495065 ONTARIO INC.			
04		1944 FOWLER DRIVE		MISSISSAUGA	ON L5K 0A1

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
05 06					
07					

SECURED PARTY / LIEN CLAIMANT	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
08 09		OTERA CAPITAL INC			
		3610-81 BAY STREET		TORONTO	ON M5J 0E7

COLLATERAL CLASSIFICATION		CONSUMER	MOTOR VEHICLE	AMOUNT	DATE OF	NO. FIXED
GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED	MATURITY OR MATURITY DATE
10	X	X	X	X	X	

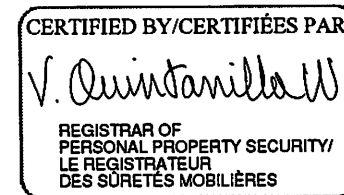
MOTOR VEHICLE	YEAR	MAKE	MODEL	V.I.N.
11 12				

13 GENERAL DESCRIPTION ANY AND ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY, ASSETS AND
 14 COLLATERAL DESCRIPTION UNDERTAKINGS OF ANY NATURE WHATSOEVER, NOW OR HEREAFTER OWNED BY THE
 15 DEBTORS AND SITUATED WITHIN, LOCATED ON, RELATED TO, OR USED OR

REGISTERING AGENT	ADDRESS	CITY	PROV	POSTAL CODE
16 17	MCCARTHY TETRAULT LLP (N. KHAN - OTERA LOAN NO. 2021-0354-10)	TORONTO	ON	M5K 1E6

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3



(rj11v 05/2022)



RUN NUMBER : 285
RUN DATE : 2023/10/12
ID : 20231012100830.38

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(7496)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 2495065 ONTARIO INC.
FILE CURRENCY : 11OCT 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
785067588

00

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	002	2		20220720 1239 9234 3846		

01

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

02

DEBTOR NAME

BUSINESS NAME

03

ONTARIO CORPORATION NO.

04

ADDRESS

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

05

DEBTOR NAME

BUSINESS NAME

06

ONTARIO CORPORATION NO.

07

ADDRESS

SECURED PARTY / LIEN CLAIMANT

08

ADDRESS

09

COLLATERAL CLASSIFICATION

CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE

10

YEAR MAKE MODEL V.I.N.

11

MOTOR VEHICLE

12

GENERAL ACQUIRED IN CONNECTION WITH OR ARISING OUT OF THE PROPERTY
COLLATERAL MUNICIPALLY KNOWN AS 39 NEWCASTLE STREET, TORONTO, ONTARIO

13

DESCRIPTION

14

15

REGISTERING AGENT

16

ADDRESS

17

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(c)11v 05/2022



RUN NUMBER : 285
 RUN DATE : 2023/10/12
 ID : 20231012100830.38

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

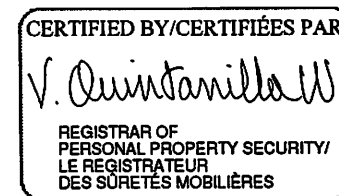
REPORT : PSSR060
 PAGE : 4
 (7497)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : 2495065 ONTARIO INC.
 FILE CURRENCY : 11OCT 2023

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
785067588	20220720	1239	9234	3846

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crj6 05/2022)

THIS IS **EXHIBIT L** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

From: Gertner, Thomas
Sent: 29 September 2023 15:08
To: rma@vandyk.com; jvandyk@vandyk.com
Cc: Gauthier, Virginie
Subject: Credit Facilities Established by Otéra Capital Inc. in favour of 2495065 Ontario Inc.
Attachments: Otera - Demand Letter to Borrower (Sept29.2023).pdf; Otera - Demand Letter to Guarantors (Sept29.2023).pdf; Otera - BIA Notice (Sept29.2023).pdf

Importance: High

We are counsel to Otéra Capital Inc.

Please find enclosed demand letters and notices of intention to enforce security issued pursuant to Section 244 of the *Bankruptcy and Insolvency Act (Canada)*.

Thomas Gertner
Partner
T +1 416 369 4618
thomas.gertner@gowlingwlg.com



Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5
Canada



gowlingwlg.com

Gowling WLG | 1,500+ legal professionals worldwide



Virginie Gauthier
 Direct 416 369 7256
virginie.gauthier@gowlingwlg.com

September 29, 2023

BY EMAIL

2495065 Ontario Inc.
 Attention: Richard Ma
 Email: rma@vandyk.com

Re: Amended and restated commitment letter dated as of July 4, 2022, as amended (collectively, the “Commitment Letter”), between 2495065 Ontario Inc. (the “Borrower”), as borrower, Otéra Capital Inc. (the “Lender”), as lender, and John Vandyk and Vandyk Properties Incorporated (collectively, the “Guarantors”), as guarantors

Capitalized terms used in this letter that are not defined herein have the meanings given to them in the Commitment Letter.

We are the solicitors for the Lender. As you are aware, an Event of Default has occurred under the Commitment Letter by reason of the failure by the Borrower to pay in full the payments of interest and principal that were due upon the expiry of the Term on August 15, 2023. The Borrower further failed to make a monthly interest payment due on September 15, 2023 under the Commitment Letter.

We hereby demand, on behalf of the Lender, that the Borrower pay the entire indebtedness owing under the Commitment Letter and other Loan Documents.

For purpose of repaying the indebtedness under the Commitment Letter and other Loan Documents, the amount of such indebtedness as at today’s date is as follows:

Principal Balance:	\$71,542,000.00
Interest Outstanding (to September 29, 2023):	\$935,895.33
Estimated Legal Fees Outstanding to-Date:	\$51,927.50
Total Indebtedness:	<u>\$72,529,822.83</u>



The statement of indebtedness set out above does not include (i) *per diem* interest in the amount of \$20,345.55 per day to the date on which the indebtedness is paid in full; (ii) an accounting for any payments that may be received after the date of this letter; (iii) any cost, loss, claim, expense or liability of the Lender in respect of the termination, variation or redeployment of any arrangements entered into with any counterparty to a hedge arrangement, (iv) the Lender's legal and other expenses in connection with the indebtedness; or (v) any further costs of the Lender to the date of payment in full of the indebtedness, including further legal costs to such date.

Please advise us a reasonable time in advance of the expected date on which the indebtedness is to be paid so that we can arrange for the statement of indebtedness to be updated to account for the matters referred to in the preceding paragraph.

Unless payment or arrangements satisfactory to the Lender are made by no later than 4:00 p.m. on October 9, 2023 (Toronto time), the Lender may take any further steps that it deems necessary to recover payment of the Indebtedness. These steps may include (i) the enforcement of its security by way of the appointment of an interim receiver, court appointed receiver and manager, a private receiver and manager, or an agent under its security; and (ii) the enforcement of any real property security by way of rights of power of sale. The Lender expressly reserves the right to take any steps it deems advisable to protect the Lenders' position prior to that date.

We enclose herewith a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada), subsection 244(1).

Yours very truly,

A handwritten signature in black ink, appearing to read "John Vandyk", written over a light blue horizontal line.

cc.

John Vandyk
Email: jvandyk@vandyk.com

Vandyk Properties Incorporated
Attention: John Vandyk
Email: jvandyk@vandyk.com

58606736\3



Virginie Gauthier
 Direct 416 369 7256
 virginie.gauthier@gowlingwlg.com

September 29, 2023

BY EMAIL

John Vandyk
 Email: jvandyk@vandyk.com

Vandyk Properties Incorporated
 Attention: John Vandyk
 Email: jvandyk@vandyk.com

Dear Sirs:

Re: Amended and restated commitment letter dated as of July 4, 2022, as amended (collectively, the “Commitment Letter”), between 2495065 Ontario Inc. (the “Borrower”), as borrower, Otéra Capital Inc. (the “Lender”), as lender, and John Vandyk and Vandyk Properties Incorporated (collectively, the “Guarantors”), as guarantors

Capitalized terms used in this letter that are not defined herein have the meanings given to them in the Commitment Letter

We are the solicitors for the Lender. We are instructed to notify you that an Event of Default has occurred under the Commitment Letter by reason of the failure by the Borrower to pay in full the payments of interest and principal that were due on August 15, 2023. The Borrower further failed to make a monthly interest payment due on September 15, 2023 under the Commitment Letter.

We hereby demand, on behalf of the Lender, that the Guarantors pay the entire indebtedness owing under the Commitment Letter and other Loan Documents.

For purpose of repaying the indebtedness under the Commitment Letter and other Loan Documents, the amount of such indebtedness as at today’s date is as follows:

Principal Balance:	\$71,542,000.00
Interest Outstanding (to September 29, 2023):	\$935,895.33
Estimated Legal Fees Outstanding to-Date:	\$51,927.50
Total Indebtedness:	<u>\$72,529,822.83</u>



The statement of indebtedness set out above does not include (i) *per diem* interest in the amount of \$20,345.55 per day to the date on which the indebtedness is paid in full; (ii) an accounting for any payments that may be received after the date of this letter; (iii) any cost, loss, claim, expense or liability of the Lender in respect of the termination, variation or redeployment of any arrangements entered into with any counterparty to a hedge arrangement; (iv) the Lender's legal and other expenses in connection with the indebtedness; or (v) any further costs of the Lender to the date of payment in full of the indebtedness, including further legal costs to such date.

Please advise us a reasonable time in advance of the expected date on which the indebtedness is to be paid so that we can arrange for the statement of indebtedness to be updated to account for the matters referred to in the preceding paragraph.

Unless payment or arrangements satisfactory to the Lender are made by no later than 4:00 p.m. on October 9, 2023 (Toronto time), the Lender may take any further steps that it deems necessary to recover payment of the Indebtedness. These steps may include (i) the enforcement of its security by way of the appointment of an interim receiver, court appointed receiver and manager, a private receiver and manager, or an agent under its security; and (ii) the enforcement of any real property security by way of rights of power of sale. The Lender expressly reserves the right to take any steps it deems advisable to protect the Lenders' position prior to that date.

Until the full amount of the indebtedness has been paid in full, the Lender will be considering all its rights and remedies in connection with the Loans and will take such action as it deems advisable.

Yours very truly,

A handwritten signature in dark ink, appearing to be "R. Ma", written over a light blue horizontal line.

cc. 2495065 Ontario Inc.
Attention: Richard Ma
Email: rma@vandyk.com

NOTICE OF INTENTION TO ENFORCE SECURITY

Bankruptcy and Insolvency Act

(Subsection 244(1))

TO: 2495065 ONTARIO INC. (the “**Insolvent Person**”)

TAKE NOTICE THAT:

1. **OTÉRA CAPITAL INC.** (the “**Mortgagee**”), a secured creditor, intends to enforce its security on the property of the Insolvent Person described below:
 - (a) the property known municipally as 39 Newcastle Street, Toronto, Ontario and legally described in Schedule “A” (the “**Property**”);
 - (b) all leases and rents in respect of the Property; and
 - (c) all other present and future undertaking and property, both real and personal, of the Insolvent Person of whatever nature and wherever located in which the Mortgagee has a security interest, including, without limitation, all receivables, fixtures, equipment, securities, intangibles, contracts and other personal property, and any proceeds derived from any of the foregoing.

2. The security that is to be enforced is in the form of the following:
 - (a) An amended and restated commitment letter dated July 4, 2022, as amended, between the Insolvent Person, as borrower, the Mortgagee, as lender, and John Vandyk and Vandyk Properties Incorporated, as guarantors (the “**Commitment**”);
 - (b) A mortgage dated July 22, 2022 granted by the Insolvent Person in favour of the Mortgagee registered against the Property on July 22, 2022 as Instrument No. AT6138609;
 - (c) a general assignment of rents and leases dated July 20, 2022 from the Insolvent Person in favour of the Mortgagee registered against the Property on July 22, 2022 as Instrument No. AT6138610;
 - (d) a general security agreement from the Insolvent Person in favor of the Mortgagee dated as of July 20, 2022;
 - (e) an assignment of material contracts from the Insolvent Person in favour of the Mortgagee dated as of July 20, 2022;
 - (f) an assignment of insurance from the Insolvent Person in favour of the Mortgagee dated as of July 20, 2022; and
 - (g) an assignment of purchase agreements and deposits from the Insolvent Person in favour of the Mortgagee dated as of July 20, 2022.

3. The total amount of the indebtedness secured by the security as at the date hereof is \$72,529,822.83, plus continuing interest and other costs.
4. The Mortgagee will not have the right to enforce the security until after the expiry of the ten (10) day period following the sending of this notice, unless the Insolvent Person consent to an earlier enforcement.

DATED at Toronto, this 29th day of September, 2023.

OTÉRA CAPITAL INC.
BY ITS COUNSEL GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to be the initials 'T.G.' followed by a flourish.

SCHEDULE A**LEGAL DESCRIPTION OF PROPERTY**

Firstly:

PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0047 (LT)

Secondly:

PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0269 (LT)

Thirdly:

PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0270 (LT)

THIS IS **EXHIBIT M** TO THE
AFFIDAVIT OF LEONARD DAMIANI
SWORN BEFORE ME, BY VIDEOCONFERENCE,
IN ACCORDANCE WITH O. REG. 431/20, *ADMINISTRATING
OATH OR DECLARATION REMOTELY*, THIS
31 DAY OF OCTOBER, 2023.



A Commissioner for Taking Affidavits, etc.

Court File No. ●

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

BETWEEN:

OTÉRA CAPITAL INC.

Applicant

- and -

2495065 ONTARIO INC.

Respondent

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

CONSENT TO ACT

KSV RESTRUCTURING INC. hereby consents to act as receiver and manager without security, of the property, assets and undertakings of 2495065 Ontario Inc. (the "**Debtor**"), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, including without limitation the lands and premises municipally known as 39 Newcastle Street, Toronto, Ontario, in accordance with an order substantially in form of the receivership order sought and included in the Application Record of Otéra Capital Inc.

DATED the 31st day of October, 2023

KSV RESTRUCTURING INC.



David Sieradzki

OTÉRA CAPITAL INC.

- and -

2495065 ONTARIO INC.

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF LEONARD DAMIANI
(Sworn October 31, 2023)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Virginie Gauthier (LSO# 41097D)

Tel: 416- 369 7256
Email: Virginie.Gauthier@ca.gowlingwlg.com

Thomas Gertner (LSO# 67756S)

Tel: 416-369-4618
Fax: 416-862-7661

Email: thomas.gertner@gowlingwlg.com

Lawyers for the Applicant

TAB 3

Court File No. CV-23-00708970-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
))
JUSTICE) DAY OF NOVEMBER, 2023

OTÉRA CAPITAL INC.

Applicant

- and -

2495065 ONTARIO INC.

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc., ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and property of 2495065 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Leonard Damiani sworn October 31, 2023 (the "**Damiani Affidavit**"), and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, [counsel for the Debtor,] those other parties listed on the counsel slip, no one else appearing for any other party although duly served as appears from the affidavits of service of ● sworn November ●, 2023 and on reading the consent of KSV to act as the Receiver,

SERVICE:

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor and all proceeds thereof (collectively, the "**Property**"), including but not limited to the lands and premises listed in Schedule "A" hereto (the "**Real Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the

Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further,

for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that, without limiting the generality of paragraphs 5-7 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Vandyk Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order

authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/vandyk>.

26. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in

these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

27. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered, but not obligated, to cause the Debtor to make an assignment in bankruptcy and nothing in this Order shall prevent the Receiver from acting as trustee in the Debtor's bankruptcy.

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

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

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

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security.

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

33. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

The lands and premises municipally known as 39 Newcastle Street, Toronto, Ontario and legally described as:

Firstly:

PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0047 (LT)

Secondly:

PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0269 (LT)

Thirdly:

PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0270 (LT)

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties 2495065 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ● day of November, 2023 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 20__.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its personal
capacity

Per: _____
Name:
Title:

OTÉRA CAPITAL INC.
Applicant

-and- 2495065 ONTARIO INC.
Respondent

Court File No. CV-23-00708970-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Appointing Receiver)**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

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100 King Street West, Suite 1600

Toronto ON M5X 1G5

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Counsel to the Applicant

Email for party served:

jeff.larry@paliareroland.com

TAB 4

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA
(Ontario) Receiver

Court File No. — CV-23-00708970-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) ~~WEEKDAY~~, THE #
JUSTICE)
) DAY OF ~~MONTH~~ NOVEMBER,
) 20YR 2023

OTÉRA CAPITAL INC.

PLAINTIFF¹

Plaintiff

Applicant

- and -

DEFENDANT

Defendant

2495065 ONTARIO INC.

Respondent

ORDER
(appointing Receiver)

THIS ~~MOTION~~ APPLICATION made by the ~~Plaintiff~~² Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~KSV Restructuring Inc., ("KSV") as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and ~~properties~~property of ~~[DEBTOR'S NAME]~~2495065 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Leonard Damiani sworn ~~[DATE]~~October 31, 2023 (the "Damiani Affidavit"), and the Exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant, [counsel for the Debtor,] those other parties listed on the counsel slip, no one else appearing for ~~[NAME]~~any other party although duly served as appears from the ~~affidavit~~affidavits of service of ~~[NAME]~~● sworn ~~[DATE]~~November ●, 2023 and on reading the consent of ~~[RECEIVER'S NAME]~~KSV to act as the Receiver,

SERVICE:

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated³ so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, ~~including and~~ all proceeds thereof (collectively, the "Property", including but not limited to the lands and premises listed in Schedule "A" hereto (the "Real Property")).

³~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the Construction Act, R.S.O. 1990, c. C.30;
- (i) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;
- (l) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~150,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~300,000; and

⁴ ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~for section 31 of the Ontario *Mortgages Act*, as the case may be,~~⁵ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (m) ~~(l)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
- (p) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

(r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(s) ~~(t)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver

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

7. ~~THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~ COURT ORDERS that, without limiting the generality of paragraphs 5-7 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the "Vandyk Group"), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Vandyk Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and

domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all

security interests, trusts ([including deemed trusts](#)), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow [from the Applicant](#) by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~500,000~~[500,000](#) (or such greater amount [that is acceptable to the Applicant and](#) as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts ([including deemed trusts](#)), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

⁶~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

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

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

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~Protocol~~"Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website ~~at~~ <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~at~~<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~2113~~ of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~'@':~~ <https://www.ksvadvisory.com/experience/case/vandyk>.

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

~~third business day after mailing~~ in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

27. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered, but not obligated, to cause the Debtor to make an assignment in bankruptcy and nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor. trustee in the Debtor's bankruptcy.

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

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

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

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

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

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

33. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

The lands and premises municipally known as 39 Newcastle Street, Toronto, Ontario and legally described as:

Firstly:

PCL 1-1, SEC M177 ; FIRSTLY: LTS 1, 2, 3, 4 & 5 ON THE S/S OF NEWCASTLE ST, PL M177; SECONDLY: LT 8 ON THE E/S OF CHURCHILL ST, PL M177; THIRDLY: ALL THAT PORTION OF THE LANE, PL M177 LYING BTN THE ELY LIMIT OF CHURCHILL ST (FORMERLY WINDSOR ST) AND THE PRODUCTION SLY IN A STRAIGHT LINE OF THE ELY LIMIT OF LT 5, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0047 (LT)

Secondly:

PCL LANE-1, SEC M177 ; PT LANE, PL M177 , THAT PT OF THE PUBLIC LANE LYING BTN THE ELY LIMIT OF LT 5 AND ITS SLY PRODUCTION AND THE WLY LIMIT OF LT 6 EXTENDING FROM THE SLY LIMIT OF NEWCASTLE ST TO THE SLY LIMIT OF THE SAID LANE, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0269 (LT)

Thirdly:

PCL 6-1, SEC M177 ; LT 6, PL M177 ; ETOBICOKE , CITY OF TORONTO, being all of PIN 07617-0270 (LT)

SCHEDULE "B"**RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ 2495065 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___[●]_ day of _____ November, ~~20__~~ 2023 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME]~~ KSV Restructuring Inc.,
solely in its capacity
as Receiver of the Property, and not in its personal
capacity

Per: _____

Name:

Title:

OTÉRA CAPITAL INC.
Applicant

-and-

2495065 ONTARIO INC.
Respondent

Court File No. CV-23-00708970-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

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Document comparison by Workshare Compare on 02 November 2023 15:16:57

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Format changes	0
Total changes	265

OTÉRA CAPITAL INC.
Applicant

-and- 2495065 ONTARIO INC.
Respondent

Court File No. CV-23-00708970-00CL

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

PROCEEDING COMMENCED AT
TORONTO

APPLICATION RECORD

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